

## Form ADV Part 2A: Firm Brochure

### Zenyth Advisors LLC

March 30, 2020

#### Principal Office

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<https://www.zenythpartners.com/>

This brochure provides information about the qualifications and business practices of Zenyth Advisors LLC (“Investment Manager”). If you have any questions about the contents of this brochure, please contact our Chief Compliance Officer (“CCO”) at 516-858-2840 or email [sabari@zenythpartners.com](mailto:sabari@zenythpartners.com). The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority.

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

The Investment Manager is registered as an investment adviser under the Investment Advisers Act of 1940 (“Advisers Act”). Registration as an investment adviser with the SEC does not imply a certain level of skill or training.

## **Item 2: Material Changes**

This brochure contains information about the Investment Manager which became registered with the SEC on June 28, 2019 (having previously been filed with the SEC as an Exempt Reporting Adviser since August 2017).

Sabari Bagchi was appointed to the role of Chief Compliance Officer in March 2020.

Please be aware that certain non-material changes were made to the brochure, which the Investment Manager recommends you review in its entirety.

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## **Item 4: Advisory Business**

The Investment Manager is organized as a limited liability company under the laws of the State of Delaware. Robert Feuer (“Principal”) founded the Investment Manager in April of 2016. The Investment Manager was previously known by the name Hilltop Capital Advisors LLC and changed its name to its current name in August 2017.

The Investment Manager provides discretionary advisory services to private investment partnerships, Hilltop Capital Anchor, LP and Zenyth Partners, LP (each, a “Fund” or collectively the “Funds”). An affiliate of the Investment Manager, Zenyth Partners GP LLC, serves as the general partner to the Funds (“General Partner”). The Investment Manager will manage the assets of the Funds in accordance with the terms of the Funds’ individual limited partnership agreements, subscription agreements and other governing documents applicable to the Funds (the “Governing Fund Documents”). Robert Feuer is the managing member of, and controls the management and operations of, the General Partner and the Investment Manager.

The Funds’ investment objective is to seek long-term capital appreciation by acquiring, holding and disposing of securities, primarily in companies focusing on: healthcare services, healthcare technology, healthcare real estate, health-related services or products, wellness, and consumer-oriented products or services, including both minority and majority shareholding positions, and including transactions which may be categorized as late-stage venture capital through to control buy-outs of mature businesses.

Limited partnership interests in the Funds are not registered under the U.S. Securities Act of 1933, as amended (the “Securities Act”), and the Funds are not registered under the Investment Company Act of 1940, as amended (the “Investment Company Act”). Accordingly, interests in the Funds are offered and sold exclusively to investors satisfying the applicable eligibility and suitability requirements, in private transactions within and outside the United States.

As of December 31, 2019, the Investment Manager managed approximately \$307,200,000 on a discretionary basis. The Investment Manager does not manage assets on a non-discretionary basis.

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

### **General**

The Investment Manager provides investment advisory services to each of the Funds pursuant to separate investment advisory agreements (the “Agreements”). The Agreements for each Fund, along with specific organizational documents of the Fund, set forth in detail the fee structure relevant to each such Fund. The terms of the Agreements are generally established at the time of the formation of the applicable Fund.

The Investment Manager typically receives compensation from fees based on a percentage of assets under management, incentive allocations and certain other fees or expenses related to transactions (see below). Investors should review all fees charged by the Investment Manager and others

described in the Governing Fund Documents to fully understand the total amount of fees to be paid by a Fund and, indirectly, by its Investors.

### **Management Fee**

Zenyth Partners LP pays the Investment Manager an annual management fee (the “Management Fee”) of (i) during the Drawdown Period, 2% per annum of aggregate commitments, and (ii) thereafter, up to 1.5% per annum of the Funds’ net asset value, in each case in accordance with its Governing Fund Documents. The Management Fee is payable quarterly in advance. The Investment Manager and its affiliates reserve the right to waive or reduce management fees for certain investors, including employees, a limited number of strategic partners, advisors and consultants and others as may be determined in the Investment Manager’s sole discretion.

### **Incentive Allocations**

A portion of Zenyth Partners LP’s net investment profit may be allocated to the capital account of its General Partner as an incentive allocation. The manner of calculation and distribution of such incentive allocation is disclosed in the Governing Fund Documents and may vary by Fund. Generally, however, 20% of the investment profits of Zenyth Partners LP, subject to a high water mark, are allocated to the General Partner as more fully described in the Governing Fund Documents. Incentive allocations distributed to the General Partner are subject to a potential clawback at the end of the life of Zenyth Partners LP (or in the interim period) if the General Partner has received excess cumulative distributions. As is the case with Management Fees, the Investment Manager and its affiliates reserve the right to waive or reduce the incentive allocation for certain investors, including employees, a limited number of strategic partners, advisors and consultants and others as may be determined in the Investment Manager’s sole discretion.

