

---

---

**ACRES Capital, LLC**  
**Form ADV Part 2A**  
**Disclosure Brochure**  
**August 17, 2020**

865 Merrick Avenue, Suite 200S  
Westbury, New York 11590  
(516) 535-0015

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.

\* \* \* \*

## Item 2: Material Changes

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).

Consistent with SEC rules, ACRES will ensure that you receive a summary of any material changes to this and subsequent Brochures within 120 days of the close of our fiscal year. Furthermore, we will provide you with interim disclosures about material changes as necessary.

This Brochure updates ACRES' previous brochure dated March 30, 2020 as follows:

1. Adds Exantas Capital Corp. ("XAN") as a collective investment vehicle for which ACRES serves as external manager; and
2. Updates certain items in accordance with XAN's addition as an advisory client of ACRES.

### Item 3: Table of Contents

Item 2: Material Changes .....	1
Item 3: Table of Contents.....	2
Item 4: Advisory Business .....	3
Item 5: Fees and Compensation .....	4
Item 6: Performance-Based Fees and Side-By-Side Management .....	7
Item 7: Types of Clients.....	8
Item 8: Methods of Analysis, Investment Strategies and Risk of Loss.....	9
Item 9: Disciplinary Information .....	11
Item 10: Other Financial Industry Activities and Affiliations .....	27
Item 11: Code of Ethics .....	28
Item 12: Brokerage Practices .....	29
Item 13: Review of Accounts.....	30
Item 14: Client Referrals and Other Compensation.....	31
Item 15: Custody .....	32
Item 16: Investment Discretion.....	33
Item 17: Voting Client Securities.....	34
Item 18: Financial Information .....	35
Item 19: Requirements for State Registered Advisers .....	36

#### 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 owned by ACRES Capital Corp. a Delaware Corporation.

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 has discretionary investment management authority with respect to managed accounts, a Delaware private fund, a private fund domiciled in the Cayman Islands and a publicly-traded REIT incorporated in Maryland. ACRES is responsible for all investment decisions made with respect thereto pursuant to managed account agreements or investment management agreements.

##### B. Types of Advisory Services

ACRES private funds and separate accounts invest in commercial mortgage loan investments, commercial real estate and related assets. The publicly-traded REIT focuses on investments in commercial real estate, commercial real estate-related assets and, to a lesser extent, residential real estate and commercial finance assets.

We provide investment management, administrative and other services to nine 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 two private investment funds and will monitor, oversee, supervise and control any and all investment advisory services provided with respect thereto. These funds include ACRES Capital Debt Opportunity Fund, LP (“*ACDOF*”) and ACRES Mortgage Fund, Ltd. (“*AMF*”) (ACDOF and AMF are collectively referred to the “*Funds*”). Investment advice is provided directly to the Funds and not individually to the investors in the Funds. Current and prospective investors should refer to the applicable governing documents for complete information regarding investment objectives, restrictions and risks relating to the Fund.

We provide investment management, administrative and other services to Exantas Capital Corp., a publicly-traded REIT (NYSE: XAN) (“*XAN*”) and will monitor, oversee, supervise and control any and all investment advisory services provided with respect thereto. Investment advice is provided directly to XAN, and not individually to its shareholders. Greater detail regarding XAN, its portfolio holdings, and risks associated with those investments may be found on XAN’s website, [www.exantas.com](http://www.exantas.com), or on the SEC’s website, [www.sec.gov](http://www.sec.gov).

Each reference herein to “**Client**” shall include to the owner of the Separate Account or the investors in the Funds.

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 Funds provide ACRES' with discretion to make investments with a focus on originating, structuring, underwriting and servicing a portfolio of collateralized first mortgage loans. ACRES provides 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 Funds include investment restrictions such as prohibitions on asset class, geographic location, asset type and position size.

ACRES provides investment advisory services to XAN in accordance with a management agreement between ACRES and XAN. The management agreement sets forth the specific services that will be provided by ACRES on behalf of XAN. The management agreement requires ACRES to manage the business affairs of XAN in conformity with the policies and investment guidelines established by XAN's board of directors. ACRES' role as manager is under the supervision and direction of XAN's board of directors. Pursuant to the management agreement, ACRES is responsible for the selection, purchase and sale of portfolio investments, XAN's financing activities, and providing XAN with investment advisory services.

### **D. Wrap Programs**

We do not participate in wrap fee programs.

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

As of June 30, 2020, we managed approximately \$105,398,796 of Client assets on a non-discretionary basis and \$2,351,167,705 on a discretionary basis.

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

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

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

The amount of the advisory fees of each Fund are set forth in each Fund's governing documents, which are distributed to each investor prior to making an investment in such 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.

ACRES is entitled to a monthly base management fee calculated in accordance with XAN's management agreement. ACRES also charges a quarterly performance fee calculated in accordance with XAN's management agreement. ACRES is also reimbursed from XAN for certain fees and expenses as permitted by XAN's management agreement. For a more detailed discussion of ACRES' fees and compensation, please refer to a copy of XAN's SEC Form 10-Q filed on August 10, 2020 available on XAN's website, [www.exantas.com](http://www.exantas.com), or on the SEC's website, [www.sec.gov](http://www.sec.gov).

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. Deduction of Fees**

Clients are billed for fees incurred on a quarterly basis.

## **C. 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 of third party consultants, attorneys and accountants, commission expenses and costs of litigation relating to such investment, or (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 Funds are generally allocated their pro rata share of such additional fees and expenses. Additional costs and expenses payable by XAN are set forth in XAN's management agreement. 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 or by 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 by Separate Account Clients and the Funds in arrears, generally on a quarterly basis. Management Fees are paid by XAN monthly in arrears, while Incentive Fees are paid quarterly by XAN. 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 of ACDOF and the Directors of AMF are 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>D. Pre-Paid Fees</b>
-------------------------

Clients do not pre-pay fees.

