

**ITEM 1  
COVER PAGE**

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**PART 2A OF FORM ADV: FIRM BROCHURE**

**TOMS CAPITAL INVESTMENT MANAGEMENT LP**

March 30, 2020

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TOMS Capital Investment Management LP  
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New York, New York 10014  
Tel: (212) 337-4100

*This brochure (this "Brochure") provides information about the qualifications and business practices of TOMS Capital Investment Management LP (the "Investment Manager," "we," "us," and similar terms). If you have any questions about the contents of this Brochure, please contact us at (212) 337-4100. The information in this Brochure has not been approved or verified by the United States Securities and Exchange Commission (the "SEC") or by any state securities authority.*

*This Brochure also relates to TCIM GP LLC (the "Fund General Partner"); however, to the extent the qualifications and business practices of the Fund General Partner are substantially similar to those of the Investment Manager, no specific mention of the Fund General Partner is made herein.*

*The Investment Manager is registered as an investment adviser with the SEC. Registration with the SEC or with any state securities authority does not imply a certain level of skill or training.*

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

## **ITEM 2**

### **MATERIAL CHANGES**

We last filed an annual update to this Brochure on March 29, 2019 and have not updated this Brochure since that annual update. While this update to our Brochure contains changes and updates to certain information, we do not feel that they constitute material changes since we last filed an amendment to this Brochure. Clients and prospective clients, however, should review the entirety of this Brochure carefully.

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## **ITEM 4**

### **ADVISORY BUSINESS**

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

##### **1. *TOMS Capital Investment Management LP***

TOMS Capital Investment Management LP (the "Investment Manager," "we," and "us"), is a Delaware limited partnership that was formed in 2017.

Our principal office and place of business is located in New York, NY.

Our principal owners are Mr. Noam Gottesman and Mr. Benjamin Pass. Mr. Gottesman is the Senior Member of TCIM Management GP LLC, the general partner of the Investment Manager ("TCIM Management GP"). Mr. Gottesman is also the Senior Member of TCIM GP MM LLC ("TCIM GP MM"), the managing member of TCIM GP LLC (the "Fund General Partner"), a limited liability company organized under the laws of the state of Delaware.

Mr. Benjamin Pass, who serves as the Chief Investment Officer ("CIO") of the Funds (as defined below) and is responsible for their day-to-day investment activities, is also a partner of the Investment Manager and a member of the Fund General Partner.

##### **2. *TCIM GP LLC***

Our registration on Form ADV also covers the Fund General Partner. The Fund General Partner is an affiliate of the Investment Manager and it serves or may serve as the general partner of pooled investment vehicles that are U.S. or offshore partnerships. The Fund General Partner's facilities and personnel are provided by the Investment Manager.

Each of the Fund General Partner, TCIM GP MM, the Investment Manager and TCIM Management GP has established a management board (each a "Management Board", and collectively, the "Management Boards") which, with the exception of limited consent rights held by Mr. Gottesman upon the occurrence of certain extraordinary events, has been irrevocably delegated responsibility for all aspects of the management and operation of the Fund General Partner, TCIM GP MM, the Investment Manager and TCIM Management GP, respectively. The members of each Management Board are Messrs. Benjamin Pass, Alejandro San Miguel and Anup Patel.

#### **B. Description of Advisory Services.**

##### **1. *Advisory Services.***

We serve as the investment adviser, with discretionary trading authority, to private pooled investment vehicles, the securities of which we offer to investors on a private placement basis (each, a "Fund" and collectively, the "Funds") and separately managed accounts (each, a "Managed Account"). As used herein, the term "client" generally refers to each Fund and Managed Account.

The Funds include:

- (1) TCIM Fund LP, a Delaware limited liability partnership (the "Domestic Fund");
- (2) TCIM Offshore Fund Ltd., a Cayman Islands exempted company (the "Offshore Fund", and together with the Domestic Fund, the "Feeder Funds"); and
- (3) TCIM Master Fund Ltd., a Cayman Islands exempted company (the "Master Fund"), which serves as the master fund into which the Feeder Funds invest all of their assets through a "master feeder" structure.

The Fund General Partner serves as the general partner of the Domestic Fund.

*This Brochure generally includes information about us and our relationships with our clients and affiliates. While much of this Brochure applies to all such clients and affiliates, certain information included herein applies to specific clients or affiliates only.*

*This Brochure does not constitute an offer to sell or solicitation of an offer to buy any securities. The securities of the Funds are offered and sold on a private placement basis under exemptions promulgated under the Securities Act of 1933 and other applicable state, federal or non-U.S. laws. Significant suitability requirements apply to prospective investors in the Funds, including requirements that they be "accredited investors" as defined in Regulation D, "qualified purchasers" as defined in the Investment Company Act of 1940, or non-"U.S. Persons" as defined in Regulation S. Persons reviewing this Brochure should not construe this as an offer to sell or a solicitation of an offer to buy the securities of any of the Funds described herein. Any such offer or solicitation will be made only by means of a confidential private placement memorandum.*

## *2. Investment Strategies and Types of Investments.*

Our objective is to generate superior, absolute returns throughout the complete economic and market cycle. We cause our clients to invest primarily in publicly traded equities, and invest opportunistically in other corporate securities and derivatives. We may cause our clients to take positions in other securities, derivatives and other financial instruments, though generally for the primary purpose of hedging exposures embedded in our client's primary investment positions.

We utilize in depth fundamental research to formulate a differentiated view and assessment of return potential. To accomplish this, the intrinsic value of a security is calculated utilizing various investment analyses including sum of parts, discounted cash flow, market comparables, and other valuation methodologies that we deem to be appropriate. Investments are targeted that exhibit a significantly positive expected value and sized based on an assessment of dollars lost in a range of downside scenarios.

We seek to exploit undervalued and overvalued opportunities as well as other inefficiencies in the market, and as a result, the portfolio consists of both long and short positions, some of which may be concentrated and/or leveraged in an effort to seek to achieve greater returns than could be achieved in the absence of such concentration and/or leverage.

Investments in financial instruments may be made on exchanges and over-the-counter. We may cause our clients to invest excess cash balances in short-term investments that we deem appropriate.

The descriptions set forth in this Brochure of specific advisory services that we offer to our clients, and investment strategies we pursue and investments we make on behalf of our clients, should not be understood to limit in any way our investment activities. We may offer any advisory services, engage in any investment strategy and make any investment, including any not described in this Brochure, that we consider appropriate, subject to each client's investment objectives and guidelines. The investment strategies we pursue are speculative and entail substantial risks. Clients should be prepared to bear a substantial loss of capital. There can be no assurance that the investment objectives of any client will be achieved.

C. Availability of Customized Services for Individual Clients.

Our investment decisions and advice with respect to each client are subject to each client's investment objectives and guidelines, as set forth in its respective offering documents.

The investment objectives and guidelines of the Managed Accounts are determined in conjunction with the applicable client.

The Investment Manager, in its role as investment adviser to the Funds, and/or the Fund General Partner, in its role as the general partner of certain Funds that are partnerships, from time to time agree to supplements, clarifications, or variations of the terms of a Fund's offering, subscription, or organizational documents in "side letters" or similar agreements.

D. Wrap Fee Programs.

We do not currently participate in any Wrap Fee Programs.

E. Assets Under Management.

We manage, on a discretionary basis, approximately \$783.0 million of client assets (rounded to the nearest \$100,000), determined as of December 31, 2019.

We do not manage any assets on a non-discretionary basis.

## **ITEM 5 FEES AND COMPENSATION**

A. Advisory Fees and Compensation.

The fees applicable to each Fund are set forth in detail in each Fund's offering documents. The fees applicable to each Managed Account are set forth in detail in each Managed Account's investment management agreement. A brief summary of such fees, expenses, and compensation (all of which is qualified by and subject to the language of the client's offering documents or investment management agreements, as applicable) is provided below.

## 1. *Domestic Fund*

Management Fee. The Domestic Fund pays the Investment Manager as of the beginning of each month a fee for management services (the "Management Fee") equal to the product of the applicable Management Fee Rate (as defined below) multiplied by the balance of each capital account of a limited partner as of the beginning of such month (before taking into account the estimated accrued Incentive Allocation (as defined below), if any).

"Management Fee Rate" means 2.0% (annualized).

Payment of the Management Fee will be made within 10 days of the beginning of each month or as soon as reasonably practicable thereafter.

