

FAIRHOLME CAPITAL MANAGEMENT, L.L.C.

# BROCHURE

## 27 MARCH 2020

*This brochure provides information about the qualifications and business practices of Fairholme Capital Management, L.L.C. ("Fairholme" or the "Adviser"), an investment adviser registered with the United States Securities and Exchange Commission (the "SEC"). If you have any questions about the contents of this brochure, please contact us at 305-358-3000 or [fcminfo@fairholme.net](mailto:fcminfo@fairholme.net). This information has not been approved or verified by the SEC or by any state securities authority. Additional information about Fairholme is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). Registration with the SEC or with any state securities authority does not imply a certain level of skill or training.*

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**ITEM 2. MATERIAL CHANGES.....**

Since the Adviser's last annual update of the brochure, which was filed on March 29, 2019, the Adviser has amended the brochure to reflect the closure of the CP Liquidity Income Fund, LP and the closure of Fairholme Trust Company, LLC, to identify the issuer in which one of more Accounts are invested and for which Mr. Berkowitz serves as a director, and to include legal proceedings disclosure in Item 9.

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#### ITEM 4. ADVISORY BUSINESS.....

Fairholme is an investment adviser with its principal place of business in Miami, Florida. Fairholme commenced operations as an investment adviser in June 1997 and has been registered with the SEC since August 21, 1997. Fairholme is a wholly-owned subsidiary of Fairholme Holdings LLC. Fairholme Holdings LLC is owned by East Lane, LLC, Gables Investment Partnership, LLLP, and Bruce R. Berkowitz. East Lane, LLC and Gables Investment Partnership, LLLP are controlled by entities owned and controlled by Bruce R. Berkowitz and family.

Fairholme provides continuous and regular investment management services on a discretionary basis to various types of clients and client accounts (each, an "Account" and collectively, the "Accounts"), including: high net worth individuals and other individual investors; pensions and profit sharing plans; trusts, estates and charitable organizations; corporations and other business entities (including those in which clients have invested); multiple series of a registered investment company; and pooled investment vehicles (private funds) intended for accredited investors and qualified purchasers. Fairholme provides advisory services to separately managed accounts through the Fairholme Managed Account Program ("MAP"); to Fairholme Offshore Partners Fund, Ltd. and The Fairholme Partnership, LP (together, the "Fairholme Private Funds"); and to each series (each, a "Mutual Fund" and collectively, the "Mutual Funds") of Fairholme Funds, Inc. (the "Company"). As of February 29, 2020, Fairholme had approximately \$1.76 billion of client assets under management, all of which are managed on a discretionary basis.

Fairholme provides advice to the Fairholme Private Funds and the Mutual Funds based on each of their respective investment objectives and strategies. Subject to reasonable restrictions imposed on a MAP Account, each MAP Account is managed, under normal circumstances, in accordance with Fairholme's overall investment objectives and strategies, which seek investments with potential for above-average total returns over time. Under certain circumstances, Fairholme may agree to tailor advisory services to the individual needs of a client. Clients may impose restrictions on investing in certain securities or certain types of securities. The Fairholme Private Funds are closed to new investors and are in the process of liquidating.

Fairholme may determine to invest all or a substantial portion of a MAP Account's assets in shares of one or more of the Mutual Funds. Unless otherwise provided in its investment management agreement ("Agreement"), Fairholme is authorized by the Account holder to make such investments in shares of one or more of the Mutual Funds. Such authorization may be revoked at any time in writing by the Account holder. The holder of the MAP Account invested in shares of a Mutual Fund should review the Mutual Fund's Prospectus for information about the Mutual Fund and its fees, which include an investment management fee to Fairholme. Fairholme does not charge its investment management fee on any assets in an Account invested in the Mutual Funds. Each Mutual Fund pays an investment management fee to Fairholme, and MAP Accounts invested in the Mutual Fund indirectly pay to Fairholme their pro rata portion of that Mutual Fund's investment management fee.

## ITEM 5. FEES AND COMPENSATION.....

### MAP Accounts

Fairholme charges each MAP Account an investment management fee based on the value of the Account's assets under management. Fairholme offers an unbundled fee arrangement for MAP clients. Under this arrangement, an Account is charged an annual management fee, which is payable quarterly in advance and calculated as a percentage of the market value of the managed assets in the Account, that covers Fairholme's investment management services only. The management fee does not cover brokerage commissions or custodial and administrative costs associated with the Account. Accordingly, Accounts are responsible for paying for brokerage commissions and transaction fees, custodial fees and other fees that are expenses associated with their Accounts. Effective January 31, 2013, Fairholme stopped accepting new MAP Accounts (subject to certain exceptions and in its sole discretion).

The standard investment management fee for MAP Accounts is set forth below:

<u>Account Minimum</u>	<u>Investment Management Fee</u> <u>(As an Annual % of Account Assets)</u>
\$25 million	1.0%

The investment management fee is non-negotiable, but may be reduced or waived in Fairholme's sole discretion. Effective January 1, 2018, Fairholme agreed to waive, on a voluntary basis, a portion of the investment management fee charged to each Account to an annual rate of 0.80% of the Account's assets under management. This voluntary waiver may be terminated by Fairholme upon 60 days' written notice to the Account.