### **Expenses**

The General Partner and the Investment Manager are responsible for their general overhead expenses associated with providing services to each Fund, including any compensation and employee benefit expenses, rent and other routine office and administrative expenses.

### **Operating Partner and Senior Advisor Expenses**

The Investment Manager or its affiliates engages operating partners (“Operating Partners”), who provide advisory or consulting roles with the Funds’ portfolio companies. In addition, the Investment Manager or its affiliates engages senior advisors (“Senior Advisors”) from time to time to source and evaluate investment opportunities and other advisory activities related thereto. The compensation and out-of-pocket expenses incurred by such individuals is generally borne by the Funds or relevant portfolio company with respect to which the Operating Partner or Senior Advisor, respectively, provides services.

**Fund Expenses**

In addition, each Fund pays all other expenses attributable to the activities of such Fund, including, without limitation:

- (i) all out-of-pocket costs and expenses of organizing the Fund, including all legal, accounting, printing, electronic database, travel (including business or first class airfare), and filing fees and expenses (“Organizational Expenses”); and
- (ii) all costs, expenses, fees and liabilities that are incurred by, or arise out of the operation and activities of, the Fund, any feeder fund, any parallel fund, or any alternative investment vehicle, as determined by the General Partner in its discretion, including: (a) the Management Fee; (b) fees and expenses relating to consummated investments, proposed but unconsummated investments, including costs, expenses, fees and liabilities relating to the sourcing, developing, evaluating, negotiating, structuring, acquiring, holding, administering, monitoring, financing, refinancing, managing, restructuring, disposing and hedging thereof (including reasonable travel and related expenses associated therewith, which may include business or first class airfare), including appraiser, retainer, finder, placement, adviser, consultant (including Senior Advisors, Operating Partners and other employees, whether retained by the Fund or one or more portfolio companies), custodian, sub-custodian, depository, transfer agent, disbursal, brokerage, registration, legal and other similar costs, fees and expenses, in each case, to the extent that such fees and expenses are not reimbursed by a portfolio company or other third person; (c) costs, fees and expenses for other third party research, news, industry information, analytics and expert networks/research resources; (d) costs, fees and expenses for support services (including data processing, trading, settlement, client relations, accounting, legal and tax support and other services) outsourced to third party service providers; (e) legal, compliance, custodial depository, trading, settlement, client relations, auditing, accounting and banking costs, fees and expenses, including for example costs, fees and expenses attributable to legal, compliance, trading, settlement, client relations, accounting, reporting and information management software and systems used in connection with the Fund and its activities as well as those associated with the preparation of financial statements, tax returns and Schedule K-1s, the filing of various foreign tax withholding and treaty forms and the representation of the Fund or investors by the tax matters partner or partnership representative; (f) appraisal and valuation costs, fees and expenses, including costs, fees and expenses of independent appraisal or valuation services or third party vendor price quotations; (g) costs, fees and expenses related to organizing persons, including any alternative investment vehicle, through or in which investments may be made or held; (h) costs, fees and expenses that are classified as extraordinary expenses under U.S. GAAP; (i) premiums and fees for insurance to benefit, directly or indirectly, such entities, the holders of interests therein, the Investment Manager or the General Partner or any of their respective affiliates, or their respective shareholders, partners, members, officers, directors, employees and agents, with respect to liabilities to any person in connection with the affairs of such entities and for directors’ and officers’ liability insurance or other similar insurance policies, including errors and omissions insurance and financial institution bond

insurance (including the Fund's *pro rata* share of expenses with respect to policies whose costs and benefits are expected to be shared with other accounts); (j) taxes and other governmental charges, fees and duties; (k) damages and other costs, fees and expenses relating to costs of litigation or other matters that are the subject of the Fund's indemnification obligations under the Governing Fund Documents; (l) costs and expenses of reporting to regulatory authorities in any jurisdiction in which the Fund, the General Partner, the Investment Manager, any portfolio company or other entity owned directly or indirectly by the Fund invests, is organized or is marketed or otherwise directly or indirectly conducts business related to the Fund or its investments (including compliance with FATCA), including the SEC, the U.S. Commodities and Futures Trading Commission, the U.S. National Futures Association, the U.S. Treasury, the U.S. Internal Revenue Service and other national, state, provincial or local regulatory authorities in any country or territory (for example, Form PF, Form CPO-PQR and Form CTA-PR in the United States and filings related to the offering of interests in the Fund, any feeder fund and any parallel funds in particular jurisdictions to the extent applicable); *provided* that the costs of the Investment Manager's general compliance with the Advisers Act, such as preparation and updating of Form ADV, will be borne by Investment Manager; (m) costs, fees and expenses of reporting to, or on behalf of, investors; (n) costs, fees and expenses of communications and meetings with investors; (o) costs, fees and expenses relating to the incurrence and repayment of indebtedness (together with any interest and other amounts payable thereon and fees and expenses related thereto) of the Fund; (p) sales, leasing and brokerage commissions, development fees, loan servicing fees, custodial expenses and other costs, fees and expenses incurred in connection with investments; and (q) costs, fees and expenses of winding up and dissolution of the Fund.