<b>E. Sales Compensation</b>
------------------------------

Neither ACRES, nor any of its 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 ACRES, nor any of its 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 XAN, its Funds 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 XAN, our Funds 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, loan-to-value and loan-to-cost ratios. ACRES will have the opportunity to invest, on economic terms substantially similar to other Clients. ACRES will be allocated an amount in such investment opportunity, to the extent practicable, on a 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, private investment funds, a publicly-traded REIT and other institutional clients. ACRES' acts as the general partner to ACDOF and Investment Manager to AMF. Investors in the Funds 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 ACDOF are required to meet certain suitability and net worth qualifications including qualifications that they are (i) an "accredited investor" as defined in Rule 501(A) of regulation D under the Securities Act of 1933, as amended (the "***Securities Act***") and a "Qualified Purchaser" as defined in Section 2(A)(51) of the Investment Company Act of 1940, as Amended (the "***Investment Company Act***"); (ii) are able to bear the economic risk of an investment in an interest for an indefinite period, (iii) a "United States person" for U.S. federal income tax purposes and (iii) acquiring an interest for its own account for investment purposes only and not with a view to any resale or distribution of such interest.

Investors participating in AMF are required to meet certain suitability and net worth qualifications including qualifications that they are (i) an "accredited investor" as defined in Rule 501(A) of regulation D under the Securities Act of 1933, as amended (the "***Securities Act***") and a "Qualified Purchaser" as defined in Section 2(A)(51) of the Investment Company Act of 1940, as Amended (the "***Investment Company Act***"), (ii) able to bear the economic risk of an investment in an interest for an indefinite period, (iii) not a "United States person" 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 ACDOF is \$250,000. ACRES' has the ability to waive this minimum at our discretion.

The minimum investment in AMF is \$1,000,000. 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 and Investment Strategies

For each prospective investment, an underwriting team is assigned to perform a ground-up analysis of all aspects of credit risk. ACRES has 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, ACRES incorporates input received from its finance, capital markets, credit and legal teams, as well as from various third parties, including 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 regular contact with our borrowers and servicers, monitoring performance of our collateral and enforcing our rights as necessary.

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.

In regard to XAN, ACRES' objective is to provide XAN and its shareholders with total returns over time, including quarterly distributions and capital appreciation, while seeking to manage the risks associated with XAN's investment strategies. ACRES, on behalf of XAN, generates income primarily from the spread between the revenues received from XAN assets and the cost to finance XAN's ownership of those assets, including corporate debt and from hedging interest rate risks. ACRES, on behalf of XAN, generates revenues from the interest and fees XAN earns on its whole loans, A-notes, B-notes, mezzanine debt securities, preferred equity investments in commercial real estate, commercial mortgage-backed securities ("CMBS") and investments in trust preferred securities. ACRES uses leverage to enhance XAN's returns and has financed each of XAN's different asset classes with different degrees of leverage. The cost of borrowings that finance XAN's investments is a significant part of its expenses. For a more detailed discussion of ACRES' investment strategies, please refer to a copy of XAN's SEC Form 10-Q filed on August 10, 2020 available on XAN's website, [www.exantas.com](http://www.exantas.com), or on the SEC's website, [www.sec.gov](http://www.sec.gov).

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 Funds (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 of ACRES investment strategies. 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.

## **B. 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.*

### **SEPARATE ACCOUNT AND FUND CLIENTS**

#### ***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
- 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 applicable 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 or any Separate Account 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 the Fund or 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.

## **XAN**

Investments made by XAN, or investments in XAN, are speculative and involve a high degree of risk.

Below is a summary of certain risks associated with investments made by XAN, and investments in XAN. For a more detailed discussion of risks related to XAN’s financing, investments, and operations, please refer to a copy of XAN’s SEC Form 10-K for the fiscal year ended December 31, 2019 and XAN’s SEC Form 10-Q filed on August 10, 2020 available on XAN’s website, [www.exantas.com](http://www.exantas.com), or on the SEC’s website, [www.sec.gov](http://www.sec.gov).

### ***NATURE OF INVESTMENTS***

Investments by XAN, or an investment in XAN, generally require a long-term commitment with no certainty of return.

XAN generally makes investments in real estate-related assets (including CMBS and CRE-CDO tranches) that are experiencing or are expected to experience severe financial difficulties that may never be overcome. Because XAN will only make a limited number of investments and because many of the investments will involve a high degree of risk, poor performance by a few of the investments could severely affect the total returns to XAN and the investors in XAN. Although an investment by XAN may generate some current income, the return of capital and the realization of gains, if any, from such investment generally will occur, in the case of a real estate debt investment, when the borrower repays the related loan (at maturity or sooner) or, in the case of a CMBS or CRE-CDO investment, when the borrowers repay the loans (at maturity or sooner) underlying the CMBS trust or CRE-CDO issuer or XAN sells the CMBS or CRE-CDO investment. Although an investment may be sold or the related loan repaid at any time, it is not expected that this will occur for a substantial period of time, and in many cases several years, after the investment is acquired. Therefore, there may be little or no near-term cash flow available to XAN or the investors in XAN. Because XAN may only make a limited number of investments and because many of the investments involve a high degree of risk, poor performance by a few XAN investments could severely affect the total returns to XAN and the investors in XAN.

## ***REAL ESTATE INVESTMENTS***

### ***General***

The performance of XAN's real estate-related investments will be significantly affected by fluctuations in the value of the underlying properties collateralizing the loans held by XAN and the properties collateralizing the loans underlying a XAN's investments in CMBS and CRE-CDO tranches, and the cash flows generated by those properties. If the underlying properties do not generate revenues sufficient to meet operating expenses, XAN's cash flow and the ability to make distributions to XAN's investors will be adversely affected. The factors affecting the cash flows generated by the underlying properties collateralizing the loans held by XAN and the properties collateralizing the loans underlying a XAN's investments in CMBS and CRE-CDO tranches, and the values of those properties, include:

- national and local economic conditions;
- changes in supply of, and demand for, competing properties in an area (including the consequences of overbuilding);
- changes in real property tax rates;
- changes in interest rates and the availability of mortgage funds (including changes that render the sale or refinancing of properties difficult or impracticable);
- financial resources of tenants;
- changes in building, environmental and other laws or government regulations; and/or
- quality of management and maintenance of the properties; and
- changes in tax policies and legislation, including, in particular, tax rules in jurisdictions in which investments are made or fund entities are organized.