In general, the first quarterly fee payment is due upon execution of the Agreement and will be assessed pro rata in the event the Agreement is executed at any time other than the first business day of a calendar quarter. Thereafter, with limited exceptions, the fee is payable quarterly in advance and is based on the managed total gross assets in the Account as of the last trading day of the previous calendar quarter. If assets in excess of \$50,000 are deposited in the Account after the inception of a quarter, the fee with respect to such MAP assets will be prorated and charged based on the market value of the assets at close of business on the day of deposit and the number of days remaining in such quarter. Unless otherwise provided in the Agreement, Fairholme has been authorized by each Account to instruct the Account's custodian to deduct the fee from the Account and to pay the fee directly to Fairholme on a quarterly basis. If the fee is not deducted from the Account, Fairholme bills the Account on a quarterly basis.

MAP Accounts are also subject to other expenses, such as custodial charges, brokerage fees, commissions and related costs; interest expenses; taxes, duties and other governmental charges; transfer and registration fees or similar expenses; costs associated with foreign exchange transactions; other portfolio expenses; and costs, expenses and fees (including investment advisory and other fees charged by investment advisers with, or funds in, which the client's Account invests) associated with products or services that may be necessary or incidental to such investments or Accounts.

An Agreement for a MAP Account may be terminated at any time by either party. If the Agreement is terminated during a quarter, the pro rata fee paid in advance to Fairholme on the assets calculated based

from the termination date to the end of the quarter is refunded to the Account. If the Account Agreement is terminated within five business days of its execution, the Account will receive a full refund of the fee. If the Agreement is terminated after five business days of its execution, the Account will receive a pro rata refund of any prepaid fee as described above.

As noted above, Fairholme does not charge a management fee on any assets in a MAP Account invested in one or more Mutual Funds. Each Mutual Fund pays an investment management fee to Fairholme, and an Account will indirectly pay its pro rata portion of the Mutual Fund's management fee to Fairholme to the extent assets in the Account are invested in the Mutual Fund.

### **Fairholme Private Funds**

Under the terms of the Fairholme Private Funds' offering documents, a related person of the Adviser is generally eligible to receive an allocation of performance-based compensation with respect to the Fairholme Private Funds in an amount up to 25% of the net profits (including realized and unrealized gains and losses) previously allocated to investors' capital accounts or shares, as applicable, in the Fairholme Private Funds. The Fairholme Private Funds are currently in the process of liquidating, and, since the date that the liquidation was announced, all compensation for investment advisory services, including any performance-based compensation, has been waived.

Investors in a Fairholme Private Fund bear their pro rata share of the Fairholme Private Fund's operating and other expenses, including legal, accounting (including third party accounting services), audit, administration and other professional fees and expenses, organizational expenses, research expenses, investment expenses such as commissions, custodial fees, bank service fees, insurance (including D&O and E&O insurance), and other expenses related to the purchase, sale (including in connection with a liquidation), preservation or transmittal of the Fairholme Private Fund's assets.

### **Registered Investment Company**

Fairholme provides investment management services to the Mutual Funds, which are series of the Company. The Company is registered with the Securities and Exchange Commission as an open-end management investment company under the Investment Company Act of 1940, as amended (the "1940 Act"). Under the terms of each Mutual Fund's investment management agreement with Fairholme, Fairholme is entitled to receive an annual asset-based investment management fee of 1.0% from each Mutual Fund. These fees are payable monthly on the last day of the month and may be reduced or waived by Fairholme. Effective January 1, 2018, Fairholme agreed to waive, on a voluntary basis and with respect to each Mutual Fund, a portion of the Mutual Fund's investment management fee to an annual rate of 0.80% of the daily average net asset value of the Mutual Fund. This voluntary waiver may be terminated with respect to a Mutual Fund by Fairholme upon 60 days' written notice to the Mutual Fund. Account assets (other than assets of the Fairholme Private Funds) may be invested in the Mutual Funds.

### **Additional Information**

The allocation of expenses by Fairholme between Fairholme and any client and among clients represents a conflict of interest for Fairholme. To address this conflict, Fairholme has adopted and implemented policies and procedures for the allocation of expenses (the "Expense Allocation Policy"). Fairholme

allocates expenses to each client in accordance with client agreements and client disclosures, as applicable. Fairholme seeks to allocate shared expenses for products and services benefitting Fairholme and the client and not covered in the client's arrangements in a fair and reasonable manner, in accordance with the Expense Allocation Policy. Fairholme allocates common client expenses among multiple clients pro rata based on gross assets under management as of the beginning of each semi-annual period in which the expenses are paid. Fairholme may deviate from this standard allocation method if it determines that an expense disproportionately benefits a particular client or group of clients.

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

Fairholme and its investment personnel provide investment management services to Accounts with differing investment strategies and restrictions, and fee arrangements that may vary.

Certain Accounts may have higher management fees, or compensation arrangements more favorable to Fairholme, than other Accounts engaging in the same or similar investment activities. When managing more than one Account, a potential exists for one Account to be favored over another Account. Fairholme and its investment personnel have an incentive to favor Accounts that pay Fairholme higher fees.