The Investment Manager allocates each of the costs noted above among the Funds in good faith and in accordance with each Fund's applicable limited partnership agreement and the Investment Manager's expense allocation policies.

Investors should review all fees and expenses charged by the Investment Manager, its affiliates, and others to fully understand the total amount of fees and expenses to be paid by the Funds and, indirectly, their investors.

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

As described above, the Investment Manager or its affiliates receive performance-based compensation in the form of an incentive allocation which calculation is based on net profits of Zenyth Partners LP as described in the Governing Fund Documents. The existence of performance-based compensation has the potential to create an incentive for the Investment Manager to make more speculative investments on behalf of the Funds than it would otherwise make in the absence of such arrangement.

## **Item 7: Types of Clients**

The Investment Manager provides discretionary management and advisory services to the Funds directly, subject to the direction and control of the General Partner of the Funds, and not individually to the investors. Investors in the Funds may include, but are not limited to, high net worth individuals, pension plans (corporate, state and foreign), sovereign wealth funds, endowments, foundations, banks, pooled investment vehicles (e.g., funds-of-funds), trusts, estates or charitable organizations, and corporate or business entities.

The minimum commitment for an investor is \$1,000,000; however, the Investment Manager maintains discretion to accept less than the minimum investment threshold. Investors will be required to meet certain suitability qualifications, such as being an “accredited investor” within the meaning set forth in Rule 501(a) of Regulation D under the Securities Act. Also, investors will be required to make certain representations when investing in a Fund, including, but not limited to that (i) they are acquiring an interest for their own account, (ii) they received or had access to all information they deem relevant to evaluate the merits and risks of the prospective investment and (iii) they have the ability to bear the economic risk of an investment in the Fund. Details concerning applicable investor suitability criteria are set forth in the respective Governing Fund Documents, which are furnished to each investor.

The Funds may enter into separate agreements, commonly referred to as “side letters,” or other similar agreements with one or more investors which would have the effect of establishing rights under, or supplementing the terms of, the applicable Fund’s partnership agreement with respect to such investor in a manner more favorable to such investor than those applicable to other investors. Any rights established, or any terms of a Fund’s partnership agreement altered, waived or supplemented, in a side letter with an investor will govern with respect to such investor notwithstanding any other provision of the Fund’s partnership agreement. None of the Fund, the General Partner or the Investment Manager will be required to notify any or all of the other investors of any such side letters or any of the rights and/or terms or provisions thereof, nor will the General Partner or the Investment Manager be required to offer such additional and/or different rights and/or terms to any or all of the other investors.

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

### **General**

The Fund expects that, typically, its portfolio companies will have developed central infrastructures and strong management teams, as well as records of attractive unit economics. In addition, the Fund expects that portfolio companies will typically pursue both M&A-driven growth strategies and de novo-driven or more organic growth strategies to expand their businesses, and that such investments would be made at substantially lower multiples than the value of the overall platform, thus driving superior returns over time as a result of the inherent multiple arbitrage in the businesses. In addition, the Fund may pursue some start-up and/or buy-and-build opportunities where the Investment Manager may identify an attractive niche and a potential opportunity to generate attractive returns.



The Fund intends to take both minority and majority positions; however, in both cases, the Fund expects to have meaningful and appropriate corporate governance rights, including board representation, and appropriate exit rights. In addition, in the case of majority investments, the Investment Manager expects to have a strong semi-operational approach to investments it makes on behalf of the Fund, and a strong relationship with the CEOs and management teams of the relevant portfolio companies.

### **Certain Risk Factors**

**General.** An investment in the Fund requires a long-term commitment, with no certainty of any return. The Fund's investments will be highly illiquid, and there can be no assurance that the Fund will be able to realize returns on investments in a timely manner or at all. There most likely will be little or no near-term cash flow available to the investors. Consequently, fully disposing of any investments may require a lengthy time period or may result in distributions in-kind to investors. Additionally, in connection with any investments, the Fund may acquire securities that cannot be sold except pursuant to a registration statement filed under the Securities Act or in a private placement or other transaction exempt from registration under the Securities Act and that complies with any applicable non-U.S. securities laws. The securities in which the Fund will invest may be part of a complex capital structure and thus subject to risk of loss. As further discussed herein, changes in general economic conditions may affect the Fund's activities. Interest rates, general levels of economic activity, the price of securities, the price of commodities, foreign currency exchange rates, the rate of inflation and participation by other investors in the financial markets may affect the value of the investments in portfolio companies.