### ***Real Estate Market Conditions***

XAN's strategy may be based, in part, upon the premise that interests in real estate businesses and assets will be available for purchase by XAN at prices that ACRES considers favorable. Further, XAN's strategy may rely, in part, upon market recoveries continuing during the term of an investment. No assurance can be given that interests in real estate businesses and assets can be acquired at favorable prices or that the market for such assets will recover or continue to improve, as the case may be, since this will depend, in part, upon events and factors outside the control of ACRES.

### ***Declines in Real Estate Values***

Risks associated with investing in real estate-related investments are likely to be more severe during periods of economic slowdown or recession, especially if such periods are accompanied by declining real estate values. Further, declining real estate values significantly increase the likelihood of losses on real estate-related investments acquired by XAN in the event of default, as the value of the underlying real estate and the value of the loans collateralized by such real estate may be insufficient to pay amounts owed in respect of such investments and result in a loss to XAN. Low recovery on real estate or real estate-related investments might result in a loss on the investment. Any sustained period of increased payment delinquencies, foreclosures or losses could



adversely affect the income received by XAN from its real estate-related investments, which would reduce the amount it has available for distribution. Furthermore, the underlying properties may be suffering varying degrees of financial distress or may be located in economically distressed areas.

In the case of real estate debt investments (including investments in CMBS and CRE-CDO tranches), adverse changes in the real estate market increase the probability of default, as the incentive of the borrower to retain equity in the property declines. In addition, loans may become non-performing for a wide variety of reasons and may require a substantial amount of workout negotiations and/or restructuring, which may entail, among other things, a substantial reduction in the interest rate, capitalization of interest payments and a substantial write-down of the principal of the loan. However, even if such restructuring were successfully accomplished, a risk exists that upon maturity of such mortgage loan, replacement “take-out” financing will not be available, which could ultimately impact the value of the related investments.

### ***COMMERCIAL MORTGAGE LOANS AND MEZZANINE LOANS***

Commercial mortgage loans are secured by, and mezzanine loans depend on, the performance of the underlying property and are subject to risks of delinquency and foreclosure, and risks of loss, that are greater than similar risks associated with loans made on the security of single-family residential properties. The ability of a borrower to repay a loan secured by or dependent upon an income-producing property typically depends primarily upon the successful operation of the property rather than upon the existence of independent income or assets of the borrower. If the net operating income of the property is reduced, the borrower’s ability to repay the loan may be impaired. Net operating income of an income producing property can be affected by, among other things:

- tenant mix, success of tenant businesses, tenant bankruptcies and property management decisions;
- property location and condition;
- competition from comparable types of properties;
- changes in laws that increase operating expenses or limit rents that may be charged;
- any need to address environmental contamination at the property;
- the occurrence of any uninsured casualty at the property;
- changes in national, regional or local economic conditions and/or the conditions of specific industry segments in which the lessees may operate;
- declines in regional or local real estate values;
- declines in regional or local rental or occupancy rates;
- increases in interest rates, real estate tax rates and other operating expenses;
- the availability of debt or equity financing;
- increases in costs of construction material;

- changes in governmental rules, regulations and fiscal policies, including environmental legislation and zoning laws; and
- acts of God, terrorism, pandemic, social unrest and civil disturbances.

XAN risks loss of principal on defaulted mortgage loans it holds to the extent of any deficiency between the value XAN can realize from the sale of the collateral securing the loan upon foreclosure, and the loan's principal and accrued interest. Moreover, foreclosure of a mortgage loan can be an expensive and lengthy process which could reduce the net amount XAN can realize on the foreclosed mortgage loan. In a bankruptcy of a mortgage loan borrower, the mortgage loan will be deemed to be secured only to the extent of the value of the underlying collateral at the time of bankruptcy as determined by the bankruptcy court, and the lien securing the mortgage loan will be subject to the avoidance powers of the bankruptcy trustee or debtor-in-possession to the extent the lien is unenforceable under state law.

### ***COMMERCIAL MORTGAGE BACKED SECURITIES***

XAN invests (and may in the future invest) in CMBS, which are securities secured by a single commercial mortgage loan or a pool of commercial mortgage loans (including certificates of participation in such loans). Investing in CMBS involves the general risks typically associated with investing in traditional fixed-income securities (including interest rate and credit risk) and certain additional risks and special considerations, including the risk of principal prepayment, the risk of investing in real estate, lack of standardized terms, shorter maturities than residential mortgage loans and payment of all or substantially all of the principal only at maturity rather than regular amortization of principal. The exercise of remedies and successful realization of liquidation proceeds relating to CMBS may be highly dependent on the performance of the special servicer.

Some investments in CMBS may be subordinated to substantial amounts of senior indebtedness, all or a significant portion of which may be secured and/or subject to a "first loss" subordinate holder position. Investments in subordinate securities, such as CMBS, have a higher risk of such loss than investments in more senior securities. In the event that ACRES underestimates the pool losses relative to the price XAN pays for a particular CMBS investment, XAN may experience losses with respect to such investment. With respect to CMBS, overall control over the special servicing of the related underlying mortgage loans may be held by a directing certificate holder or a controlling class certificate, which is appointed by the holders of the most subordinate class of CMBS in such series. Furthermore, if ACRES or XAN does not have the right to appoint the directing certificate holder or controlling class representative, the related special servicer, at the direction of the directing certificate holder, may take actions with respect to specially serviced mortgage loans that could adversely affect the investments.