The Investment Manager, in its sole discretion, may elect to reduce, waive or calculate differently the Management Fee with respect to any limited partner, including, without limitation, any employee or affiliate of the Investment Manager, any family member thereof or trusts, estate planning and other investment accounts and/or vehicles established by or for the benefit of such persons. The Fund General Partner and certain other affiliates of the Investment Manager will not be charged the Management Fee. The Fund General Partner may, without the consent of the limited partners, cause the Management Fee to be charged to and paid by the Master Fund instead of the Domestic Fund.

Incentive Allocation. Generally, at the end of each fiscal year of the Domestic Fund, the Domestic Fund will reallocate from each capital account of each limited partner to the capital account of the Fund General Partner an amount (the "Incentive Allocation") equal to the result of the Incentive Allocation Rate (as defined below) multiplied by the amount of the net capital appreciation allocated to such capital account of such limited partner for such fiscal year after reduction by an amount equal to the amount of the Management Fee debited to such capital account for such fiscal year; *provided, however*, that the net capital appreciation upon which the calculation of the Incentive Allocation is based will be reduced to the extent of any balance in such capital account's Loss Recovery Account (as defined below). The Incentive Allocation will also be made with respect to net capital appreciation attributable to amounts withdrawn and to amounts transferred (*provided* that such transfer results in a change in the beneficial ownership of the interest transferred) and in connection with the termination of the Domestic Fund.

The "Incentive Allocation Rate" means 20%.

The Domestic Fund maintains a loss recovery account (a "Loss Recovery Account") for each capital account of a limited partner that tracks the losses that must be recouped before an Incentive Allocation can be made with respect to such capital account of a limited partner (*i.e.*, tracks the "high water mark" of such capital account). The balance in each capital account's Loss Recovery Account is adjusted at the end of each fiscal year to reflect the aggregate net capital depreciation with respect to such capital account, if any, and is adjusted as necessary to account for net capital appreciation and intra-year withdrawals. Solely for purposes of determining an adjustment to the balance of a capital account's Loss Recovery Account, net capital appreciation and net capital depreciation for any applicable period will be calculated by taking into account the amount of the Management Fee debited to such capital account for such period. Additional

capital contributions do not affect the balance of any Loss Recovery Account. The Incentive Allocation is not made with respect to a capital account until the balance of such capital account's Loss Recovery Account has been reduced to zero.

The Fund General Partner, in its sole discretion, may elect to reduce, waive or calculate differently the Incentive Allocation with respect to any limited partner, including, without limitation, any employee or affiliate of the Investment Manager, any family member thereof or trusts, estate planning and other investment accounts and/or vehicles established by or for the benefit of such persons.

## *2. Offshore Fund*

Management Fee. The Offshore Fund pays the Investment Manager as of the beginning of each month a fee for management services (the "Management Fee") equal to the product of the applicable Management Fee Rate (as defined below) multiplied by the NAV of each series of shares as of the beginning of such month (before taking into account the estimated accrued Incentive Fee (as defined below), if any).

"Management Fee Rate" means 2.0% (annualized).

Payment of the Management Fee will be made within 10 days of the beginning of each month or as soon as reasonably practicable thereafter.

The Investment Manager, in its sole discretion, may elect to reduce, waive or calculate differently the Management Fee with respect to any shareholder, including any employee or affiliate of the Investment Manager, any family member thereof or trusts, estate planning and other investment accounts and/or vehicles established by or for the benefit of such persons. The Investment Manager may, without the consent of the shareholders, cause the Management Fee to be charged to and paid by the Master Fund instead of the Offshore Fund.

Incentive Fee. At the end of each fiscal year of the Offshore Fund, the Offshore Fund will pay to the Investment Manager an amount (the "Incentive Fee") equal to the result of the Incentive Fee Rate (as defined below) multiplied by the net realized and unrealized appreciation in the NAV of each series of shares, adjusted for any redemption of shares and for any accruals of the Incentive Fee during the relevant fiscal year (the "Adjusted NAV"); *provided, however*, that the Offshore Fund will pay an Incentive Fee only with respect to the excess of the Adjusted NAV of a series of shares over its Prior High NAV (as defined below). The Incentive Fee will also be paid with respect to amounts redeemed and to shares transferred (provided that such transfer results in a change in the beneficial ownership of the shares transferred) and in connection with the termination of the Offshore Fund.

"Incentive Fee Rate" means 20%.

The "Prior High NAV" of each series of shares is the NAV of that series immediately following the date as of which the last Incentive Fee earned with respect to such series was determined (or if no Incentive Fee has yet been determined with respect to such series, the NAV

of such series immediately following the initial issuance of such series) reduced by any investor-related taxes accrued or paid subsequent to either such date.

If shares of a particular series are redeemed other than at the end of a fiscal year as of which an Incentive Fee is payable with respect to such series, the Prior High NAV of such series will be reduced in the same proportion as the reduction in the NAV of that series caused by such redemption.

The Incentive Fee will be paid separately with respect to each series of shares issued to a shareholder. Accordingly, it is possible that an Incentive Fee may be payable with respect to one series of shares even though another series of shares held by the same shareholder has not appreciated, or has depreciated in value during the same period.

In the sole discretion of the Investment Manager, the Incentive Fee may be waived, reduced or calculated differently with respect to the series of shares of any shareholder, including, without limitation, any employee or affiliate of the Investment Manager, any family member thereof or trusts, estate planning and other investment accounts and/or vehicles established by or for the benefit of such person. The Investment Manager may, without the consent of the shareholders, cause the Incentive Fee to be charged to and paid by the Master Fund instead of the Offshore Fund.

### *3. Managed Accounts*

All fees for Managed Accounts are subject to negotiation and established pursuant to each Managed Account's investment management agreement. Generally, the investment management agreements are terminable upon receipt by either party from the other of prior written notice of termination and after the expiration of the specified notice period and the client will be entitled to any unearned prepaid portion of the management fee to the extent applicable.

#### **B. Payment of Fees.**

Fees and compensation paid to the Investment Manager or its affiliates by the Funds are generally deducted from the assets of such clients. As discussed above, Management Fees are generally deducted on a monthly basis and Incentive Allocation/Fee amounts are generally deducted on an annual basis.

#### **C. Additional Fees and Expenses.**

Each of the Domestic Fund and the Offshore Fund bears its own operating and other expenses and its *pro rata* share of the expenses of the Master Fund, including, but not limited to, investment-related expenses (*e.g.*, brokerage commissions and transaction costs, clearing and settlement charges, custodial fees, interest expense, borrowing charges on securities sold short, research-related expenses (paid directly or paid indirectly via "soft dollars"), including, without limitation, third-party research, news and quotation equipment and services (including fees for data and software providers), fees and costs related to portfolio risk analytics, and third party trading-related software, including trade order management software (*i.e.*, the software used to model and route trade orders) and data warehouse software), investment related travel expenses

(including meals, lodging and travel costs); legal and compliance expenses (which include, without limitation, investment-related legal fees and expenses (including review, advice and negotiation of agreements and other documents), fees and expenses incurred in responding to formal and informal inquiries, indemnification expenses and expenses associated with regulatory filings relating to the Funds and for their respective portfolios), insurance costs incurred in connection with the Funds' business (including, without limitation, acquiring and maintaining D&O and/or E&O insurance for certain Funds' directors and the Investment Manager, the Fund General Partner and their respective affiliates), accounting, audit and tax preparation and consulting expenses, organizational expenses, taxes, expenses relating to the offer and sale of the interests, including legal and related fees and expenses in negotiating agreements and other documents, fees and expenses relating to proxy voting research, reporting, execution and recordkeeping services, fees and expenses relating to class action recovery services, fees and expenses of the Funds' administrator and certain Funds' directors, expenses related to the maintenance of certain Funds' registered office, corporate licensing, extraordinary expenses and other similar expenses. Expenses of the Funds, other than expenses which the Investment Manager determines in its sole discretion should be allocated to a particular investor in the Funds, generally will be shared by all of investors in the Funds, (including, for the Domestic Fund, the Fund General Partner), *pro rata* in accordance with each investor's capital account or share class balance.

If any of the above expenses are incurred jointly for the account of a Fund and any other client or proprietary account sponsored or managed by the Fund General Partner, the Investment Manager or their affiliates (each, an "Other Account"), such expenses will be allocated among the applicable Fund or Funds and such Other Accounts based on the relative assets under management, or in such other manner as we consider fair and reasonable.