**Investment Environment and Economic Conditions.** There are many macroeconomic and other factors that could affect the Fund and its investments. The activities of the Fund could be materially adversely affected by the instability in the U.S. or global financial markets, or changes in market, economic, political or regulatory conditions, as well as by numerous other factors outside the control of the General Partner, the Investment Manager or their respective affiliates. Interest rates and general levels of economic activity may affect the value of the investments in the portfolio companies.

In recent years, global financial markets experienced extraordinary market conditions, including among other things, extreme losses and volatility in securities markets and the failure of credit markets to function, thereby affecting the prices of, as well as the ability to make, certain types of investments. The U.S. economy experienced significant declines in employment, household wealth and lending. Global credit markets continue to experience disruption and liquidity shortages. As a result, certain government bodies and central banks worldwide, including the U.S. Treasury Department and the U.S. Federal Reserve, have undertaken unprecedented intervention programs the effects of which remain uncertain, and may undertake additional interventions in the future. It is uncertain whether regulatory actions will be able to prevent further losses and volatility in securities markets or stimulate the global economy. The continuation or worsening of the events described in this paragraph, or other similar or dissimilar events, could have an adverse effect on the availability of credit to businesses generally and may lead to an overall weakening of the U.S. and global economies. In the longer term, there may be significant new regulations that could change the functioning of the capital markets, and there is the possibility of a severe worldwide

economic downturn. Consequently, the Fund may not be capable of, or successful at, preserving the value of its assets, generating positive investment returns or effectively managing risks. In particular, during certain periods of the recent crisis, the cost and availability of funding was adversely affected by illiquidity and widening credit spreads, and future negative economic and financial events could again cause such a contraction in the availability of credit. These economic conditions may continue or worsen in the future.

**Force Majeure.** The Investment Manager's activities, as well as the Fund's portfolio investments, could be affected by force majeure events (i.e., unforeseen consequences beyond the Investment Manager's control). Certain force majeure events (such as war, escalation of war, or an outbreak of an infectious disease) could have a broader negative impact on the world economy and business activity in general. Force majeure events include, but are not limited to: acts of God, war, escalation of war, riots, fire, flood, hurricane, earthquake, explosion, outbreaks of an infectious disease, pandemic or any other serious public health concern, act or threat of terrorism, labor strikes, theft, cyber-attacks, malicious damage, electricity line rupture, energy blackouts, failure of technology, social instability, etcetera). The Fund's portfolio investments in healthcare companies may be particularly adversely affected by a force majeure event relating to outbreaks of an infectious disease, pandemic, or any other serious public health concern.

**Illiquidity.** Investment in the Fund requires the financial ability and willingness to accept significant risk and illiquidity. An investment in the Fund requires a long-term commitment, with no certainty of return. Interests in the Fund have not been registered under the Securities Act or any other applicable securities laws. There is no public market for the interests, and none is expected to develop.

In addition, the interests are not transferable except with the consent of the General Partner, which may be withheld by the General Partner in its sole discretion and are subject to the terms and conditions of the Governing Fund Documents. Investors generally may not withdraw capital from the Fund, and there generally will be little or no near-term cash flow distributed by the Fund. Consequently, investors may not be able to liquidate their investments prior to the end of the Lock-Up Period or any Withdrawal Date.

**Risk of Investing in the Healthcare Sector.** Investing in securities and other instruments of healthcare companies involves substantial risks, including, but not limited to, the risks described herein. The healthcare industry is subject to regulatory controls by international, national, state and, in some instances, local governmental authorities. The nature and scope of healthcare regulations generally are subject to political forces and market considerations, the effects of which cannot be predicted. There can be no assurance that governments or regulatory agencies will not adopt laws or regulations, change their interpretation of existing laws and regulations, or take other actions that adversely affect the investments. Further, companies in the healthcare industry are often subject to significant risks related to litigation and liability for damages in connection with their operations. The litigation and liability environment in the healthcare industry is constantly evolving, and new legislative actions, court decisions, enforcement actions or guidance from enforcement agencies may alter the risk profile of investments and may increase exposure to any of these types of claims.

**Small Healthcare Business M&A Driven Investment.** The Fund's strategy includes portfolio companies acquiring small healthcare businesses and combining them into a larger company. In general, acquiring an existing healthcare practice is more costly than developing a de novo practice, but can often be a faster means for achieving profitability and entering a new market. Small businesses sometimes have limited financial and operating information that has not been prepared with the same level of scrutiny as, for instance, audited financial statements. Small businesses may be more volatile due to their reliance on a limited number of revenue generating personnel, such as physicians and other clinicians. While the Investment Manager will put contractual and economic incentives for revenue producing personnel in place, the unexpected departure of a significant revenue generating employee after a Fund acquisition can significantly disrupt a portfolio company's operations.