Fairholme has adopted and implemented policies and procedures intended to address conflicts of interest relating to the management of multiple Accounts. In particular, Fairholme periodically reviews investment decisions for the purpose of ensuring that all Accounts with substantially similar investment objectives are treated equitably. The performance of similarly managed Accounts is also regularly compared to determine whether there are any unexplained significant discrepancies. In addition, Fairholme has compliance procedures and controls addressing the allocation of investment opportunities, including securities made available to Fairholme in initial public offerings and private placements. These activities are monitored by Fairholme's Chief Compliance Officer ("CCO"). Items 12 and 16 provide additional information concerning Fairholme's brokerage and trading policies, and allocation policies.

## **ITEM 7. TYPES OF CLIENTS.....**

As described in Item 4, Accounts consist of high net worth individuals and other individual investors; the Mutual Funds; the Fairholme Private Funds; pension and profit sharing plans; trusts, estates and charitable organizations; and corporations and other business entities. The Adviser, however, is not precluded from advising types of clients that are not listed above.

Effective January 31, 2013, Fairholme stopped accepting new MAP Accounts. Prior thereto, Fairholme had required that an Account holder invest a minimum of \$25 million to open a MAP Account, which amount may have been waived at the discretion of Fairholme. Effective September 30, 2017, the Fairholme Private Funds were closed to new investors.

The investment minimums for making an initial or subsequent investment in a Mutual Fund are disclosed in the Mutual Fund's current offering documents. No initial or subsequent investments may be made in a Fairholme Private Fund.

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

Fairholme uses bottom-up fundamental analysis in formulating investment advice and managing Account assets. Fundamental analysis of issuers involves identifying certain characteristics of companies, including expected free cash flow yields in relation to market values and risk-free rates, capital allocation policies, competitive positions, balance sheet, liquidity and leverage, stress-tested owners/managers, stressed industries having reasonable prospects for recovery, potential for long-term growth, tangible assets in relation to enterprise values, expected returns on invested equity and capital, and the production of essential services and products.

Subject to Account restrictions, each Account is managed, under normal circumstances, in accordance with Fairholme's overall investment objective and strategies, which seek investments with potential for above-average total returns over time. Fairholme expects, for example, that each Account managed in accordance with this investment objective and strategies will normally hold a focused portfolio of securities and other investments, which means that the Account may hold fewer securities and investments than a diversified portfolio. In addition, Accounts may be invested in securities of issuers primarily in one industry or sector. Weightings in different investments will depend on many factors, including those specific to individual securities, to the investment objectives and strategies and to Account restrictions, if any. In addition, an Account may, from time to time, not be fully invested and may hold significant amounts of cash, money-market funds, short-term U.S. Government bonds, commercial paper or similar securities.

In connection with implementing its overall investment objective and strategies, Fairholme employs the following investment strategies, subject to Account restrictions and other factors:

- *Focused Portfolio/Non-diversification.* Fairholme typically focuses its investments on a limited number of issuers and securities and does not seek to diversify investments among types of securities, countries or industry sectors.
- *Buy and Hold.* Fairholme typically engages in a buy and hold investment strategy wherein it buys securities and holds them for relatively longer periods of time, regardless of short-term factors, such as market fluctuations or volatility of the stock price.
- *Equity.* Fairholme's equity strategy focuses on a broad range of equity investment styles, including what is popularly considered "core" and value. In addition, Fairholme may invest in particular geographic regions or specific countries based upon global, multi-national developments.
- *Fixed-Income.* Fairholme's fixed-income strategy includes investing in a wide-range of securities, including U.S. corporate debt, non-U.S. corporate debt, bank debt (including bank loans and participations), U.S. government and agency debt, short-term debt obligations of foreign governments and foreign money market instruments, convertible bonds and other convertible securities without regard to maturity or the rating of the issuer of the security, lower-rated securities or unrated securities determined by Fairholme to be comparable to lower-rated debt securities, and municipal bonds.



- *Commercial Paper.* Fairholme invests in commercial paper, which consists of short-term (usually from 1 to 270 days) unsecured promissory notes issued by entities in order to finance their current operations.
- *Distressed/Special Situations.* Fairholme may invest in “special situations,” which involve the securities of a company that are expected to appreciate over time due to company-specific developments rather than general business conditions or movements of the market as a whole.
- *Fundamental Value.* Fairholme engages in a fundamental value investment strategy wherein Fairholme attempts to invest in asset-oriented securities that Fairholme believes are undervalued by the market.
- *Leverage.* Fairholme may, for certain Accounts, utilize a moderate amount of leverage from time to time which includes the borrowing of funds from brokerage firms, banks and other institutions in order to be able to increase the amount of capital available for marketable securities investments.
- *Limits on Trading Activities.* In some situations, purchases or sales of securities for one client Account may cause certain trading limitations to apply to another client Account. Such trading limitations may be the result of regulatory restrictions. For example, limits may prevent certain client Accounts from participating in an investment in which other client Accounts with similar investment objectives and guidelines participate, such as where Fairholme is not able to invest a new client Account’s assets in a security because Fairholme has reached the aggregate ownership limit for that security with respect to its other clients.
- *Control and Substantial Positions.* Fairholme may invest in the securities of a company for the purpose of affecting the management or control of the company or may have or acquire a substantial position in the securities of a company, subject to applicable legal restrictions with respect to the investment.