### ***COMMERCIAL REAL ESTATE COLLATERALIZED DEBT OBLIGATIONS***

XAN invests (and may in the future invest) in CRE-CDOs, which are, generally, limited recourse obligations of the issuer thereof payable solely from the collateral owned by such issuer or the proceeds thereof. CRE-CDOs are subject to similar risks and provisions as commercial mortgage loans, B-Notes and CMBS, including:

- limited liquidity and secondary market availability;
- the possibility that income of a related borrower may be insufficient to meet its debt service;



- declining creditworthiness and potential for insolvency of the borrower during periods of economic downturn;
- spread compression over the reference interest rate available for reinvestment during any period in which prepayments are received; and
- subordination to the prior claims of other senior lenders and creditors in the event that a CRE-CDO includes loans with terms that, upon certain conditions, allow the spread subordinated.

The holder of an interest in a CRE-CDO must rely solely on distributions on the underlying collateral or proceeds thereof for payments in respect thereof. If distributions on the underlying collateral are insufficient to make payments on the CRE-CDO, no other assets will be available for the payment of such deficiency and following realization of the underlying collateral, the obligation of such issuer to pay such deficiency shall be extinguished.

Many subordinate classes of CRE-CDOs provide that a deferral of interest thereon does not constitute an event of default and the holders of such securities will not have available to them any associated default remedies. During such periods of non-payment, such non-paid interest will generally be capitalized and added to the outstanding principal balance of the related security. Any such deferral will reduce the amount of current payments made on such CRE-CDO.

The underlying collateral of a CRE-CDO is subject to credit, liquidity and interest rate risks. Such assets may consist of commercial mortgage loans, structured finance securities and other real estate-related debt instruments, which may be rated either as investment grade or below investment grade (or of equivalent credit quality). The lower rating of below investment grade loans reflects a greater possibility that adverse changes in the financial condition of an issuer, general economic conditions or both may impair the ability of the issuer to make payments of principal or interest.

Many CRE-CDOs are actively managed securitization vehicles, and the manager's performance is vital to the performance of a CRE-CDO, particularly the most subordinate tranches. Accordingly, CRE-CDOs are subject to investment manager risk, characterized as the potential failure on the manager's part in some measure to select quality investments, effectively anticipate and act on market movements, manage conflicts and/or otherwise execute an investment strategy consistent with the interests of the investors.

#### ***BELOW INVESTMENT GRADE (HIGH YIELD OR JUNK BOND) SECURITIES***

XAN invests (and may in the future invest) in new issue non-rated CMBS tranches and CMBS tranches rated between "B3" and "Ba1", inclusive, by Moody's Investors Service at the time of issuance (or tranches that have an equivalent rating by another rating agency (such as Standard & Poor's or Fitch) at the time of issuance). These high yield securities generally pay a premium above investment grade tranches or investment grade issuers because they are subject to greater risks. These risks, which reflect the speculative character of the securities, may include greater volatility, greater risk of default, greater sensitivity to general economic or industry conditions and a lack of attractive resale opportunities. If ACRES is unable to correctly evaluate the value of the securities in which XAN invests or the probability that XAN will receive distributions or repayments on such securities, then XAN may lose part or all of its investment in such securities. Additionally, it may take a number of years for the fair value of such investments to ultimately reflect their intrinsic value as perceived by ACRES, if at all. There is no assurance that the XAN's investment objectives with respect to non-investment grade CMBS will be realized or that there will be any return on its investment in such securities.

### ***CMBS INTEREST-ONLY CERTIFICATES***

XAN may invest in CMBS interest-only certificates (“IOs”). CMBS IOs receive no payment of principal from the underlying mortgage assets. IO class payments are derived by the excess interest that exists due to a higher weighted average coupon on the underlying mortgages than the weighted average coupon on the corresponding CMBS bonds. The notional amount of the IO bonds will equal the certificate balance of all or a portion of the other CMBS classes of the same issuance. The yields to maturity on IOs are very sensitive to the rate of principal payments (including prepayments) and defaults on the related underlying mortgage assets. If the underlying mortgage assets experience greater than anticipated prepayments of principal or defaults, XAN may not fully recoup its initial investment in IOs.

### ***UNRATED INVESTMENTS***

XAN invests (and may in the future invest) in debt instruments that are not rated by any recognized rating agency. The value of unrated debt obligations tends to be subject to more fluctuation as a result of economic conditions than rated debt obligations. Overall credit quality may move up or down frequently within this category. XAN’s acquisition of credit support classes of securitizations (which may be “first loss” classes) that are unrated at the time of acquisition and that have lower ratings incrementally increase the risk of nonpayment or of a significant delay in payments on these classes. The downgrading of an asset may adversely affect the value of the asset and, ultimately, adversely affect the value of XAN’s investment. Except as provided in XAN’s governing documents, there are no limits on the percentage of unrated or noninvestment grade assets that XAN may hold in its portfolio.

### ***B-NOTES***

XAN may make investments in B-notes. A B-note is a loan typically secured by a first mortgage on a single large commercial property or group of related properties and subordinated to a senior note secured by the same first mortgage on the same collateral. As a result, if a borrower defaults, there may not be sufficient funds remaining for B-note owners after payment to the senior note owners. Since each transaction is privately negotiated, B-notes can vary in their structural characteristics and risks. For example, the rights of holders of B-notes to control the process following a borrower default may be limited in certain investments. B-notes are less liquid than other forms of commercial real estate debt investments, such as CMBS, and, as a result, XAN may be able to dispose of underperforming or non-performing B-note investments only at a significant discount to book value.