Future growth depends on the Fund's and portfolio companies' success in finding acquisitions at reasonable valuations. Strategic buyers and other financial buyers seek and complete acquisitions comparable to those of the Fund and its portfolio companies. Competition from strategic and other financial buyers may increase for small healthcare businesses leading to higher valuations and a general decline in the supply of attractive targets. The Fund and its portfolio companies may be unable to identify suitable acquisition opportunities or complete acquisitions in a timely manner and on favorable terms. Portfolio companies may need to obtain additional capital or financing from time to time to fund an M&A based strategy. Sufficient capital or financing may not be available on satisfactory terms, if at all. In addition, the integration of targets into a larger company can be labor-intensive, costly, and generally difficult.

Small healthcare businesses may be more vulnerable to general economic trends as well as regional and local trends in their performance. In addition, the relative illiquidity of private equity investments generally, and the somewhat greater illiquidity of private investments in lower middle-market companies such as the Fund's portfolio companies, could make it difficult for the Fund to react quickly to negative economic or regulatory developments.

**De Novo Growth.** The Fund's growth strategy depends in part on portfolio companies' ability to develop de novo clinics. Developing de novo clinics can be expensive and may include costs related to construction, equipment and initial working capital. De novo clinics are subject to various risks, including risks associated with the availability and terms of financing for development, securing appropriate licenses and permits, achieving brand awareness in new markets, managing increases in costs, competing for appropriate sites in new markets, attracting clinical and administrative talent, and maintaining adequate information systems and other operational system capabilities. In addition, for certain types of healthcare practices in certain states the ability to open new clinics is limited by state certificate of need programs and other regulatory restrictions on expansion. States without certificate of need programs may begin restricting the development of new clinics and states with existing programs may institute more restrictive measures.

Finally, de novo clinics may not become cash flow positive or profitable on a timely basis or at all. Delays in the opening of de novo clinics, delays or costs resulting from a decrease in commercial development due to capital constraints, difficulties resulting from commercial, residential and infrastructure development (or lack thereof) near de novo clinics, difficulties in staffing and operating new locations or lack of acceptance in new market areas may negatively impact de novo

clinic growth and the costs or the profitability associated with de novo clinics. Further, additional federal or state legislative or regulatory restrictions or licensure requirements could negatively impact the ability to operate both existing and de novo clinics

**Reliance on Portfolio Company Management.** Each portfolio company's day-to-day operations will be the responsibility of that portfolio company's management team. Although the General Partner will be responsible for monitoring the performance of each investment and generally intends to invest in companies operated by strong management teams with additional management employees placed with the portfolio company by the General Partner, there can be no assurance that the management team will be able to operate the portfolio company in accordance with the Fund's plans and/or objectives. Disagreements with management or other shareholders over time may limit the Fund's ability to bring about operating, strategic or other changes in the portfolio companies and may limit exit opportunities.

**Leverage.** The General Partner may seek to use leverage in a manner it believes is prudent. The capital structure of any leveraged investment will increase the exposure of a portfolio company to adverse economic factors such as rising interest rates, downturns in the economy or deteriorations in the condition of such portfolio company or its industry. Leveraged investments are inherently more sensitive to declines in revenues and to increases in expenses and recessions, operating problems and other general business and economic risks may have a more pronounced effect on the profitability and survival of such investments. Leveraging the capital structure of a portfolio company will mean that third parties, such as banks, may be entitled to the cash flow generated by such investments prior to the Fund receiving a return. The securities in which the Fund will invest may be the most junior in what may be a complex capital structure, and thus subject to the greatest risk of loss. In addition, there can be no guarantee that debt facilities will be available at commercially attractive rates throughout the term of the Fund or when due for refinancing such that the Fund or any portfolio company will be exposed to less favorable terms or rates upon a refinancing, or that any facilities negotiated will be fully utilized. If a portfolio company cannot generate adequate cash flow to meet debt obligations, the Fund may suffer a total loss of capital invested in such company.

The Fund may guarantee loans or other extensions of credit made to a portfolio company (or to any subsidiary thereof) or any vehicle formed to effect the acquisition thereof. In addition, the Fund has the power to borrow and enter into a credit facility that grants a security interest to a lender in respect of the assets of the Fund (including capital commitments and the right to call capital commitments on behalf of the Fund).

**Dependence on Key Personnel.** The success of the Fund depends in substantial part on the skill and expertise of Robert Feuer, Sean Hayes and the Investment Manager's other investment professionals (collectively the "Zenyth Senior Professionals") to identify and evaluate investment opportunities, to negotiate and arrange the closing of transactions, to stimulate good performance by acquired companies and to arrange the timely disposition of securities at a profit. In addition, there can be no assurance that the Zenyth Senior Professionals or other employees of the Investment Manager will continue to be employed throughout the life of the Fund. The loss of key personnel could have a material adverse effect on the Fund.