Fairholme may from time to time, and subject to any applicable investment restrictions, employ additional strategies, including strategies involving investments in illiquid or restricted securities and strategies utilizing margin, short sales or options and derivatives.

The methods, strategies and investments involve risk of loss to Account holders, and Account holders must be prepared to bear the loss of their entire investment. There are substantial risks related to Fairholme’s investment objective and strategies. The material risks relating to the foregoing investment strategies include:

- *Focused Portfolio/Lack of Diversification.* Accounts will not be diversified among a wide range of types of securities, issuers, markets, asset classes, regions, countries or industry sectors, accordingly, they may have more volatility and are considered to have more risk than accounts that are invested in a greater number of securities, issuers, markets, asset classes, regions, countries or industry sectors. Changes in the value of a single security in an Account may have a more significant effect, either negative or positive, on the portfolio than such changes in a diversified portfolio. Accounts are also subject to more rapid change in value than would be the

case if Fairholme were required to maintain a wider diversification among types of securities and other instruments.

- *Buy and Hold.* Buy and hold investment strategies bring specific risks to a securities portfolio. Under a buy and hold investment strategy, Fairholme may not take advantage of short-term gains in a security that could be profitable to the Account. Moreover, if Fairholme's predictions are incorrect, a security may decline sharply in value before the security is sold.
- *Distressed/Special Situation Risk.* Investment in distressed or special situations exposes an Account to significant risks, including: the difficulty in obtaining information as to the issuer's true condition; regulatory risk, and bankruptcy; litigation risk; liquidity risk; and collection risk.
- *Leverage.* Account performance may be more volatile if Fairholme employs leverage for that Account. The use of leverage increases exposure to additional levels of risk, including (i) greater losses from investments than would otherwise have been the case, (ii) margin calls or changes in margin requirements may force premature liquidations of investment positions, (iii) losses on investments where the investment fails to earn a return that equals or exceeds the cost of the leverage related to such investments and (iv) fluctuations in interest rates on borrowings, which may have a negative effect on profitability. If assets may not be liquidated quickly enough to repay borrowings, losses may be further magnified.
- *Commercial Paper Risk.* The value of commercial paper may be affected by changes in the credit rating or financial condition of the issuing entity and tends to fall when interest rates rise and increase when interest rates fall. Maturing commercial paper issuances are usually repaid by the issuer from the proceeds of new commercial paper issuances. Consequently, investments in commercial paper are subject to the risk the issuer cannot issue enough new commercial paper or utilize other sources of cash to satisfy its outstanding commercial paper, which is also known as rollover risk.
- *Control and Substantial Positions Risk.* Investing in the securities of a company for the purpose of affecting the management or control of the company, or having or acquiring a substantial position in the securities of a company, imposes additional risks other than a possible decline in the value of the investment. Such risks include (i) the application of statutory, regulatory and other requirements that could restrict activities contemplated by an Account or Fairholme with respect to a company, or limit the time and the manner in which an Account is able to dispose of, or hedge, its holdings in the company; (ii) an Account or Fairholme may be required to obtain relief from the SEC or its staff prior to engaging in certain activities with respect to a company that could be deemed a joint arrangement under the 1940 Act; (iii) an Account may incur substantial expenses and costs when taking control or other substantial positions in a company, including paying market prices for securities whose value the Account is required to discount when computing the Account's net asset value; and (iv) an Account could be exposed to various legal claims by governmental entities, or by a company, its security holders and its creditors, arising from, among other things, the Account's status as an insider or control person of the company or from Fairholme's designation of directors to serve on the board of directors of the company.

The following risks are those most associated with the types of securities that are primarily recommended to Accounts.