The Investment Manager may, in its sole and absolute discretion, bear any of the Funds' expenses described above; *provided*, that if the Investment Manager bears any such expenses, it will not be required to continue to bear such expenses and may thereafter cause the applicable Fund to bear such expenses. To the extent that any of the Funds' expenses are provided or paid for by the Fund General Partner (in excess of its ratable share) or the Investment Manager, such Fund will reimburse the Fund General Partner and/or the Investment Manager, as the case may be, for such expenses.

All expenses for Managed Accounts are subject to negotiation and established pursuant to each Managed Account's investment management agreement.

#### D. Prepayment of Fees.

Generally, each client (either directly or indirectly) pays the Investment Manager a Management Fee monthly in advance based on the net asset value of each client. In the event that a withdrawal or redemption by an investor in a client is effective within a month, the Investment Manager will pay such client an amount equal to the *pro rata* unearned portion of the Management Fee and such client will distribute such amount to the investor.

E. Additional Compensation and Conflicts of Interest.

Neither the Investment Manager nor any of its supervised persons accepts compensation (e.g., brokerage commissions) for the sale of securities or other investment products. Please see Item 12 for information about the factors the Investment Manager considers in selecting or recommending broker-dealers for client transactions and determining the reasonableness of their compensation.

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

As discussed in Item 5, the Investment Manager generally receives an incentive allocation/fee equal to a percentage of the net realized and unrealized profits allocated to each client/investor, accrued at the end of each fiscal year. The Investment Manager currently charges an Incentive Allocation/Fee to some (but not all) of its clients and the Investment Manager generally allocates investment opportunities to all clients on a pro-rata basis.

The variation of Incentive Allocation/Fee models among the Investment Manager's clients creates an incentive for the Investment Manager to favor the client's accounts with the greatest Incentive Allocation/Fee percentage. The Investment Manager is committed to allocating investment opportunities on a fair and equitable basis and has implemented policies and procedures reasonably designed to identify and mitigate the conflicts of interest described above.

The Incentive Allocation/Fee provides an incentive for the Investment Manager to make riskier or more speculative investments on behalf of a client than it might make otherwise. Notwithstanding this incentive, the Investment Manager will evaluate investments in a manner that it considers to be in the best interest of its clients, given those clients' investment objectives, investment strategies, suitability of the investment, and risk profile.

**ITEM 7**  
**TYPES OF CLIENTS**

We provide investment advice to Funds and Managed Accounts, as described above.

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

A. Methods of Analysis and Investment Strategies.

Our objective is to generate superior, absolute returns throughout the complete economic and market cycle. We cause the clients to invest primarily in publicly traded equities, and invest opportunistically in other corporate securities and derivatives. We may cause our clients to take positions in other securities, derivatives and other financial instruments, though generally for the primary purpose of hedging exposures embedded in our client's primary investment positions.

We utilize in depth fundamental research to formulate a differentiated view and assessment of return potential. To accomplish this, the intrinsic value of a security is calculated utilizing various investment analyses including sum of parts, discounted cash flow, market comparables, and other valuation methodologies that we deem to be appropriate. Investments are targeted that exhibit a significantly positive expected value and sized based on an assessment of dollars lost in a range of downside scenarios.

We seek to exploit overvalued and undervalued opportunities as well as other inefficiencies in the market, and as a result, the portfolio consists of both long and short positions, some of which may be concentrated and/or leveraged in an effort to seek to achieve greater returns than could be achieved in the absence of such concentration and/or leverage. Investments in financial instruments may be made on exchanges and over-the-counter. We may cause our clients to invest excess cash balances in short-term investments that we deem appropriate.

**B. Material, Significant or Unusual Risks Relating to Investment Strategies.**

The following risk factors do not purport to be a complete list or explanation of the risks involved in an investment in the clients advised by us. These risk factors include only those risks we believe to be material, significant or unusual and relate to particular significant investment strategies or methods of analysis employed by us.

**Risks of Investments Generally.** Clients face the risk that the entire amount invested may be lost. We cause our clients to invest in and actively trade securities and other financial instruments using investment techniques with certain risk characteristics, including, without limitation, risks arising from the volatility of the equity markets and the potential illiquidity of securities and other financial instruments and the risk of loss from counterparty defaults. No guarantee or representation is made that our clients' investment objectives will be achieved.

**General Economic and Market Conditions.** The success of our clients' activities will be affected by general economic and market conditions, such as interest rates, availability of credit, credit defaults, inflation rates, economic uncertainty, changes in laws (including laws relating to taxation of our clients' investments), trade barriers, currency exchange controls, and national and international political circumstances (including wars, terrorist acts or security operations). These factors may affect the level and volatility of the prices and the liquidity of our clients' investments. Volatility or illiquidity could impair our clients' profitability or result in losses. We may cause our clients to maintain substantial trading positions that can be adversely affected by the level of volatility in the financial markets.

**Assumption of Catastrophe Risks.** Clients may be subject to the risk of loss arising from direct or indirect exposure to various catastrophic events, including the following: hurricanes, earthquakes and other natural disasters; terrorism; and public health crises, including the occurrence of a contagious disease. To the extent that any such event occurs and has a material effect on global financial markets or specific markets in which our clients participate (or has a material effect on locations in which the Investment Manager operates) the risks of loss can be substantial and could have a material adverse effect on our clients.

**Coronavirus Risks.** In December 2019, a novel strain of coronavirus (known as COVID-19) surfaced in Wuhan, China, which has resulted in the temporary closure of many corporate offices, retail stores, and manufacturing facilities across the globe, including the United States, Europe and Asia. These closures have caused the disruption of manufacturing supply chains and local and global economies, the duration of which remains uncertain. As of March 2020, COVID-19 has also resulted in disruptions in the global financial markets. The extent to which COVID-19 may negatively affect the operations of the Investment Manager and the performance of our clients is difficult to predict. Any potential impact on such operations and performance will depend to a large extent on future developments and new information that may emerge regarding the duration and severity of COVID-19 and the actions taken by authorities and other entities to contain COVID-19 or treat its impact. These potential impacts, while uncertain, could adversely affect the performance of our clients.

**Event-Driven.** The success of our clients' event-driven investment strategy depends upon our ability to make predictions about (i) the likelihood that an event will occur and (ii) the impact such event will have on the value of a company's securities. If the event fails to occur or it does not have the effect foreseen, losses can result. For example, the adoption of new business strategies or completion of asset dispositions or debt reduction programs by a company may not be valued as highly by the market as we had anticipated, resulting in losses. In addition, a company may announce a plan of restructuring which promises to enhance value, but fail to implement it, which can result in losses to investors. In liquidations and other forms of corporate reorganization, the risk exists that the reorganization either will be unsuccessful, will be delayed or will result in a distribution of cash or a new security, the value of which will be less than the purchase price to our client of the security in respect of which such distribution was made. The consummation of mergers and tender and exchange offers can be prevented or delayed by a variety of factors, including: (i) opposition of the management or stockholders of the target company, which will often result in litigation to enjoin the proposed transaction; (ii) intervention of a U.S. federal or state regulatory agency; (iii) efforts by the target company to pursue a "defensive" strategy, including a merger with, or a friendly tender offer by, a company other than the offeror; (iv) in the case of a merger, failure to obtain the necessary stockholder approvals; (v) market conditions resulting in material changes in securities prices; (vi) compliance with any applicable U.S. federal or state securities laws and foreign securities laws; and (vii) inability to obtain adequate financing. Because of the inherently speculative nature of event-driven investing, the results of our clients' operations may be expected to fluctuate from period to period. Accordingly, investors should understand that the results of a particular period will not necessarily be indicative of results that may be expected in future periods.

**Long/Short.** The success of our clients' long/short investment strategy depends upon our ability to identify and cause our clients to purchase securities that are undervalued and identify and sell short securities that are overvalued. The identification of investment opportunities in the implementation of our clients' long/short investment strategies is a difficult task, and there are no assurances that such opportunities will be successfully recognized or acquired. In the event that the perceived opportunities underlying our clients' positions were to fail to converge toward, or were to diverge further from values we expect, our clients may incur losses. In the event of market disruptions, significant losses can be incurred which may force our clients to close out one or more positions. Furthermore, the financial and valuation models used to determine

whether a position presents an attractive opportunity consistent with our long/short strategies may become outdated and inaccurate as market conditions change.