### ***MEZZANINE DEBT AND OTHER SUBORDINATED DEBT***

Subject to maintain XAN’s qualification as a REIT and exclusion from regulation under the Investment Company Act, XAN may invest in mezzanine debt, preferred equity, mezzanine or other subordinated tranches of CMBS, syndicated corporate loans and other ABS. XAN currently has investments in mezzanine debt and preferred equity. These types of investments carry a higher degree of risk of loss than senior secured debt investments such as whole loan investments because, in the event of default and foreclosure, holders of senior liens will be paid in full before mezzanine investors. Depending on the value of the underlying collateral at the time of foreclosure, there may not be sufficient assets to pay all or any part of amounts owed to mezzanine investors. Moreover, mezzanine and other subordinate debt investments may have higher loan-to-value ratios than conventional senior lien financing, resulting in less equity in the collateral and increasing the risk of loss of principal. If a borrower defaults or declares bankruptcy, XAN may be subject to agreements restricting or eliminating its rights as a creditor, including rights to call a default, cure

a default, foreclose on collateral, and accelerate maturity or control decisions made in bankruptcy proceedings. In addition, the prices of lower credit quality securities are generally less sensitive to interest rate changes than more highly rated investments, but more sensitive to economic downturns or individual issuer developments because the ability of obligors of investments underlying the securities to make principal and interest payments may be impaired. In such event, existing credit support relating to the securities' structure may not be sufficient to protect XAN against loss of principal

### ***PORTFOLIO INVESTMENTS***

XAN currently holds, and expects to hold in the future, portfolio investments that are not publicly traded. The fair value of securities and other investments that are not publicly traded may not be readily determinable. XAN values these investments quarterly at fair value as determined under policies approved by the Board of Directors. Because such valuations are inherently uncertain, may fluctuate over short periods of time and may be based on estimates, XAN's determinations of fair value may differ materially from the values that XAN would have obtained if a ready market for them existed. The value of XAN's common stock will likely decrease if XAN's determinations regarding the fair value of these investments are materially higher than the values that XAN ultimately realizes upon their disposal.

### ***BANK LOANS, ABS AND CORPORATE BONDS***

Historically, XAN has invested in syndicated corporate loans, ABS and corporate bonds, subject to maintaining XAN's qualification as a REIT and exclusion from regulation under the Investment Company Act. Syndicated corporate loan investments, ABS investments or corporate bond investments, which are principally backed by small business and syndicated corporate loans, may not be secured by mortgages or other liens on assets or may involve higher loan-to-value ratios than XAN's real estate-related investments. Historically, XAN's syndicated corporate loan investments, ABS investments and corporate bond investments backed by loans have included loans that have an interest-only payment schedule or a schedule that does not fully amortize principal over the term of the loan, which makes repayment of loans dependent upon the borrowers' liquidity or ability to refinance the loans at maturity. Numerous factors affect a borrower's ability to repay or refinance loans at maturity, including national and local economic conditions, a downturn in a borrower's industry, loss of one or more principal customers and conditions in the credit markets. A deterioration in a company's financial condition or prospects may be accompanied by a deterioration in the collateral for the syndicated corporate loan or any ABS or corporate bond backed by such company's loans.

### ***OTHER RISKS RELATED TO XAN'S INVESTMENTS***

#### ***Financing Risks***

*Risks of Leverage.* XAN's portfolio has been financed in material part through the use of leverage, which may reduce the return on investments and cash available for distribution. XAN's portfolio has been financed in material part through the use of leverage and, as credit market conditions permit, ACRES will seek such financing in the future. Using leverage may subject XAN to risks associated with debt financing, including the risks that:

- the cash provided by XAN's operating activities will not be sufficient to meet required payments of principal and interest,

- the cost of financing may increase relative to the income from the assets financed, reducing the income XAN has available to pay distributions, and
- XAN's investments may have maturities that differ from the maturities of the related financing and, consequently, the risk that the terms of any refinancing XAN obtains will not be as favorable as the terms of existing financing.

If XAN is unable to secure refinancing of currently outstanding financing, when due, on acceptable terms, XAN may be forced to dispose of some of its assets at disadvantageous terms or to obtain financing at unfavorable terms, either of which may result in losses to XAN or reduce the cash flow available to meet its debt service obligations or to pay distributions.

Financing that XAN may obtain, and financing it has obtained through CRE debt securitizations, typically requires, or will require, XAN to maintain a specified ratio of the amount of the financing to the value of the assets financed. A decrease in the value of these assets may lead to margin calls or calls for the pledge of additional assets which XAN will have to satisfy. XAN may not have sufficient funds or unpledged assets to satisfy any such calls, which could result in XAN's loss of distributions from and interests in affected CRE debt securitizations, which would reduce XAN's assets, income and ability to make distributions.

*Credit Risk Related to Repurchase Agreements, Warehouse Facilities and other Short-term Financings.* If XAN accumulates assets for a CRE debt securitizations on a short-term credit facility and do not complete the CRE debt securitizations, or if a default occurs under the facility, the short-term lender will sell the assets and XAN would be responsible for the amount by which the original purchase price of the assets exceeds their sale price, up to the amount of XAN's investment or guaranty. XAN may lose money on its repurchase transactions if the counterparty to the transaction defaults on its obligation to resell the underlying security back to XAN at the end of the transaction term, or if the value of the underlying security has declined as of the end of the term or if XAN defaults on its obligations under the repurchase agreements.

*Repurchase Agreements.* XAN has entered into repurchase agreements and warehouse facilities and expects in the future to seek additional debt to finance its growth. Lenders typically have the right to liquidate assets securing or acquired under these facilities upon the occurrence of specified events, such as an event of default. XAN is exposed to loss if the proceeds received by the lender upon liquidation are insufficient to satisfy its obligation to the lender. XAN is also subject to the risk that the assets subject to such repurchase agreements, warehouse facilities or other debt might not be suitable for long-term refinancing or securitization transactions. If XAN is unable to refinance these assets on a long-term basis, or if long-term financing is more expensive than XAN anticipated at the time of the acquisition of the assets to be financed, XAN may be required to liquidate assets.

*Counterparty Risk.* When engaged in repurchase transactions, XAN generally sells assets to the transaction counterparty and receives cash from the counterparty. The counterparty must resell the assets back to XAN at the end of the term of the transaction. Because the cash XAN receives from the counterparty when XAN initially sells the assets is less than the market value of those assets, if the counterparty defaults on its obligation to resell the assets back to XAN, XAN will incur a loss on the transaction. XAN will also incur a loss if the value of the underlying assets has declined as of the end of the transaction term, as it will have to repurchase the assets for their initial value but would receive assets worth less than that amount. If XAN defaults upon its obligation to repurchase the assets, the counterparty may liquidate them at a loss, which XAN is obligated to repay. Any losses XAN incurs on its repurchase transactions would reduce its earnings and cash available for distribution to its stockholders.