- *Equity Securities.* The value of equity securities fluctuates in response to issuer, political, market, and economic developments. Account price volatility can be dramatic over the short as well as long term, and different parts of the market and different types of equity securities can react differently to these developments. For example, large cap stocks can react differently from small cap stocks, and “growth” stocks can react differently from “value” stocks. Issuer, political, or economic developments can affect a single issuer, issuers within an industry or economic sector or geographic region, or the market as a whole. Changes in the financial condition of a single issuer can impact the market as a whole. Terrorism and related geo-political risks have led, and may in the future lead, to increased short-term market volatility and may have adverse long-term effects on world economies and markets generally.
- *Fixed-Income and Debt Securities.* Investment in fixed-income and debt securities such as bonds, notes and asset-backed securities, subjects Accounts to interest rate risk. Generally, the value of fixed-income securities changes inversely with changes in interest rates. As interest rates rise, the market value of fixed-income securities tends to decrease. Conversely, as interest rates fall, the market value of fixed-income securities tends to increase. An Account that invests in fixed-income and debt securities may be subject to heightened interest rate risk, as the recent period of historically low rates may be ending. This risk is greater for long-term securities than for short-term securities. Investments in these types of securities will also be subject to the credit risk created when a debt issuer fails to pay interest and principal in a timely manner, or that negative perceptions of the issuer’s ability to make such payments will cause the price of that debt to decline. Fairholme may also invest in debt securities which are not protected by financial covenants or limitations on additional indebtedness. Most fixed-income instruments trade in over-the-counter transactions and lack the benefit of transparent exchange pricing. Bid and asks for these instruments are generally wider than equity securities, and trading is less frequent. These factors may cause distortions and/or volatility in the prices of fixed income-related instruments. In addition, investments in debt securities will subject Account investments to the risk that the securities may fluctuate more in price, and are less liquid than higher-rated securities because issuers of such lower-rated debt securities are not as strong financially, and are more likely to encounter financial difficulties and be more vulnerable to adverse changes in the economy.
- *Non-U.S. Securities.* Foreign securities, foreign currencies, and securities issued by U.S. entities with substantial foreign operations can involve additional Account risks relating to political, economic, or regulatory conditions in foreign countries. These risks include fluctuations in foreign currencies; withholding or other taxes; trading, settlement, custodial, and other operational risks; and the less stringent investor protection and disclosure standards of some foreign markets. One or more of these factors can make foreign investments, especially those in emerging markets, more volatile and potentially less liquid than U.S. investments. In addition, foreign markets can perform differently from the U.S. market.
- *Issuer-Specific Changes.* Changes in the financial condition of an issuer or counterparty, changes in specific economic or political conditions that affect a particular type of security or issuer, and

changes in general economic or political conditions can increase the risk of default by an issuer or counterparty, which can affect a security's or instrument's value.

- *Distressed Securities.* Investments in unrated or low grade debt securities of distressed companies are subject to greater risk of loss of principal and interest than higher-rated debt securities. Also, securities of distressed companies are generally more likely to become worthless than the securities of more financially stable companies.
- *REITs.* Real estate investment trusts ("REITs") are affected by underlying real estate values, which may have an exaggerated effect to the extent that REITs in which Fairholme invests concentrate investments in particular geographic regions or property types. Investments in REITs are also subject to the risk of interest rate volatility. Further, rising interest rates will cause investors in REITs to demand a higher annual yield from future distributions, which will in turn decrease market prices for equity securities issued by REITs. REITs are subject to risks inherent in operating and financing a limited number of projects because they are dependent upon specialized management skills, and have limited diversification. REITs depend generally on their ability to generate cash flow to make distributions to investors.
- *Illiquid and Restricted Securities Instruments.* Certain securities or instruments may have no readily available market or third-party pricing or may be subject to restrictions on resale, including restrictions applicable to Fairholme and its Account holders arising from Fairholme's or its Account holder's status as affiliates of the issuer of the security or instrument or control positions with respect to the issuer of the security or instrument. Reduced liquidity may have an adverse impact on market price and Fairholme's ability to sell particular securities when necessary to meet liquidity needs or in response to a specific economic event, such as the deterioration of creditworthiness of an issuer. Reduced liquidity in the secondary market for certain securities may also make it more difficult for Fairholme to obtain market quotations based on actual trades for the purpose of valuing an Account's portfolio. Derivatives and securities involving substantial market and credit risk tend to involve greater liquidity risk.
- *Asset-Backed Securities.* Asset-backed securities are subject to interest rate risk and, to a lesser degree, prepayment risk. Asset-backed securities are subject to additional risks in that, unlike mortgage-backed securities, asset-backed securities generally do not have the benefit of a security interest in the related collateral. Each type of asset-backed security also entails unique risks depending on the type of assets involved and the legal structure used. In addition, asset-backed securities are subject to credit risk. There is also the possibility that recoveries on repossessed collateral may not be available to support payments on these securities because of the inability to perfect a security interest in such collateral.
- *Mortgage-Backed Securities.* Mortgage-backed securities are subject to credit risk associated with the performance of the underlying mortgage properties. Factors such as consumer spending habits, local economic and competitive conditions, tenant occupancy rates and regulatory or zoning restrictions, or the loss of a major tenant may adversely affect the economic viability of a mortgaged property. In addition, these securities are subject to prepayment risk and interest rate risk. Some securities have a structure that makes their reaction to interest rates and other factors difficult to predict, making their value highly volatile.

- *Derivatives.* Swaps, and certain options and other custom derivative or synthetic instruments are subject to the risk of nonperformance by the counterparty to such instrument, including risks relating to the financial soundness and creditworthiness of the counterparty. In addition, investments in derivative instruments require a high degree of leverage, meaning the overall contract value (and, accordingly, the potential for profits or losses in that value) is much greater than the modest deposit used to buy the position in the derivative contract. Derivative securities can also be highly volatile. The prices of derivative instruments and the investments underlying the derivative instruments may fluctuate rapidly and over wide ranges and may reflect unforeseeable events or changes in conditions, none of which can be controlled by Fairholme. Further, transactions in derivative instruments are not undertaken on recognized exchanges, and will expose an Account to greater risks than regulated exchange transactions that provide greater liquidity and more accurate valuation of securities. In addition, governmental and regulatory actions, including adopted or proposed regulations governing derivatives, could restrict the ability of a client Account to engage in derivatives transactions, or may impose reporting and other requirements with respect to client Accounts that engage in such transactions.
- *Security Futures and Options.* In connection with the use of futures contracts and options for an Account, there may be an imperfect correlation between the change in market value of a security and the prices of the futures contracts and options in the Account. In addition, Fairholme's investments in security futures and options may encounter a lack of a liquid secondary market for a futures contract and the resulting inability to close a futures position prior to its maturity date.
- *Tax Exempt Securities.* Tax exempt securities are obligations whose interest is exempt from federal and certain state and/or local authorities. Investments in such securities may include municipal securities, including bonds and notes. Municipal bonds are intended to meet longer-term capital needs while municipal notes are intended to fulfill short-term capital needs. Investments in tax exempt securities are subject to credit risk, interest rate risk, market risk and liquidity risk.