**Investment and Due Diligence Process.** Before causing our clients to make investments, we conduct due diligence that we deem reasonable and appropriate based on the facts and circumstances applicable to each investment. When conducting due diligence, we may be required to evaluate important and complex business, financial, tax, accounting, environmental and legal issues. When conducting due diligence and making an assessment regarding an investment we rely on the resources reasonably available to us, which in some circumstances, whether or not known to us at the time, may not be sufficient, accurate, complete or reliable. Due diligence may not reveal or highlight matters that could have a material adverse effect on the value of an investment. We may make investment decisions based on incomplete or limited information and based on assumptions that may not be accurate.

**Undervalued Securities.** The identification of investment opportunities in undervalued securities is a difficult task, and there are no assurances that such opportunities will be successfully recognized or acquired. While investments in undervalued securities offer the opportunity for above-average capital appreciation, these investments involve a high degree of financial risk and can result in substantial losses. Returns generated from our clients' investments may not adequately compensate for the business and financial risks assumed.

**Diversification and Concentration.** We may select investments that are highly concentrated in a very limited number or type of securities. In addition, our clients' portfolios may become highly concentrated in securities related to a single or a limited number of issuers, industries, sectors, strategies, countries or geographic regions. This limited diversification may result in the concentration of risk, which, in turn, could expose our clients to losses disproportionate to market movements in general if there are disproportionately greater adverse price movements in such securities.

**Short Selling.** We cause our clients to engage in short selling. Short selling involves selling securities which are not owned and borrowing them for delivery to the purchaser, with an obligation to replace the borrowed securities at a later date. Short selling allows the investor to profit from declines in market prices to the extent that such decline exceeds the transaction costs and the costs of borrowing the securities. The extent to which our clients may engage in short sales will depend upon our investment strategy and opportunities. A short sale creates the risk of a theoretically unlimited loss, in that the price of the underlying security could theoretically increase without limit, thus increasing the cost to our clients of buying those securities to cover the short position. There can be no assurance that our clients will be able to maintain the ability to borrow securities sold short. In such cases, our clients can be "bought in" (*i.e.*, forced to repurchase securities in the open market to return to the lender). There also can be no assurance that the securities necessary to cover a short position will be available for purchase at or near prices quoted in the market. Purchasing securities to close out a short position can itself cause the price of the securities to rise further, thereby exacerbating the loss.

**Leverage; Interest Rates; Margin.** The use of leverage has attendant risks and can substantially increase the adverse impact to which our clients' investment portfolio may be subject. The use of leverage will allow us to cause our clients to make additional investments,

thereby increasing our clients' exposure to assets, such that their total assets may be greater than their capital. However, leverage will also magnify the volatility of changes in the value of our clients' portfolios. The effect of our use of leverage on behalf of our clients in a market that moves adversely to their investments could result in substantial losses to our clients, which would be greater than if our clients were not leveraged. In addition, any leverage used by our clients is subject to the risk that changes in the general level of interest rates may adversely affect expenses and operating results.

In general, any use by our clients of short-term margin borrowings results in certain additional risks. For example, should the securities pledged to brokers to secure the portfolio's margin accounts decline in value, the portfolio could be subject to a "margin call", pursuant to which the portfolio must either deposit additional funds with the broker, or suffer mandatory liquidation of the pledged securities to compensate for the decline in value. In the event of a sudden precipitous drop in the value of the portfolio's assets, the portfolio might not be able to liquidate assets quickly enough to pay off their margin debt.

In the futures and forward markets, margin deposits are typically low relative to the value of the futures contracts purchased or sold. Such low margin deposits are indicative of the fact that any futures or forward contract trading is typically accompanied by a high degree of leverage. Low margin deposits mean that a relatively small price movement in a contract may result in immediate and substantial losses to the investor.

To the extent that we cause our clients to purchase an option in the U.S., there is no margin requirement because the option premium is paid for in full. The premiums for certain options traded on non-U.S. exchanges may be paid for on margin. Whether any margin deposit will be required for over-the-counter options and other over-the-counter instruments, will depend on the credit determinations and specific agreements of the parties to the transaction, which are individually negotiated.

**Hedging Transactions.** We are not required to attempt to hedge our clients' positions. In addition, we may not anticipate a particular risk so as to hedge against it. Furthermore, we may not anticipate a particular risk so as to hedge against it. We may cause our clients, however, to utilize a variety of financial instruments (including options and derivatives), both for investment purposes and for risk management purposes in order to: (i) protect against possible changes in the market value of our clients' investment portfolio resulting from fluctuations in the securities markets and changes in interest rates; (ii) protect the unrealized gains in the value of our clients' investment portfolios; (iii) facilitate the sale of any such investments; (iv) enhance or preserve returns, spreads or gains on any investment in our clients' portfolios; (v) hedge the interest rate or currency exchange rate on any of our clients' liabilities or assets; (vi) protect against any increase in the price of any securities that we anticipate causing our clients to purchase at a later date; or (vii) for any other reason that we deem appropriate.

The success of our hedging strategy is subject to our ability to correctly assess the degree of correlation between the performance of the instruments used to hedge and the performance of the investments in the portfolios being hedged. Since the characteristics of many securities change as markets change or time passes, the success of the instances when we hedge portfolio positions for our clients is also subject to our ability to continually recalculate, readjust and

execute hedges in an efficient and timely manner. While we may cause our clients to enter into certain hedging transactions to seek to reduce risk, such transactions may result in a poorer overall performance for our clients than if we had not caused them to engage in any such hedging transactions. For a variety of reasons, we may not seek to establish a perfect correlation between such hedging instruments and the portfolio holdings being hedged. Such imperfect correlation may prevent our clients from achieving the intended hedge or expose our clients to risk of loss. The successful utilization of hedging and risk management transactions requires skills complementary to those needed in the selection of our clients' portfolio holdings.

**Counterparty Risk.** We expect to establish, and have established, relationships to obtain financing, derivative execution, derivative intermediation and prime brokerage services that permit our clients to trade in any variety of markets or asset classes over time. However, there can be no assurance that our clients will be able to establish or maintain such relationships. An inability to establish or maintain such relationships could limit our clients' trading activities, create losses, preclude our clients from engaging in certain transactions or prevent our clients from trading at optimal rates and terms. Moreover, a disruption in the financing, derivative intermediation and prime brokerage services provided by any such relationships could have a significant impact on our clients' business due to our clients' reliance on such counterparties.

We may cause our clients to effect transactions in the "over-the-counter" or "OTC" derivatives markets. The stability and liquidity of OTC derivatives transactions depends in large part on the creditworthiness of the parties to the transactions. In the OTC markets, we cause our clients to enter into a contract directly with dealer counterparties, which may expose our clients to the risk that a counterparty will not settle a transaction in accordance with its terms because of a solvency or liquidity problem with the counterparty. Delays in settlement may also result from disputes over the terms of the contract (whether or not bona fide). In addition, we may cause our clients to have a concentrated risk in a particular counterparty, which may mean that if such counterparty were to become insolvent or have a liquidity problem, losses would be greater than if a client had entered into contracts with multiple counterparties. Certain OTC derivative contracts require that our clients post collateral.

If there is a default by a counterparty, our clients under most normal circumstances will have contractual remedies pursuant to the agreements related to the transaction. However, exercising such contractual rights may involve delays or costs which could result in the net asset value of the client being less than if the client had not entered into the transaction. Furthermore, there is a risk that any of such counterparties could become insolvent and/or the subject of insolvency proceedings. In such case, the recovery of our clients' securities from such counterparty or the payment of claims therefor may be significantly delayed and such client may recover substantially less than the full value of the securities entrusted to such counterparty. In addition, there are a number of proposed rules that, if they were to go into effect, may impact the laws that apply to insolvency proceeding and may impact whether a client may terminate its agreement with an insolvent counterparty.

Collateral that we cause a client to post to its counterparties that is not segregated with a third-party custodian may not have the benefit of customer-protected "segregation" of such funds. In the event that a counterparty were to become insolvent, our clients may become

subject to the risk that it may not receive the return of its collateral or that the collateral may take some time to return.

In addition, we may cause our clients to use counterparties located in jurisdictions outside the United States. Such local counterparties usually are subject to laws and regulations in non-U.S. jurisdictions that are designed to protect customers in the event of their insolvency. However, the practical effect of these laws and their application to our clients' assets are subject to substantial limitations and uncertainties. Because of the range of possible factual scenarios involving the insolvency of a counterparty and the potentially large number of entities and jurisdictions that may be involved, it is impossible to generalize about the effect of such an insolvency on our clients and their respective assets. Investors should assume that the insolvency of any such counterparty would result in significant delays in recovering our clients' securities from or the payment of claims therefor by such counterparty and a loss to the respective client, which could be material.