## Certain Conflicts of Interest

**Waiver of Conflicts on Smilist Transaction and Similar Transactions in the Future.** Certain conflicts may arise from the fact that the Principal, currently the sole owner, manager and decision-maker of the Investment Manager, may control, through economic ownership or voting interests, and may sit on the boards of directors of, certain companies. Specifically, the Principal is the Chairman of the Board of The Smilist Management, Inc. (“Smilist”). In instances in which the Fund has previously invested, or will in the future invest, in the securities of such company, the Principal has previously been, or will in the future be, in the position of making decisions or providing advice to both the Fund and such company with respect to the Fund’s actual investment in such company. The foregoing is the case with respect to Smilist. The Fund currently has an investment in Smilist and intends to make additional investments in Smilist in the future. In addition, the Principal currently serves as the Executive Chairman of Smilist.

**No Obligation of Full-Time Service.** None of the General Partner, the Investment Manager, the Principal or any of their respective affiliates is required to manage the Fund as its sole and exclusive function. Each of the General Partner, the Investment Manager, the Principal and any of their respective affiliates may engage in other business activities, including competing ventures and/or other unrelated employment, and is only required to devote such time to the Fund as each deems necessary to accomplish the purposes of the Fund. As described above and also below in Item 11, the Principal currently serves as the Executive Chairman of Smilist, as well as the Chairman of the Board of Directors. In addition, and as described below in Item 10, the Principal engages in real estate investing activities and owns, and may in the future own, one or more of the properties out of which the Fund’s portfolio companies operate. As a result of the foregoing, conflicts of interests may arise, including in allocating management time, services and functions between the Fund and such other activities.

**Services to Other Funds or Ventures.** Except as expressly prohibited in the Governing Fund Documents, in addition to managing the Fund and its investments, each of the General Partner, the Investment Manager, the Principal and their respective affiliates may provide investment management and other services to other parties and may manage and/or establish affiliated or other funds, holding companies or joint ventures in the future (collectively, “Other Ventures”), including those that may employ an investment program and strategy similar to that of the Fund. The investments made by Other Ventures that may be managed by the General Partner, the Investment Manager, the Principal or their respective affiliates in the future may compete with investments for the Fund’s account, and the General Partner, the Investment Manager, the Principal or other affiliates may decide to invest the funds of these Other Ventures rather than the assets of the Fund in a particular investment or strategy. These decisions will be made by the relevant party in good faith and in any manner considered to be fair under the circumstances. The records of these Other Ventures will not be made available to investors. As described below in Item 10, the Principal, along with certain investors in the Funds, invest directly in physical real estate assets where the Funds’ portfolio companies will operate. The portfolio companies will lease these real estate assets as described in the following paragraph.

**Business with Portfolio Companies.** The Investment Manager or its affiliates, including the Principal and portfolio companies, may from time to time utilize the services of or enter into transactions, including but not limited to the lease of real property with other portfolio companies or affiliates. Any such transaction will be negotiated on an arm's-length basis, as the Investment Manager deems appropriate.

**Operating Partners.** The Investment Manager will employ Operating Partners who are expected to engage in advisory or consulting roles with the Fund's portfolio companies. Such Operating Partners may also assist the Investment Manager with sourcing investment opportunities and consummating new investments. All expenses and salaries of any such Operating Partner will be borne by the Fund and/or its portfolio companies. Operating Partners may also be given the opportunity to co-invest alongside the Fund at terms more favorable to the investors and may also receive a portion of the General Partner's incentive allocation as compensation for his/her services.

**Senior Advisors.** The Investment Manager or the General Partner may engage Senior Advisors to source and evaluate potential investments and other advisory activities related thereto. Such individuals shall not be considered employees of the Investment Manager or the General Partner, but rather consultants engaged on behalf of the Fund. The compensation of such individuals is generally borne by the Fund or relevant portfolio company with respect to which such consultant provides services, and such individuals may receive a portion of the profits generated by a liquidity event with respect to a portfolio company.

**The foregoing list of risk factors and conflicts of interest does not purport to be a complete enumeration or explanation of the risks and conflicts of interest involved in an investment in the Fund. Potential investors should read the Governing Fund Documents and consult with their own advisors before deciding to purchase interests in the Fund.**

## **Item 9: Disciplinary Information**

Registered investment advisers are required to disclose all material facts regarding any legal or disciplinary events that would be material to a client's or investor's evaluation of the adviser or the integrity of the adviser's management. Neither the Investment Manager nor any of its officers, directors, employees or other management persons, have been involved in any legal or disciplinary events in the past 10 years that would require disclosure in response to this Item.

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

The Investment Manager organizes and sponsors the Funds, which are private investment companies. These pooled investment vehicles managed by the Investment Manager are controlled by an affiliated General Partner. The Investment Manager or the General Partner will be responsible for all decisions regarding portfolio transactions of the Funds and have full discretion over the management of the Funds' investment activities. While the General Partner is not separately registered as an investment adviser with the SEC, all of its investment advisory activities are subject to the Investment Advisers Act of 1940, as amended (the "Advisers Act") and the rules thereunder. In addition, employees and persons acting on behalf of the General Partner are subject to the supervision and control of the Investment Manager. Thus, the General Partner, all of its employees

and the persons acting on its behalf would be “persons associated with” the registered investment adviser so that the SEC could enforce the requirements of the Advisers Act on the General Partner.