Additional risks relating to Fairholme:

- *Cybersecurity Risk.* The information and technology systems of Fairholme and of key service providers to Fairholme and its clients may be vulnerable to potential damage or interruption from computer viruses, network failures, computer and telecommunication failures, infiltration by unauthorized persons and security breaches, usage errors by their respective professionals, power outages and catastrophic events such as fires, tornadoes, floods, and hurricanes. Although Fairholme has implemented various measures, including an incident response plan, designed to manage risks relating to these types of events, if these systems are compromised, become inoperable for extended periods of time, or cease to function properly, significant interruptions could occur in the operations of Fairholme or its client Accounts and may result in a failure to maintain the security, confidentiality or privacy of sensitive data, including personal information.
- *Systems and Operational Risk.* Fairholme relies on certain financial, accounting, data processing and other operational systems and services that are employed by Fairholme and/or by third party service providers, including prime brokers, the third party administrator, market counterparties and

others. These programs or systems may be subject to certain defects, failures or interruptions. In addition, despite certain measures established by Fairholme and third party service providers to safeguard information in these systems, Fairholme, clients and their third party service providers are subject to risks associated with a breach in cybersecurity which may result in damage and disruption to hardware and software systems, loss or corruption of data and/or misappropriation of confidential information. Any such errors and/or disruptions may lead to financial losses, the disruption of the client trading activities, liability under applicable law, regulatory intervention or reputational damage.

- *Valuation of Portfolio Holdings.* There are various conflicts of interest in connection with the valuation of client Account assets, in particular, higher valuations of clients Account assets may result in increased asset-based fees. In addition, inflated valuations may result in better performance which may assist in marketing for the Adviser. Conflicts of interest may be heightened in the case of assets that do not have readily ascertainable market values. To address these conflicts, the Adviser has adopted and implemented policies and procedures for the valuation of client Account securities.

**Fairholme Private Fund and Mutual Fund investors should refer to the applicable offering documents for additional information about the material risks associated with the investment strategies and methods of analysis used by Fairholme for such funds.**

## **ITEM 9. DISCIPLINARY INFORMATION.....**

On April 17, 2019, Sears Holdings Corporation, Sears Roebuck and Co., Sears Development Co., Kmart Corporation and Kmart of Washington LLC commenced an adversary proceeding in the United States Bankruptcy Court for the Southern District of New York against Edward Scott “Eddie” Lampert; ESL Investments, Inc.; RBS Partners LP; CRK Partners LLC; SPE Master I L.P.; ESL Partners L.P.; SPE I Partners L.P.; RBS Investment Management LLC; ESL Institutional Partners L.P.; ESL Investors, L.L.C.; JPP LLC; JPP II LLC; the Adviser; Cesar L. Alvarez; Bruce Berkowitz; Alesia Haas; Kunal Kamrani; Steven Mnuchin; Thomas J. Tisch; Seritage Growth Properties, Inc.; Seritage Growth Properties, L.P.; Seritage KMT Mezzanine Finance LLC; Seritage SRC Mezzanine Finance LLC; Seritage KMT Finance LLC; Seritage SRC Finance LLC; Seritage GS Holdings LLC; Seritage SPS Holdings LLC; and Seritage MS Holdings LLC. On November 25, 2019, the plaintiffs filed an amended complaint, which (1) added defendants not named in the original complaint, including the Company (collectively with the initial defendants, “Defendants”); (2) asserted new causes of action against the initial defendants; and (3) added additional affiliates of Sears Holdings as plaintiffs. In the Amended Complaint, Plaintiffs assert avoidance and other claims against certain Defendants, including the Adviser, for participation in certain Sears corporate transactions, including (i) the Lands’ End spinoff and (ii) the Seritage rights offering. The avoidance claims against the Adviser include claims for the avoidance of consideration received by certain of the Adviser’s clients from Sears Holdings Corp. that were allegedly actual and/or constructive fraudulent transfers. The complaint also asserts claims for breach of fiduciary duty and aiding and abetting breach of fiduciary duty against certain Defendants, including the Adviser and Bruce Berkowitz, arising out of the Sears corporate transactions and certain related-party transactions. On February 21, 2020, the Adviser, Bruce Berkowitz, the Company, and all other Defendants moved to dismiss all or parts of the complaint against them. The motions to dismiss are currently pending before the court.