*Risks of Financing REIT-Qualifying Assets.* XAN has entered into and intend to enter into, sale and repurchase agreements under which XAN nominally sells certain REIT-qualifying assets to a counterparty and simultaneously enters into an agreement to repurchase the sold assets. XAN believes that XAN will be treated for U.S. federal income tax purposes as the owner of the assets that are the subject of any such agreement, notwithstanding that XAN may transfer record ownership of the assets to the counterparty during the term of the agreement. It is possible, however, that the Internal Revenue Service, or IRS, could assert that XAN did not own the assets during the term of the sale and repurchase agreement, in which case XAN's ability to qualify as a REIT would be adversely affected. If any of XAN's REIT-qualifying assets are subject to a repurchase agreement and are sold by the counterparty in connection with a margin call, the loss of those assets could impair XAN's ability to qualify as a REIT. Accordingly, unlike other REITs, XAN may be subject to additional risk regarding its ability to qualify and maintain its qualification as a REIT.

*CDO Financing.* Historically, XAN has financed most of its investments through CRE debt securitizations in which XAN retains the equity interest. Depending on market conditions and credit availability, XAN intends to use CRE debt securitizations to finance its investments in the future. The equity interests of a CRE debt securitization are subordinate in right of payment to all other securities issued by the CRE debt securitization. The equity is usually entitled to all of the income generated by the CRE debt securitization after the CRE debt securitization pays all of the interest due on the debt securities and its other expenses. However, there may be little or no income available to the CDO equity if there are excessive defaults by the issuers of the underlying collateral which would significantly reduce the value of that interest. Reductions in the value of the equity interests XAN holds in CRE debt securitization, if XAN determines that they are other than temporary, would reduce XAN's earnings. In addition, the liquidity of the equity securities of CDOs is constrained and, because they represent a leveraged investment in the CRE debt securitization's assets, the value of the equity securities will generally have greater fluctuations than the value of the underlying collateral.

XAN's CRE debt securitizations generally provide that the principal amount of their assets must exceed the principal balance of the related securities issued by them by a certain amount, commonly referred to as "over-collateralization." If delinquencies and/or losses exceed specified levels, based on the analysis by the rating agencies (or any financial guaranty insurer) of the characteristics of the assets collateralizing the securities issued by the CRE debt securitization issuer, the required level of over-collateralization may be increased or may be prevented from decreasing as would otherwise be permitted if losses or delinquencies did not exceed those levels. A failure by a CRE debt securitization to satisfy an over-collateralization test typically results in accelerated distributions to the holders of the senior debt securities issued by the CRE debt securitization entity, resulting in reduction or elimination of distributions to more junior securities until the over-collateralization requirements have been met or the senior debt securities have been paid in full.

XAN's equity holdings and, when XAN acquires debt interests in CRE debt securitizations, XAN's debt interests, if any, generally are subordinate in right of payment to the other classes of debt securities issued by the CRE debt securitization entity. Accordingly, if overcollateralization tests are not met, distributions on the subordinated debt and equity XAN holds in these CDOs will cease, resulting in a substantial reduction in XAN's cash flow. Other tests (based on delinquency levels, interest coverage or other criteria) may restrict XAN's ability to receive cash distributions from assets collateralizing the securities issued by the CRE debt securitization entity.

If any of XAN's CRE debt securitizations fails to meet collateralization or other tests relevant to the most senior debt issued and outstanding by the CRE debt securitization issuer, an event of default may occur under that CRE debt securitization. If that occurs, XAN's Manager's ability to manage the CRE debt securitization likely would be terminated and XAN's ability to attempt to



cure any defaults in the CRE debt securitization would be limited, which would increase the likelihood of a reduction or elimination of cash flow and returns to XAN in those CDOs for an indefinite time.

If XAN issues debt securities, the terms may restrict XAN's ability to make cash distributions, require XAN to obtain approval to sell assets or otherwise restrict XAN's operations in ways that could make it difficult to execute XAN's investment strategy and achieve XAN's investment objectives. Any debt securities XAN may issue in the future will likely be governed by an indenture or other instrument containing covenants restricting XAN's operating flexibility. Holders of senior securities may be granted the right to hold a perfected security interest in certain of XAN's assets, to accelerate payments due under the indenture if XAN breaches financial or other covenants, to restrict distributions, and to require XAN to obtain their approval to sell assets. These covenants could limit XAN's ability to operate its business or manage its assets effectively. Additionally, any convertible or exchangeable securities that XAN issues may have rights, preferences and privileges more favorable than those of XAN's common stock. XAN, and indirectly XAN's stockholders, will bear the cost of issuing and servicing such securities.

Historically, XAN has financed a significant portion of its assets through the use of CRE debt securitizations, and have accumulated assets for these financings through short-term credit facilities, typically repurchase agreements or warehouse facilities. Depending upon market condition, and, consequently, the extent to which such financing is available to XAN, XAN expects to seek similar financing arrangements in the future. In addition to risks discussed above, these arrangements could expose XAN to other credit risks, including the following:

- An event of default under one short-term facility may constitute a default under other credit facilities XAN may have, potentially resulting in asset sales and losses to XAN, as well as increasing XAN's financing costs or reducing the amount of investable funds available to XAN.
- XAN may be unable to acquire a sufficient amount of eligible assets to maximize the efficiency of a CRE debt securitization issuance, which would require XAN to seek other forms of term financing or liquidate the assets. XAN may not be able to obtain term financing on acceptable terms, or at all, and liquidation of the assets may be at prices less than those XAN paid, resulting in losses to XAN.
- Using short-term financing to accumulate assets for a CRE debt securitization issuance may require XAN to obtain new financing as the short-term financing matures. Residual financing may not be available on acceptable terms, or at all. Moreover, an increase in short-term interest rates at the time that XAN seeks to enter into new borrowings would reduce the spread between the income on XAN's assets and the cost of XAN's borrowings. This would reduce returns on XAN's assets, which would reduce earnings and, in turn, cash available for distribution.