In May of 2019, the Principal commenced an Other Venture with certain investors in the Funds to invest directly in the physical real estate assets where the Funds’ portfolio companies will operate. The Principal, not the General Partner or the Investment Manager, is assisted by a Board of Directors and CEO of the Other Venture in making investment decisions for such Other Venture. The lease transactions with Fund portfolio companies will be negotiated on an arm’s length basis between the CEO of the Other Venture and the CEO of the respective portfolio company.

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

Pursuant to Rule 204A-1 of the Advisers Act, the Investment Manager has adopted a written Code of Ethics (the “Code”) predicated on the principle that the Investment Manager owes a fiduciary duty to the Funds and investors. The Code is designed to address and avoid potential conflicts of interest and is applicable to all officers, directors, members, partners or employees of the Investment Manager (the “Employees”). The Investment Manager requires its Employees to act in the Funds’ best interests, abide by all applicable regulations and avoid any action that is, or could even appear to be, legally or ethically improper.

The Investment Manager generally prohibits the purchase or sale of securities that are held by the Funds; requires pre-clearance before purchasing an IPO or limited offering (i.e., private placement); requires periodic reporting of Employees’ personal securities transactions and all holdings; and requires prompt internal reporting of Code violations. The Investment Manager endeavors to maintain current and accurate records of all personal securities accounts of its Employees to monitor all such activity. A copy of the Investment Manager’s Code is available upon request.

The Investment Manager, Employees or a related entity will have an investment in the Funds. In addition, the Investment Manager, General Partner, Principal and/or their respective affiliates will participate in the Funds’ investment program by agreeing to commit a certain percentage of the Funds’ total capital commitments or a certain amount as defined in the Governing Fund Documents and as described above under Item 8. Therefore, the Investment Manager its employees or a related entity participate in transactions effected for Funds.

Employees of the Investment Manager may also serve as directors and officers of certain portfolio companies and, in that capacity, will be required to make decisions that consider the best interests of such portfolio companies and their respective shareholders. In certain circumstances, actions that may be in the best interests of the portfolio company may not be in the best interests of the Funds, and vice versa. Accordingly, in these situations, there will be conflicts of interest between such individual’s duties as an employee of the Investment Manager and such individual’s duties as a director or officer of such portfolio company.

Certain employees of the Fund’s portfolio companies may perform services for the Investment Manager and other portfolio companies of the Fund. Compensation for these employees is paid by the applicable portfolio company, and therefore indirectly by the Fund. The Investment Manager

has implemented timekeeping procedures in order to mitigate any conflicts that could arise from such an arrangement and to allocate the costs of such employees' services among the relevant portfolio companies of the Fund.

In addition to the above, certain conflicts may arise from the fact that the Principal, currently the sole owner, manager and decision-maker of the Investment Manager, sits on the boards of directors of, and/or has ownership interests in, certain of the Funds' portfolio companies. Specifically, the Principal currently serves as Executive Chairman as well as the Chairman of the Board of Directors of Smilist, which is a portfolio investment.

In instances in which the Fund has previously invested, or will in the future invest, in securities of Smilist, the Principal has previously been, or will in the future be, in the position of making decisions or providing advice to both the Fund and such company with respect to the Fund's actual investment in such company. In addition, certain of the Zenyth Senior Professionals may also have roles in, or otherwise provide services to, Smilist or other similarly situated portfolio companies and may receive compensation therefor. Each investor acknowledges and waives any claims or concerns with respect to such conflicts.

## **Item 12: Brokerage Practices**

The Investment Manager focuses on making investments in private securities and does not ordinarily deal with any financial intermediary such as a broker-dealer; therefore, commissions are not ordinarily payable in connection with such investments. To the limited extent the Investment Manager transacts in public securities, or other non-private equity investments (e.g., currency hedging), the Investment Manager will seek to obtain best execution. In such cases, the Investment Manager intends to select brokers based upon the broker's ability to provide best execution for the Funds. The Investment Manager and/or the General Partner is generally authorized to make the following determinations, subject to each Fund's investment objectives and restrictions, without obtaining prior consent from the relevant Fund or any of their investors: (1) which securities or other instruments to buy or sell; (2) the total amount of securities or other instruments to buy or sell; (3) the executing broker or dealer for any transaction; and (4) the commission rates or commission equivalents charged for transactions.