Although the Adviser believes that it has strong defenses to the foregoing complaint and intends to defend themselves vigorously against the allegations in the complaint, the Adviser is not in a position to express an opinion about the ultimate outcome of the litigation or the range of potential loss, if any.

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

Fairholme provides discretionary investment management services to the Fairholme Private Funds, and a related person of Fairholme serves as general partner of at least one of the Fairholme Private Funds. The Fairholme Private Funds may enter into agreements, or “side letters,” with certain prospective or existing investors whereby such investors may be subject to terms and conditions that are more advantageous than those set forth in the applicable offering memorandum. For example, such terms and conditions may provide for special rights to make future investments in a private fund, other investment vehicles or managed accounts; special liquidity rights, relating to frequency or notice; a waiver, reduction or rebate in fees to be paid by the investor and/or other terms; rights to receive reports from the Fairholme Private Funds on a more frequent basis or that include information not provided to other investors (including, without limitation, more detailed information regarding portfolio positions) and such other rights as may be negotiated by the Fairholme Private Funds and investors.

Fairholme provides discretionary investment management services to the Mutual Funds, which are series of the Company. The Company is registered with the SEC as an open-end, management investment company under the 1940 Act. Mr. Berkowitz serves as President and a Director of the Company. Mr. Berkowitz also currently serves as a Director and Chairman of the Board of The St. Joe Company, a New York Stock Exchange-listed and publicly-traded company in which one or more Accounts currently are invested.

Fairholme may determine to invest all or a substantial portion of the assets of a MAP Account in shares of one or more of the Mutual Funds. This arrangement represents a potential conflict of interest for Fairholme. Unless otherwise provided in its Agreement, the Account holder authorizes Fairholme to make such investments in shares of one or more of the Mutual Funds. Such authorization may be revoked at any time in writing by the Account holder. Fairholme does not charge its managed account fee on any assets of an Account invested in a Mutual Fund. Each Mutual Fund pays an investment management fee to Fairholme, and, to the extent that assets of an Account are invested in a Mutual Fund, the Account will indirectly pay to Fairholme the Account’s pro rata portion of that Mutual Fund’s investment management fee.

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

Fairholme has adopted a Code of Ethics (the “Code”) that requires its access persons to obtain preclearance of personal securities transactions. Securities holdings and transactions of access persons and their immediate family members are reviewed to determine compliance with the requirements of the Code. The Code also contains other restrictions and reporting requirements designed to limit potential conflicts of interest. These provisions apply to all employees of Fairholme. All personnel are also required to comply with applicable federal securities laws. Clients or prospective clients may obtain a copy of the Code by contacting Fairholme Client Services by email at [clientservices@fairholme.net](mailto:clientservices@fairholme.net). See below for further provisions of the Code as they relate to the preclearing and reporting of securities transactions.

Fairholme, in the course of its investment management and other activities (e.g., board or creditor committee service), may come into possession of confidential or material nonpublic information about issuers, including issuers in which Fairholme or its related persons have invested or seek to invest on behalf of Accounts. Fairholme is prohibited from improperly disclosing or using such information for its own benefit or for the benefit of any other person, regardless of whether such other person has an Account. Fairholme maintains and enforces written policies and procedures that prohibit the communication of such information to persons who do not have a legitimate need to know such information and to assure that Fairholme is meeting its obligations to Accounts and remains in compliance with applicable law. In certain circumstances, Fairholme may possess certain confidential or material, nonpublic information that, if disclosed, might be material to a decision to buy, sell or hold a security, but Fairholme will be prohibited from communicating such information to the Account holder or using such information for the Account holder's benefit. In such circumstances, Fairholme will have no responsibility or liability to the Account holder for not disclosing such information to the Account holder (or the fact that Fairholme possesses such information), or not using such information for the Account holder's benefit, as a result of following Fairholme's policies and procedures designed to provide reasonable assurances that it is complying with applicable law.

Fairholme may, by providing written notice to the Account holder, relinquish to the Account holder any delegated investment discretion and proxy voting authority for any particular security held in an Account due to conflicts of interest, including those described below with respect to board service. Thereafter, the Account holder, or the Account holder's authorized agent, will have investment discretion and proxy voting authority for the securities identified in the notice. Fairholme may seek the Account holder's authorization to regain investment discretion and proxy voting authority for any security for which Fairholme has previously relinquished such discretion or authority to the Account holder by notifying the client in accordance with applicable terms of the Agreement of the security for which Fairholme seeks to regain investment discretion and informing the Account holder that the conflict circumstances previously requiring Fairholme to relinquish such discretion and authority have changed and are no longer applicable to Fairholme's management of the security. Fairholme may seek to regain investment discretion and proxy voting authority for the security by use of a negative consent process. During the time that investment discretion and proxy voting authority is relinquished for a particular security, the security will not be included in the Account assets on which the management fee is calculated. Upon regaining investment discretion and proxy voting authority for a particular security, the security will once again be included in the Account assets on which the fee is calculated.