**Counterparty Fraud.** Of paramount concern in investments is the possibility of material misrepresentation or omission on the part of a counterparty. Such inaccuracy or incompleteness may adversely affect the valuation of the collateral underlying an investment. We rely upon the accuracy and completeness of representations made by counterparties to the extent reasonable, but cannot guarantee such accuracy or completeness. Under certain circumstances, payments to our clients may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance or a preferential payment.

**Counterparty Insolvency.** We may cause our clients' assets to be held in one or more accounts maintained for our clients by counterparties, including their prime brokers. There is a risk that any such counterparties could become insolvent. The insolvency of our clients' counterparties is likely to impair the operational capabilities or the assets of our clients. Although we regularly monitor the financial condition of the counterparties our clients use, if one or more of our clients' counterparties were to become insolvent or the subject of liquidation proceedings in the U.S. (either under the Securities Investor Protection Act or the U.S. Bankruptcy Code), there exists the risk that the recovery of our clients' securities and other assets from such prime broker or broker-dealer will be delayed or be of a value less than the value of the securities or assets originally entrusted to such prime broker or broker-dealer.

In addition, we may cause our clients to use counterparties located in various jurisdictions outside the U.S. Such local counterparties are subject to various laws and regulations in various jurisdictions that are designed to protect their customers in the event of their insolvency. However, the practical effect of these laws and their application to our clients' assets are subject to substantial limitations and uncertainties. Because of the large number of entities and jurisdictions involved and the range of possible factual scenarios involving the insolvency of a counterparty, it is impossible to generalize about the effect of their insolvency on our clients and their assets. Investors should assume that the insolvency of any client counterparty would result in a loss to that client, which could be material.

**Highly Volatile Markets.** The prices of derivative instruments, including currencies, futures and option prices, can be highly volatile. Price movements of derivative contracts in which the our clients' assets may be invested are influenced by, among other things, interest

rates, changing supply and demand relationships, trade, fiscal, monetary and exchange control programs and policies of governments, and national and international political and economic events and policies. In addition, governments from time to time intervene, directly and by regulation, in certain markets, particularly those in currencies, financial instruments, futures and options. Such intervention often is intended directly to influence prices and may, together with other factors, cause all of such markets to move rapidly in the same direction because of, among other things, interest rate fluctuations. Our clients' portfolios are also subject to the risk of the failure of any exchanges on which its positions trade or of their clearinghouses.

**Competition; Availability of Investments.** Certain markets in which we cause our clients to invest are extremely competitive for attractive investment opportunities and, as a result, there may be reduced investment returns. There can be no assurance that we will be able to identify or successfully pursue attractive investment opportunities in such environments. Among other factors, competition for suitable investments from other pooled investment vehicles and other investors may reduce the availability of investment opportunities. Competitive investment activity by other firms and institutions will reduce the opportunity for profit by generally increasing prices on desired assets, reducing mispricings in the market as well as the margins available on those mispricings that can still be identified.

**Significant Positions in Securities; Regulatory Requirements.** In the event that we cause our clients to acquire a significant stake in certain issuers of securities and such stake exceeds certain percentage or value limits, our clients may be subject to regulation and regulatory oversight that may impose notification and filing requirements or other administrative burdens on both us and our clients. Any such requirements may impose additional costs on our clients and may delay the acquisition or disposition of the securities or our clients' abilities to respond in a timely manner to changes in the markets with respect to such securities.

In addition, "position limits" may be imposed by various regulators that may limit our ability to effect desired trades on behalf of our clients. Position limits are the maximum amounts of gross, net long or net short positions that any one person or entity may own or control in a particular issuer's securities. All positions owned or controlled by the same person or entity, even if in different accounts, may be aggregated for purposes of determining whether the applicable position limits have been exceeded. To the extent that our clients' position limits were aggregated with an affiliate's position limits, the effect on our clients and resulting restriction on our investment activities on their behalf may be significant. If at any time positions managed by us were to exceed applicable position limits, we would be required to liquidate positions, which might include positions of our clients, to the extent necessary to come within those limits. Further, to avoid exceeding any position limits, we might have to cause our clients to forego or modify certain of their contemplated trades.

In addition, if we cause our clients, acting alone or as part of a group, to acquire beneficial ownership of more than 10% of a certain class of securities of a public company or place a director on the board of directors of such a company, under Section 16 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), our clients may be subject to certain additional reporting requirements and may be required to disgorge certain short-swing profits arising from purchases and sales of such securities. Furthermore, in such circumstances our

clients will be prohibited from entering into a short position in such issuer's securities, and therefore limited in their ability to hedge such investments. Similar restrictions and requirements may apply in non-U.S. jurisdictions.

**Exposure to Material Non-Public Information.** From time to time, we may receive material non-public information with respect to an issuer of publicly traded securities. In such circumstances, our clients may be prohibited, by law, policy or contract, for a period of time from (i) unwinding a position in such issuer, (ii) establishing an initial position or taking any greater position in such issuer, and (iii) pursuing other investment opportunities related to such issuer.

**Currency Exchange Exposure.** We may cause our clients to invest in securities denominated in non-U.S. currencies, the prices of which are determined with reference to currencies other than the U.S. dollar. However, we value our clients' securities in U.S. dollars. We may or may not seek to hedge our clients' non-U.S. currency exposure by entering into currency hedging transactions, such as treasury locks, forward contracts, futures contracts and cross-currency swaps. There can be no guarantee that securities suitable for hedging currency or market shifts will be available at the time when our clients wish to use them, or that hedging techniques employed by our clients will be effective. Furthermore, certain currency market risks may not be fully hedged or hedged at all. To the extent unhedged, the value of our clients' positions in non-U.S. investments will fluctuate with U.S. dollar exchange rates as well as with the price changes of the investments in the various local markets and currencies. Such fluctuations may result in a loss to our clients.

Furthermore, we may cause our clients to incur costs in connection with conversions between various currencies. Non-U.S. currency exchange dealers realize a profit based on the difference between the prices at which they are buying and selling various currencies. Thus, a dealer normally will offer to sell currency to our clients at one rate, while offering a lesser rate of exchange should our clients desire immediately to resell that currency to the dealer. We will cause our clients to conduct their currency exchange transactions either on a spot (*i.e.*, cash) basis at the spot rate prevailing in the currency exchange market, or through entering into forward or options contracts to purchase or sell non-U.S. currencies. It is anticipated that most of our clients' currency exchange transactions will occur at the time non-U.S. investments are purchased and will be executed through the local broker or custodian acting for our clients.

We may cause our clients to seek to protect the value of some portion or all of their portfolio holdings against currency fluctuations by engaging in hedging transactions, but there can be no assurance that such hedging transactions will be effective. We may cause our clients to enter into forward contracts on currencies, as well as purchase put or call options on currencies, in U.S. or non-U.S. markets. There can be no guarantee that instruments suitable for hedging currency risk will be available at the time when our clients wish to use them or will be able to be liquidated when our clients wish to do so.

**Non-U.S. Investments.** We may cause our clients to invest in assets on a global basis, including in securities of non-U.S. companies which are traded in non-U.S. markets. Investing in the securities of companies in non-U.S. countries involves certain considerations not usually associated with investing in securities of U.S. companies or U.S. markets, including: political

and economic considerations, such as greater risks of expropriation and nationalization, confiscatory taxation, the potential difficulty of repatriating funds, general social, political and economic instability and adverse diplomatic developments; the possibility of imposition of withholding or other taxes on dividends, interest, capital gain, other income or gross sale or disposition proceeds; the small size of the securities markets in such countries and the low volume of trading, resulting in potential lack of liquidity and in price volatility; fluctuations in the rate of exchange between currencies and costs associated with currency conversion; and certain government policies that may restrict our clients' investment opportunities. In addition, accounting and financial reporting standards that prevail in such countries generally are not equivalent to U.S. standards and, consequently, less information is available to investors in companies located in such countries than is available to investors in companies located in the U.S. There is also less regulation, generally, of the securities markets in such countries than there is in the U.S. As a result, we may be unable to structure our clients' transactions to achieve the intended results or to mitigate all risks associated with such markets. It may also be difficult to enforce our clients' rights in such markets. For example, securities traded on non-U.S. exchanges and the non-U.S. persons that trade these instruments are not subject to the jurisdiction of the SEC or the Commodity Futures Trading Commission, the securities and commodities laws and regulations of the U.S. Accordingly, the protections accorded to our clients under such laws and regulations are unavailable for transactions on non-U.S. exchanges and with non-U.S. counterparties.