*Hedging Strategies.* Subject to maintain XAN's qualification as a REIT, XAN may pursue various hedging strategies to seek to reduce its exposure to losses from adverse changes in interest rates. XAN's interest rate hedging activity varies in scope depending upon market conditions relating to, among other factors, the level and volatility of interest rates and the type of assets XAN holds. There are practical limitations on XAN's ability to insulate its portfolio from all of the negative consequences associated with changes in short-term interest rates, including:

- Available hedges may not correspond directly with the interest rate risk or pricing risk against which XAN seeks protection.

- The duration of the hedge may not match the duration of the related asset or liability.
- Hedging can be expensive, particularly during periods of rising and volatile interest rates. Hedging costs may include structuring and legal fees and fees payable to hedge counterparties to execute the hedge transaction.
- Losses on a hedge position may reduce the cash available to make distributions to stockholders, and may exceed the amounts invested in the hedge position.
- The credit quality of the party owing money on the hedge may be downgraded to such an extent that it impairs XAN's ability to sell or assign its side of the hedging transaction.
- The party owing money in the hedging transaction may default on its obligation to pay.

Hedging against a decline in the values of portfolio positions does not eliminate the possibility of fluctuations in the values of the positions or prevent losses if the values of the positions decline. Hedging transactions may also limit the opportunity for gain if the values of the portfolio positions should increase. Moreover, XAN may not be able to hedge against an interest rate fluctuation that is generally anticipated by the market.

The success of XAN's hedging transactions will depend on ACRES' ability to correctly predict movements of interest rates. Therefore, unanticipated changes in interest rates may result in poorer overall investment performance than if XAN had not engaged in any such hedging transactions. In addition, the degree of correlation between price movements of the instruments used in a hedging strategy and price movements in the portfolio positions being hedged may vary. Moreover, for a variety of reasons, XAN may not seek to establish a perfect correlation between such hedging instruments and the portfolio holdings being hedged. Any such imperfect correlation may prevent XAN from achieving the intended hedge and expose it to risk of loss.

Subject to maintain XAN's qualification as a REIT, part of XAN's investment strategy may involve entering into puts and calls on securities or indices of securities, interest rate swaps, caps and collars, including options and forward contracts, and interest rate lock agreements, principally Treasury lock agreements, to seek to hedge against mismatches between the cash flows from its assets and the interest payments on its liabilities. Currently, many hedging instruments are not traded on regulated exchanges, guaranteed by an exchange or its clearing house, or regulated by any U.S. or foreign governmental authorities. Consequently, there may be no applicable requirements with respect to record keeping, financial responsibility or segregation of customer funds and positions. Furthermore, the enforceability of agreements underlying derivative transactions may depend on compliance with applicable statutory and commodity and other regulatory requirements and, depending on the identity of the counterparty, applicable international requirements. The business failure of a counterparty with whom XAN enters into a hedging transaction will most likely result in a default. Default by a party with whom XAN entered into a hedging transaction may result in the loss of unrealized profits and force XAN to cover its resale commitments, if any, at the then current market price. Although generally XAN seeks to reserve the right to terminate its hedging positions, XAN may not always be able to dispose of or close out a hedging position without the consent of the hedging counterparty, and it may not be able to enter into an offsetting contract in order to cover its risk. A liquid secondary market may not exist for hedging instruments purchased or sold, and XAN may have to maintain a position until exercise or expiration, which could result in losses.

### ***Valuation Risks***

XAN currently holds, and will hold in the future, portfolio investments that are not publicly traded. The fair value of securities and other investments that are not publicly traded may not be readily determinable. These investments are valued quarterly at fair value as determined under policies approved by XAN's board of directors. Because such valuations are inherently uncertain, may fluctuate over short periods of time and may be based on estimates, such determinations of fair value may differ materially from the values that would have obtained if a ready market for them existed.

### ***Regulatory Changes Affecting CMBS***

Recent regulatory changes affecting mortgage-backed securities may create uncertainty in the financial markets and make the issuance or holding of mortgage-backed securities more burdensome. In particular, recently adopted rules implementing the credit risk retention requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Dodd-Frank Act**”) require the “sponsor” of any transaction involving the issuance of mortgage-backed securities or other asset-backed securities, subject to certain exceptions, to retain, and to refrain from transferring, selling, conveying to a third party, or hedging, 5% of the credit risk of the assets transferred, sold, or conveyed through the issuance of such securities. Similar rules in Europe restrict the ability of certain financial institutions to purchase securities issued by securitization vehicles for which the relevant sponsor or originator has not retained sufficient credit risk. These requirements have in many cases increased the costs to sponsors and originators of structuring new issuances of mortgage-backed securities and may in certain cases also increase the costs to other parties of involvement in such transactions, including potentially XAN, which invests (or may in the future invest) in such securities. In addition, the increased costs of doing business may discourage sponsors or originators from issuing such securities in the future, resulting in a less liquid and efficient market for such securities, and potentially limiting the investment choices available to XAN. While certain legacy CMBS and legacy CRE-CDO investments that XAN purchases in the secondary market may not be subject to the new rules, there is no guarantee that additional regulations issued in the future would not negatively affect the value or the liquidity of such investments.

### ***Interest Rate Risks***

A significant risk associated with XAN's investment in commercial real estate-related loans, CMBS and other debt instruments is the risk that either or both of long-term and short-term interest rates increase significantly. If long-term rates increase, the market value of XAN's assets would decline. Even if assets underlying investments XAN may own in the future are guaranteed by one or more persons, including government or government-sponsored agencies, those guarantees do not protect against declines in market value of the related assets caused by interest rate changes. At the same time, with respect to assets that are not match-funded or that have been acquired with variable rate or short-term financing, an increase in short-term interest rates would increase XAN's interest expense, reducing XAN's net interest spread or possibly result in negative cash flow from those assets. This could result in reduced profitability and distributions or losses.

### ***Competition for Suitable Investments***

There are numerous REITs and other financial investors seeking to invest in the types of assets XAN targets. This competition may cause XAN to forgo particular investments or to accept economic terms or structural features that it would not otherwise have accepted, and it may cause



XAN to seek investments outside of its currently targeted areas. Competition for investment assets may slow XAN's growth or limit its profitability.