The Investment Manager does not participate in any soft dollar arrangements outside of receiving research available to other institutional investors. Research services received from brokers and dealers are supplemental to the Investment Manager's own research effort. To the best of the Investment Manager's knowledge, these services are generally made available to all institutional investors doing business with such broker-dealers. The Investment Manager does not separately compensate such broker-dealers for the research and does not believe that it "pays-up" for such broker-dealers' services due to the difficulty associated with the broker-dealers not breaking out the costs for such services.

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

All investments are carefully reviewed and approved by the Investment Manager's investment team. The portfolio companies are reviewed on a continuous basis and investment personnel meet



regularly to discuss investment ideas, economic developments, industry outlook and other issues related to current portfolio holdings and potential investment opportunities.

The Investment Manager provides each investor with the following reports in accordance with the terms of the applicable Governing Fund Documents: (i) audited annual financial statements; (ii) unaudited quarterly financial statements; and (iii) annual tax information necessary to complete any applicable tax returns.

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

The General Partner and/or the Investment Manager may sell interests through broker-dealers, placement agents and other persons and agree to pay a marketing fee or commission in connection with such activities, including ongoing payments, at the General Partner's or the Investment Manager's own expense. Alternatively, and/or in addition, the General Partner and/or the Investment Manager may deduct from the amount invested by an investor in the Fund an amount equal to the third-party placement agent fees paid with respect to such investor's investment to pay such fees, on a fully disclosed basis, to a broker-dealer, placement agent or other person based upon the commitment of the investor introduced to the Fund by such broker-dealer, placement agent or other person (i.e., rather than, or in addition to, paying such persons at its own expense).

## **Item 15: Custody**

The Investment Manager has access to client accounts (i.e., the Funds) since it or an affiliate serves as the General Partner of the Funds. Investors will not receive statements from any custodians. Instead, the Funds are subject to an annual audit by an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board, and the audited financial statements are distributed to each investor. The audited financial statements will be prepared in accordance with generally accepted accounting principles and distributed within 120 days of each Fund's fiscal year end.

## **Item 16: Investment Discretion**

In accordance with the terms and conditions of the Governing Fund Documents, and subject to the direction and control of the General Partner of each Fund, the Investment Manager generally has discretionary authority to determine, without obtaining specific consent from the Funds or its investors, the securities and the amounts to be bought or sold on behalf of the Funds, and to perform the day-to-day investment operations of the Funds.

## **Item 17: Voting Client Securities**

In accordance with its fiduciary duty to clients and Rule 206(4)-6 of the Advisers Act, the Investment Manager has adopted and implemented written policies and procedures governing the voting of client securities.

The Investment Manager's Funds are primarily invested in privately-held portfolio company investments which typically do not issue proxies. However, if the Investment Manager were to receive a proxy, or if the Fund invested in a publicly traded company that issued proxies, it is the Investment Manager's policy to exercise the proxy vote in the best interest of its Funds, taking into consideration all relevant factors, including without limitation, acting in a manner that the Investment Manager believes will (i) maximize the economic benefits to the relevant Fund and (ii) promote sound corporate governance by the issuer. On rare occasion, the Investment Manager may be required to exercise a vote for a privately-held portfolio company, in which case the same procedures shall apply.

The Investment Manager will seek to avoid material conflicts of interest between its own interests on the one hand, and the interests of its Funds on the other. However, as is typical with private equity investing, the Investment Manager seeks and accepts the election of an Investment Manager representative to serve on the board of directors on behalf of its Funds and will typically, but not always, vote in favor of board recommendations. In situations where Investment Manager is required to vote the proxy for a company in which employees of the Investment Manager serve on the board of directors, the Investment Manager has determined that this does not inherently present a conflict of interest, as the sole purpose of this representation is to maximize the return on the Funds' investment in such portfolio company. Accordingly, while Investment Manager is generally, but not automatically, fully supportive of recommendations made by a portfolio company's board of directors with respect to proxy votes related to that issuer, it will review all proxies in accordance with its proxy voting guidelines and may or may not vote in favor of the board's recommendation. As described in Item 11 above, the Principal currently serves as Executive Chairman as well as the Chairman of the Board of Directors of Smilist, which is a portfolio investment. Conflicts between the Funds and Smilist may arise in connection with this investment.

All conflicts of interest will be resolved in the interests of the Investment Manager's Funds. In situations where the Investment Manager perceives a material conflict of interest, the Investment Manager may defer to the voting recommendation of an independent third-party provider of proxy services or take such other action in good faith which would protect the interests of the Investment Manager's Funds.

All proxies that the Investment Manager receives will be treated in accordance with these policies and procedures. A copy of the Investment Manager's written proxy voting policies and procedures, as well as a record of how the Investment Manager has voted in the past, will be maintained and available for review upon written request.

## **Item 18: Financial Information**

A balance sheet is not required to be provided as the Investment Manager (i) does not solicit fees more than six months in advance, (ii) does not have a financial condition that is likely to impair its ability to meet contractual commitments to clients or (iii) has not been subject to any bankruptcy proceeding during the past 10 years.