**Non-U.S. Exchanges.** We may cause our clients to trade on exchanges or markets located outside the U.S. Trading on such exchanges or markets is not regulated by the SEC and the CFTC and may, therefore, be subject to more risks than trading on U.S. exchanges, such as the risks of exchange controls, expropriation, burdensome taxation, moratoria and political or diplomatic events. Risks in investments in non-U.S. securities may also include reduced and less reliable information about issuers and markets, less stringent accounting standards, illiquidity of securities and markets, higher brokerage commissions and custody fees.

**Discretion of the Investment Manager; New Strategies and Techniques.** While we will generally seek to employ the representative investment strategies and techniques discussed herein, we have (subject to the policies and control of the respective client's board of directors) considerable discretion in the types of securities and sectors in which our clients may trade and have the right to modify the investment strategies and techniques of our clients without the consent of the applicable client's investors. Any of these new trading strategies and techniques may not be thoroughly tested in the market before being employed and may have operational or theoretical shortcomings which could result in unsuccessful trades and, ultimately, losses to our clients. In addition, any new investment strategy or technique that we develop for our clients may be more speculative than earlier investment strategies and techniques and may involve material and as yet unanticipated risks that could increase the risk of an investment in our clients, to the extent applicable.

#### C. Risks Associated With Particular Types of Securities and Other Investments.

We do not recommend a particular type of investment instrument to our clients, but rather, we recommend and invest in multiple investment instruments. Given the broad discretion

we have in managing our clients' portfolios, any one or more of the risks listed in the previous section may be incurred by our clients.

However, because it may be useful in understanding our investment program, set forth below is a non-exclusive list of certain risks related to securities and other instruments that may be utilized within our clients' portfolios:

**Equity Securities Generally.** Our clients' investment portfolios include equity and equity-related securities of U.S. and non-U.S. companies. Equity securities fluctuate in value in response to many factors, including the activities and financial conditions of individual companies. As a result, our clients may suffer losses if we cause them to invest in equity instruments of issuers whose share price performance diverges from our expectations. Our clients also may be exposed to risks that issuers will not fulfill contractual obligations such as, in the case of convertible securities or private placements, delivering marketable common stock upon conversions of convertible securities and registering restricted securities for public resale.

**Call Options.** There are risks associated with the sale and purchase of call options. The seller (writer) of a call option which is covered (*e.g.*, the writer holds the underlying security) assumes the risk of a decline in the market price of the underlying security below the purchase price of the underlying security offset by the gain by the premium received if the option expires out of the money, and gives up the opportunity for gain on the underlying security above the exercise price of the option. The seller of an uncovered call option assumes the risk of a theoretically unlimited increase in the market price of the underlying security above the exercise price of the option. The buyer of a call option assumes the risk of losing the premium if the option expires out of the money.

**Put Options.** There are risks associated with the sale and purchase of put options. The seller (writer) of a put option which is covered (*e.g.*, the writer has a short position in the underlying security) assumes the risk of an increase in the market price of the underlying security above the sale price of the short position of the underlying security offset by the premium if the option expires out of the money, and thus the gain in the premium, and the option seller gives up the opportunity for gain on the underlying security below the exercise price of the option. The seller of an uncovered put option assumes the risk of a decline in the market price of the underlying security to zero. The buyer of a put option assumes the risk of losing the premium if the option expires out of the money.

**Index or Index Options.** The value of an index or index option fluctuates with changes in the market values of the securities included in the index. Because the value of an index or index option depends upon movements in the level of the index rather than the price of a particular security, whether our clients will realize appreciation or depreciation from the purchase or writing of options on indices depends upon movements in the level of instrument prices in the security market generally or, in the case of certain indices, in an industry or market segment, rather than movements in the price of particular securities.

**Index Futures.** The price of index futures contracts may not correlate perfectly with the movement in the underlying index because of certain market distortions. First, all participants in the futures market are subject to margin deposit and maintenance requirements. Rather than

meeting additional margin deposit requirements, shareholders may close futures contracts through offsetting transactions that would distort the normal relationship between the index and futures markets. Second, from the point of view of speculators, the deposit requirements in the futures market are less onerous than margin requirements in the securities market. Therefore, increased participation by speculators in the futures market also may cause price distortions. Our successful use of index futures contracts on behalf of our clients is also subject to our ability to correctly predict movements in the direction of the market.

**Futures Contracts.** We may cause our clients to invest in futures contracts or options thereon. Futures positions may be illiquid because, for example, many commodity exchanges limit fluctuations in certain futures contract prices during a single day by regulations referred to as "daily price fluctuation limits" or "daily limits". Under such daily limits, during a single trading day no trades may be executed at prices beyond the daily limits. Once the price of a contract for a particular future has increased or decreased by an amount equal to the daily limit, positions in the future can neither be taken nor liquidated unless traders are willing to effect trades at or within the limit. Futures contract prices on various commodities or financial instruments occasionally have moved the daily limit for several consecutive days with little or no trading. Similar occurrences could prevent us from causing our clients to promptly liquidate unfavorable positions and subject our clients to substantial losses. In addition, our clients may not be able to execute futures contract trades at favorable prices if trading volume in such contracts is low. It is also possible that an exchange or a regulator may suspend trading in a particular contract, order immediate liquidation and settlement of a particular contract or order that trading in a particular contract be conducted for liquidation only. In addition, our clients may not be able to execute futures contract trades at favorable prices if trading volume in such contracts is low. It is also possible that an exchange or a regulator may suspend trading in a particular contract, order immediate liquidation and settlement of a particular contract or order that trading in a particular contract be conducted for liquidation only. In addition, various exchanges impose speculative position limits on the number of positions that may be held in particular commodities. Trading in commodity futures contracts and options are highly specialized activities that may entail greater than ordinary investment or trading risks. Furthermore, low margin or premiums normally required in such trading may provide a large amount of leverage, and a relatively small change in the price of a security or contract can produce a disproportionately larger profit or loss.

**Forward Trading.** Forward contracts and options thereon, unlike futures contracts, are generally not traded on exchanges and are not standardized; rather, banks and dealers act as principals in these markets, negotiating each transaction on an individual basis. Forward and "cash" trading is substantially unregulated; there is no limitation on daily price movements and speculative position limits are not applicable. The principals who deal in the forward markets are not required to continue to make markets in the currencies or commodities they trade and these markets can experience periods of illiquidity, sometimes of significant duration. There have been periods during which certain participants in these markets have refused to quote prices for certain currencies or commodities or have quoted prices with an unusually wide spread between the price at which they were prepared to buy and that at which they were prepared to sell. Disruptions can occur in any market that we cause our clients to trade in due to unusually high trading volume, political intervention or other factors. The imposition of controls by

governmental authorities might also limit such forward (and futures) trading to less than that which we would otherwise recommend, to the possible detriment of our clients. Market illiquidity or disruption could result in major losses to our clients.

**Swap Agreements.** We may cause our clients to enter into swap agreements. These agreements are individually negotiated and can be structured to include exposure to a variety of different types of investments, asset classes or market factors. Depending on their structure, swap agreements may increase or decrease our clients' exposure to, for example, equity securities. Swap agreements can take many different forms and are known by a variety of names. Our clients are not limited to any particular form of swap agreement if consistent with our clients' investment objectives. Whether our use of swap agreements on behalf of our clients will be successful depends on our ability to select appropriate transactions for our clients. Swap transactions may be highly illiquid and may increase or decrease the volatility of our clients' portfolios. Moreover, our clients bear the risk of loss of the amount expected to be received under a swap agreement in the event of the default or insolvency of their counterparties. Our clients also bear the risk of loss related to swap agreements, for example, for breaches of such agreements or the failure of our clients to post or maintain required collateral. Many swap markets are relatively new and still developing. It is possible that developments in the swap markets, including potential government regulation, could adversely affect our ability to cause our clients to terminate existing swap transactions or to realize amounts to be received under such transactions.

**Other Derivative Instruments.** We may cause our clients to enter into swaps and other derivative instruments. We may cause them to take advantage of opportunities with respect to certain other derivative instruments that are not currently contemplated for use or that are currently not available, but that may be developed, to the extent such opportunities are both consistent with the investment objectives of our clients and that we believe to be legally permissible. Special risks may apply to instruments that we cause our clients to invest in in the future that cannot be determined at this time or until such instruments are developed or we have caused our clients to invest in them. Certain swaps, options and other derivative instruments may be subject to various types of risks, including market risk, liquidity risk, the risk of non-performance by the counterparty, including risks relating to the financial soundness and creditworthiness of the counterparty, legal risk and operations risk.