***Control over Certain Loans and Investments***

The ability to manage XAN's portfolio of loans and investments may be limited by the form in which they are made. In certain situations, XAN may:

- acquire investments subject to rights of senior classes and servicers under inter-creditor or servicing agreements;
- acquire only a minority and/or non-controlling participation in an underlying investment;
- co-invest with third parties through partnerships, joint ventures or other entities, thereby acquiring non-controlling interests; or
- rely on independent third-party management or strategic partners with respect to the management of an asset.

Therefore, XAN may not be able to exercise control over the loan or investment. Such financial assets may involve risks not present in investments where senior creditors, servicers or third-party controlling investors are not involved. XAN's rights to control the process following a borrower default may be subject to the rights of senior creditors or servicers whose interests may not be aligned with XAN's. A third party partner or co-venturer may have financial difficulties resulting in a negative impact on such asset, may have economic or business interest or goals which are inconsistent with XAN's, or may be in a position to take action contrary to XAN's investment objectives. In addition, XAN may, in certain circumstances, be liable for the actions of XAN's third-party partners or co-venturers.

***Risks Associated with CMBS Trusts Containing Loans Secured by Non-U.S. Properties***

Non-U.S. properties may comprise a small portion of the real property collateral of one or more CMBS trusts in which XAN may invest. An investment in CMBS trusts containing loans secured by non-U.S. properties involves certain risks not typically associated with investing in CMBS trusts containing only loans secured by properties in the U.S., including, but not limited to, risks relating to (i) jurisdiction specific laws, rules, and regulations and variances in the ability of lenders to enforce rights, (ii) the heightened risk of natural disasters in certain jurisdictions and (iii) currency fluctuation. The risks would vary depending upon the jurisdiction of each non-U.S. property.

***Geographic, Sector, Property-Type and Sponsor Concentrations***

XAN may have material geographic concentrations related to its direct or indirect investments in real estate loans and properties. XAN may also have material concentrations in the property types and industry sectors that are in its loan portfolio. Where XAN has any kind of concentration risk in its investments, XAN may be affected by sector-specific economic or other problems that are not reflected in the national economy generally or in more diverse portfolios. An adverse development in that area of concentration could reduce the value of XAN's investment and its return on that investment and, if the concentration affects a material amount of XAN's investments, impair its ability to execute its investment strategies successfully, reduce its earnings and ability to make distributions.

### ***Cybersecurity Risk***

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

### ***Impact of COVID-19***

The impact of the COVID-19 pandemic in the United States and globally has, and will continue to, adversely impact XAN, XAN's borrowers and their tenants, the properties securing XAN's investments and the economy as a whole. The COVID-19 pandemic could have a continued and prolonged adverse impact on economic and market conditions and the fluidity of this situation precludes any prediction as to the ultimate adverse impact of the pandemic on economic and market conditions. The full extent and impact of the COVID-19 pandemic on companies is evolving rapidly and will depend on future developments, which are uncertain and cannot be predicted, including the duration and spread of the outbreak, the extension of quarantines and restrictions on travel, the discovery of successful treatments and the ensuing reactions by consumers, companies, governmental entities and global markets. The impact of the pandemic has had, and will continue to have, a long-term and material impact on XAN's operations, financial condition and liquidity and capital resources. Further discussion of the potential impacts on our business from the COVID-19 pandemic is provided in XAN's SEC Form 10-Q filed on August 10, 2020 available on XAN's website, [www.exantas.com](http://www.exantas.com), or on the SEC's website, [www.sec.gov](http://www.sec.gov).

**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 its Clients. 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 its Clients. 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 for <i>Client Transactions</i></b>
---

### **In General-Brokerage Selection**

Given the nature of commercial real estate debt investments, ACRES' does not utilize any brokerage platform or trade on any securities exchanges. Commercial mortgage loans are closed and sold through a formal legal closing process. As such, a broker-dealer is not required to effect transactions in the Separate Accounts, XAN or the Funds.

### **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 Funds are dictated by regulatory requirements and the Funds offering documents. The custodian or Fund administrator delivers a quarterly report to each investor.

ACRES reviews the XAN portfolio consistently throughout the day, week and month. This review entails security position exposure, pricing and risk analysis. This review is conducted by various investment and accounting professionals of ACRES. XAN's portfolio and investments are also reviewed by the ACRES investment committee not less than annually. ACRES provides reports to XAN as and when requested by XAN and its Board of Directors in order to assist XAN in its compliance with its governance, legal, regulatory, or other such requirements.

## Item 14: Client Referrals and Other Compensation

### A. Description of Arrangements

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 Separate Account Clients.

ACRES does not receive any economic benefit from any party that is not a client in connection with the provision of investment advice or other advisory services to XAN.



### 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.

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 Separate Account Clients in one form or another. Separate Account 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 Separate Account Client.

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.

XAN's cash and securities are required to be maintained by a "qualified custodian" in XAN's name, unless the security is otherwise exempt from this requirement (*e.g.*, certain privately offered securities).

ACRES is generally deemed to have custody of XAN funds and securities where it has authority to obtain XAN funds or securities.

XAN is audited at least annually by an independent public accountant that is registered with, and subject to regular inspection by the Public Company Accounting Oversight Board, and XAN files its audited financial statements with the SEC on an annual basis no later than 90 days after the end of its fiscal year. XAN is also subject to quarterly reviews by its auditors and files financial statements with the SEC on a quarterly basis. Accordingly, ACRES is exempt from the requirements of certain aspects of Rule 206(4)-2 under the Advisers Act for XAN.

#### **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 its 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**

Under Rule 206(4)-4 of the Investment Advisers Act of 1940, investment advisers are required to disclose certain financial information about their business practices that might serve as material to the investor's decision in choosing an investment adviser.

As of the date of this ADV Part 2A, ACRES has never filed for bankruptcy and is not aware of any financial condition reasonably likely to impair ACRES ability to meet contractual commitments to its Clients.



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

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