**Debt Instruments.** We may cause our clients to invest a portion of their assets in bonds and other fixed income instruments. The value of fixed income instruments changes in response to fluctuations in interest rates. When interest rates rise, the value of debt instruments can be expected to decline. Debt instruments with longer maturities tend to be more sensitive to interest rate movements than those with shorter maturities. Debt instruments in which we cause our clients to invest may be unrated, and whether or not rated, the debt instruments may have speculative characteristics. Fixed income securities are also subject to the risk of the issuer's inability to meet principal and interest payments on its obligations (*i.e.*, credit risk) and are subject to price volatility due to factors including interest rate sensitivity, market perception of the creditworthiness of the issuer and general market liquidity.

**Money Market Funds.** We may cause our clients to make investments or have indirect exposure to money market funds, including as a result of its excess cash being placed into prime brokerage or other accounts that periodically sweep such excess cash into money market funds. Money market funds have relatively low risks compared to most other financial instruments. By law, money market funds may only invest in certain high-quality, short-term investments issued by the U.S. government, U.S. corporations, and state and local governments. While money market funds aim to keep their net asset value at a stable \$1.00 per share, net asset value may fall below \$1.00 per share if the investments of a money market fund perform poorly. Investor losses with respect to money market funds have been rare, but the risk of loss exists. Money market funds pay dividends that generally reflect short-term interest rates, and historically the returns for money market funds have been lower than for either bond or stock funds. Accordingly, there exists the risk with respect to money market funds that inflation will outpace and erode investment returns over time.

## **ITEM 9 DISCIPLINARY INFORMATION**

There are no legal or disciplinary events that are material to a client's or prospective client's evaluation of our advisory business or the integrity of our management.

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

### **A. Broker-Dealer Registration Status.**

Neither we nor any of our management persons are registered as broker-dealers and none of us have any application pending to register with the SEC as a broker-dealer or a registered representative of a broker-dealer.

### **B. Futures Commission Merchant, Commodity Pool Operator or Commodity Trading Adviser Registration Status.**

Neither we nor any of our management persons are registered as, and none of us have any application to register as, futures commission merchants, commodity pool operators, commodity trading advisors or associated persons of the foregoing entities.

### **C. Material Conflicts of Interest Relating to Other Investment Advisers.**

The Fund General Partner, the Investment Manager and their affiliates provide advisory services to, and share certain resources with, TOMS Capital LLC (the "Family Office"), which manages the capital of Mr. Gottesman, his family and other key personnel of the Family Office, which results in a number of actual and potential conflicts of interest. The Investment Manager has adopted certain measures set forth in its Code of Ethics, and its broader Compliance Manual, including, but not limited to, the creation of a "Restricted List" of securities about which a determination has been made that it is prudent to restrict trading activity, to mitigate such conflicts of interest. In addition, with the exception of limited consent rights upon the occurrence of certain extraordinary events involving the respective businesses of the Fund

General Partner, TCIM GP MM, the Investment Manager and TCIM Management GP, Mr. Gottesman has no involvement in the management or operation of the Fund General Partner, TCIM GP MM, the Investment Manager or TCIM Management GP, nor is Mr. Gottesman involved in the investment activities of our clients.

## **ITEM 11**

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

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

The Investment Manager strives to adhere to the highest industry standards of conduct based on principles of professionalism, integrity, honesty and trust. In seeking to meet these standards, we have adopted a Code of Ethics (the "Code"). The Code incorporates the following general principles that all employees are expected to uphold:

- employees must at all times place the interests of clients first;
- all personal securities transactions must be conducted in a manner consistent with the Code and any actual or potential conflicts of interest or any abuse of an employee's position of trust and responsibility must be addressed;
- employees must not take any inappropriate advantage of their positions;
- information concerning the identity of securities and financial circumstances of the Funds, including the Funds' investors, must be kept confidential; and
- independence in the investment decision-making process must be maintained at all times.

Clients may request a copy of the Code by contacting us at the address or telephone number listed on the first page of this document.

#### **B. Securities that the Investment Manager or a Related Person Has a Material Financial Interest.**

##### **1. *Cross Trades***

We may determine that it would be in the best interests of certain clients to transfer a security from one client to another (each such transfer, a "Cross Trade") for a variety of reasons, including, without limitation, tax purposes, liquidity purposes, to rebalance the portfolios of the clients, or to reduce transaction costs that may arise in an open market transaction. If we decide to engage in a Cross Trade, we will determine that the trade is in the best interests of each client involved in the transaction and take steps to ensure that the transaction is consistent with the duty to obtain best execution for each of those clients.

We generally execute Cross Trades with the assistance of a broker-dealer who executes and books the transaction at the close of the market on the day of the transaction. Alternatively,

a Cross Trade between two clients may occur as an "internal cross", where we instruct the custodian for the clients to book the transaction at the price determined in accordance with our valuation policy. If we effect an internal cross, we will not receive any fee in connection with the completion of the transaction.

## *2. Principal Transactions*

To the extent that Cross Trades may be viewed as principal transactions due to the ownership interest in a client by the us and our personnel, we will comply with the requirements of Section 206(3) of the Advisers Act, including that any such transactions will be considered on behalf of investors in such a client and approved or disapproved by a committee consisting of one or more persons selected by us (or on of our affiliates), and any valuation approved by such a committee will be determined by an independent third party that has appropriate experience in providing such valuations.

### C. Investing in Securities that the Investment Manager or a Related Person Recommends to Clients.

The Code places restrictions on personal trades by employees. The compliance team takes into account any actual or potential conflicts of interest in determining whether to approve any transactions and if approved, whether to place any limits on such transactions. The Code also requires employees to disclose their personal securities holdings and transactions on a periodic basis.

We have established policies and procedures to monitor and resolve conflicts with respect to investment opportunities in a manner we deem fair and equitable, including the restrictions placed on personal trading in the Code, as described above, and regular monitoring of employee transactions and trading patterns for actual or perceived conflicts of interest.

### D. Conflicts of Interest Created by Contemporaneous Trading.

The Investment Manager manages investments on behalf of a number of clients. Certain clients have investment programs that are the same, similar or overlap and, therefore, participate with each other in investments. It is the policy of the Investment Manager to allocate investment opportunities among all clients fairly, to the extent practical and in accordance with each client's applicable investment strategies, over a period of time. The Investment Manager will have no obligation to purchase or sell a security for, enter into a transaction on behalf of, or provide an investment opportunity to any client solely because the Investment Manager purchases or sells the same security for, enters into a transaction on behalf of, or provides an opportunity to any client if, in its reasonable opinion, such security, transaction or investment opportunity does not appear to be suitable, practical or desirable for the client.

The Investment Manager manages a separate account in which Mr. Gottesman and his affiliates have a direct or indirect interest that pursues a substantially similar investment program as that of the Funds. While this Managed Account is managed *pari passu* with the Funds, the Managed Account established for Noam Gottesman and his affiliates has liquidity and transparency rights that are preferential to the rights of investors in the Funds. The Investment

Manager also advises several other Managed Accounts on behalf of institutional investors, each of which generally invests on a *pari passu* basis with the Funds, but also have liquidity, transparency and early termination rights that are preferential to the rights of investors in the Funds. Additional information may affect an investor's decision to invest additional capital in, to remain an investor in, to withdraw from or to terminate any such Managed Accounts. In the event such Managed Accounts take an action as a result of such preferential rights (*i.e.*, withdraw capital or terminate the Managed Account) such action may, in certain circumstances, cause any such Managed Account to liquidate its positions ahead of other clients (including the Funds), which may impact the price of the investment portfolios of the other clients to the detriment of such clients or investors in the Funds. In the event that a conflict arises, the Investment Manager and its affiliates will seek to manage potential conflicts of interest in good faith and in a manner that is consistent with its fiduciary duties to its clients.

## **ITEM 12**

### **BROKERAGE PRACTICES**

#### **A. Factors Considered in Selecting or Recommending Broker-Dealers for Client Transactions.**

As noted previously, we have full discretionary authority to manage the clients, including authority to make decisions with respect to which securities are bought and sold, the amount and price of those securities, the brokers or dealers to be used for a particular transaction, and commissions or markups and markdowns paid. Our authority is limited by our own internal policies and procedures and each client's investment guidelines.

We seek to obtain best execution for our client portfolio transactions. Portfolio transactions will be allocated to brokers and dealers on the basis of best execution and in consideration of relevant factors, including, but not limited to, price quotes; the size of the transaction; the nature of the market for the security; the timing of the transaction; the difficulty of execution; the broker or dealer's expertise in the relevant market or sector; the extent to which the broker or dealer makes a market in the security or has access to such market; the broker or dealer's skill in positioning the relevant market; the broker or dealer's facilities, reliability, promptness and financial stability; the broker or dealer's reputation for diligence and integrity (including in correcting errors); confidentiality considerations; the quality and usefulness of research products and services and investment ideas presented by the broker or dealer; and other factors that we deem appropriate.

Accordingly, the commission rates (or dealer markups and markdowns) charged to the Funds by brokers or dealers in certain situations may be higher than those charged by other brokers or dealers who may not offer such services. Subject to our obligation to seek best execution, we are not required to solicit competitive bids and do not have an obligation to seek the lowest available commission cost or spread.

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

From time to time, we pay a broker-dealer commissions (or markups or markdowns with respect to certain types of riskless principal transaction) for effecting client transactions in excess

of that which another broker-dealer might have charged for effecting the transaction in recognition of the value of the brokerage and research services provided by the broker-dealer. We will effect such transactions, and receive such brokerage and research services, only to the extent that they fall within the safe harbor provided by Section 28(e) of the Exchange Act, as amended, and subject to prevailing guidance provided by the SEC regarding Section 28(e). We believe it is important to our investment decision-making processes to have access to independent research.

Also, consistent with Section 28(e), research products or services obtained with "soft dollars" generated by one or more clients from time to time are used by us to service one or more other clients, including clients that have not paid for the soft dollar benefits. We do not seek to allocate soft dollar benefits to client accounts in proportion to the soft dollar credits the client accounts generate. Where a product or service obtained with soft dollars provides both research and non-research assistance to us (*i.e.*, a "mixed use" item), we will make a good faith allocation of the cost which may be paid for with soft dollars. In making good faith allocations of costs between administrative benefits and research and brokerage services, a conflict of interest exists by reason of our allocation of the costs of such benefits and services between those that primarily benefit us and those that primarily benefit the clients.

When we use client brokerage commissions (or markups or markdowns) to obtain research or other products or services, we receive a benefit because we do not have to produce or pay for such products or services. We have an incentive to select or recommend a broker-dealer based on our interest in receiving research or other products or services, rather than on our clients' interest in receiving most favorable execution. We believe, however, that this conflict is mitigated because, pursuant to the clients' offering documents, the clients are otherwise required to pay for such research expenses.

## *2. Brokerage for Client Referrals.*

Neither the Investment Manager nor any related person receives client referrals from any broker-dealer or third party. However, as discussed above, subject to best execution, the Investment Manager considers, among other things, capital introduction and marketing assistance with respect to investors in the Funds in selecting or recommending broker-dealers for the Funds.

## *3. Directed Brokerage.*

We do not recommend, request or require that a client direct us to execute transactions through a specified broker-dealer.

## **B. Order Aggregation.**

If we determine that the purchase or sale of a security is appropriate with regard to multiple clients, we generally will, but are not obligated to, purchase or sell such a security on behalf of such clients with an aggregated order, for the purpose of reducing transaction costs, to the extent permitted by applicable law. When an aggregated order is filled through multiple trades at different prices on the same day, each participating client will receive the average price,

with transaction costs generally allocated *pro rata* based on the size of each client's participation in the order (or allocation in the event of a partial fill) as determined by us. In the event of a partial fill, allocations may be modified on a basis that we deem to be appropriate, including, for example, in order to avoid odd lots or *de minimis* allocations. When orders are not aggregated, trades generally will be processed in the order that they are placed with the broker or counterparty selected by us. As a result, certain trades in the same security for one client (including a client in which we and our personnel may have a direct or indirect interest) may receive more or less favorable prices or terms than another client, and orders placed later may not be filled entirely or at all, based upon the prevailing market prices at the time of the order or trade. In addition, some opportunities for reduced transaction costs and economies of scale may not be achieved.

### **ITEM 13 REVIEW OF ACCOUNTS**

#### **A. Frequency and Nature of Review of Client Accounts or Financial Plans.**

Our investment team, led by our CIO, reviews each client's portfolio on a frequent and regular basis. Such reviews may include, among other things, discussion of specific investment ideas, in-depth research, portfolio performance and exposures, liquidity and risk management.

#### **B. Factors Prompting Review of Client Accounts Other than a Periodic Review.**

A review of a client account may be triggered by any unusual activity or special circumstances.

#### **C. Content and Frequency of Account Reports to Clients.**

We issue investors tax reports and audited financial statements concerning their respective Funds within 120 days of the end of a Fund's fiscal year.

Each investor is invited to meet with the authorized representatives of the applicable Fund to discuss with, ask questions of, and receive answers from, such persons concerning the terms and conditions of this offering of their interests in the applicable Fund, and to obtain additional information, to the extent the Fund possesses such information or can acquire it without unreasonable effort or expense, necessary to verify the information contained herein. An investor may request additional information and reporting, and other investors may not receive some or all information provided in response to such requests. Such information could affect an investor's decision to request a redemption of its interests in the Fund.

We may, on a discretionary basis, provide reports to investors in the Funds more frequently than as stated herein.

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

A. Economic Benefits for Providing Services to Clients.

We do not receive economic benefits from non-clients for providing investment advice and other advisory services.

B. Compensation to Non-Supervised Persons for Client Referrals.

Neither we nor any of our related persons directly or indirectly compensates any person who is not a supervised person, including placement agents, for client referrals.

**ITEM 15**  
**CUSTODY**

We are deemed to have custody of client funds and securities because we have the authority to obtain client funds or securities, for example, by deducting advisory fees from a client's account or otherwise withdrawing funds from a client's account. Account statements related to the clients are sent to us by qualified custodians.

We are subject to Rule 206(4)-2 under the Advisers Act (the "Custody Rule"). However, we are not required to comply (or are deemed to have complied) with certain requirements of the Custody Rule with respect to each Fund because we comply with the provisions of the so-called "Pooled Vehicle Annual Audit Exception," which, among other things, requires that each Fund be subject to audit 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 requires that each Fund distribute its audited financial statements to all investors within 120 days of the end of its fiscal year.

We do not have custody of the funds and securities we manage for the Managed Accounts.

**ITEM 16**  
**INVESTMENT DISCRETION**

We serve as the investment manager with discretionary trading authority to each client. Our investment decisions and advice with respect to each client are subject to each client's investment objectives and guidelines, as set forth in its offering documents.

We or one of our affiliates have entered into an investment management agreement, or similar agreement, with each client, pursuant to which we or that affiliate was granted discretionary trading authority.

## **ITEM 17**

### **VOTING CLIENT SECURITIES**

#### **A. Policies and Procedures Relating to Voting Client Securities.**

In compliance with Advisers Act Rule 206(4)-6, we have adopted proxy voting policies and procedures. The general policy is to vote proxy proposals, amendments, consents or resolutions (collectively, "Proxies") in a prudent and diligent manner that will serve the applicable client's best interests and is in line with each client's investment objectives.

We may take into account all relevant factors, as determined by us in our discretion, including, without limitation:

- the impact on the value of the securities or instruments owned by the relevant client and the returns on those securities;
- the anticipated associated costs and benefits;
- the continued or increased availability of portfolio information; and
- industry and business practices.

In limited circumstances, we will refrain from voting Proxies where we believe that doing so would be in the best interests of our clients, taking into consideration the cost of voting the Proxies and the anticipated benefit to our clients. Generally, clients may not direct our vote in a particular solicitation; however, we have agreed, and may agree in the future, to certain guidelines and limitations with respect to our proxy voting authority over securities held by Managed Accounts.

Conflicts of interest may arise between the interests of the clients on the one hand and us or our affiliates on the other hand. If we determine that we have, or are perceived to have, a conflict of interest when voting Proxies, we will vote in accordance with our Proxy voting policies and procedures. Clients may obtain a copy of our Proxy voting policies and our Proxy voting record upon request.

## **ITEM 18**

### **FINANCIAL INFORMATION**

The Investment Manager is not required to include a balance sheet for its most recent fiscal year, is not aware of any financial condition reasonably likely to impair its ability to meet contractual commitments to clients, and has not been the subject of a bankruptcy petition at any time during the past ten years.