A portfolio manager, officer or employee of Fairholme may from time to time and currently does serve as an officer, director or trustee of a company in which Fairholme or its related persons have invested on behalf of clients, or seek to invest, on behalf of Accounts. In such circumstances, Fairholme may elect to relinquish delegated investment discretion and proxy voting authority as described above. Alternatively, Fairholme may elect to retain delegated investment discretion and proxy voting authority in which case it will be subject to the restrictions and limitations described herein.

When a portfolio manager, officer or employee of Fairholme serves as an officer, director or trustee of a publicly-traded company, that portfolio manager, officer or employee will likely obtain material, nonpublic information about the company as a result of such service. When Fairholme or one of its employees possesses material, nonpublic information about a company, Fairholme includes the securities of that



company on a restricted list maintained by it pursuant to the Code. In general, Fairholme and its employees are prohibited from transacting in securities on the restricted list and from recommending the purchase or sale of securities on the restricted list. This prohibition applies to potential transactions for Accounts as well as personal accounts and would, for example, restrict Fairholme from selling the securities of a company on the restricted list that are held in Accounts when it may otherwise desire to do so. In addition, when a portfolio manager, officer or employee of Fairholme serves as an officer, director or trustee of a company or Fairholme obtains a controlling interest in the securities of the company, or otherwise has the ability to control the policies and management of the company, that company's policies that are applicable to Fairholme or such portfolio manager, officer or employee, and the statutes and regulations applicable to any of them, could restrict activities contemplated by Fairholme with respect to the company or limit the timing, manner and volume of transactions in such company's securities (including hedging transactions) for the Accounts of clients. Further, certain investments in private securities by Fairholme on behalf of certain Accounts may prevent public trading in related or other securities by other Accounts.

Fairholme may determine to invest all or a substantial portion of the assets in an Account in shares of one or more of the Mutual Funds. This arrangement represents a potential conflict of interest for Fairholme. Items 4 and 10 provide additional information concerning this conflict and the procedures employed by Fairholme to address it.

Fairholme and its related persons may invest in the same securities (or related securities (e.g., warrants, options or futures)) that Fairholme and its related persons recommend to Accounts. Such practice presents a conflict. For example, Fairholme or its related persons are in a position to trade in a manner that could adversely affect Accounts (e.g., place their own trades before or after client trades are executed in order to benefit from any price movements due to the clients' trades). In addition to affecting Fairholme's or its related person's objectivity, this practice may also harm clients by adversely affecting the price at which the Account's trades are executed. Fairholme has adopted the following procedures in an effort to minimize such conflicts:

- Fairholme requires its access persons to preclear all transactions in their personal accounts with the CCO, who may deny permission to execute a personal securities transaction if such transaction will have any adverse economic impact on MAP Accounts, the Fairholme Private Funds, or Mutual Funds. All of Fairholme's access persons are required to disclose their securities transactions on a quarterly basis and holdings on an annual basis.
- The Code and Fairholme's insider trading procedures prohibit Fairholme and its access persons from executing personal securities transactions of any kind in any securities on a restricted securities list maintained by the CCO.
- Fairholme has adopted policies concerning aggregating employee personal trades in a security with client trades in the same security on the same day. Please see the last paragraph of Item 12 for further explanation.
- Personal trading is reviewed by the CCO and compared with transactions for Accounts and reviewed against the restricted securities list.

Fairholme from time to time recommends securities to Accounts, or buys or sells securities for Accounts, at or about the same time that Fairholme or related person buys or sells the same securities for its own account in accordance with the procedures described above in order to minimize the conflicts stemming from situations where the contemporaneous trading results in an economic benefit for Fairholme or its related person to the detriment of the Account. In addition, Fairholme has adopted the aggregation policies and procedures discussed in Item 12.

## **ITEM 12. BROKERAGE PRACTICES.....**

When it has discretion to select the broker, dealer or other financial intermediary used to execute transactions for MAP Accounts, the Mutual Funds, and, to the extent applicable, the Fairholme Private Funds, Fairholme considers a number of factors in selecting a broker-dealer to execute transactions (or series of transactions) and determining the reasonableness of the broker-dealer's compensation. Such factors include the size and type of transaction; the difficulty of the order and the broker's execution capabilities, including with respect to difficult trades; actual executed prices of the securities traded; the confidentiality and the nature of the market for the security; the operational facilities of the broker and/or dealer involved (including back office efficiency); the ability to handle a block order for securities and distribution capabilities; and the full range and quality of the broker's services, including the broker's ability to secure the best price for a complete transaction over the contemplated time period; the commission rate; the broker's willingness to commit capital, creditworthiness and financial stability; the broker's clearance and settlement capability; and the broker's provision of research and brokerage services. In selecting a broker-dealer to execute transactions (or series of transactions) and determining the reasonableness of the broker-dealer's compensation, Fairholme need not solicit competitive bids and does not have an obligation to seek the lowest available commission cost. Accordingly, transactions will not always be executed at the lowest available price or commission. The CCO and traders meet regularly to evaluate the broker-dealers used by Fairholme to execute client trades using the foregoing factors.

Fairholme may purchase or sell securities on behalf of Accounts for which it has brokerage discretion in agency or principal transactions depending upon security type and market. In agency transactions, an Account generally pays brokerage commissions. In principal transaction, an Account generally does not pay commissions. However, the price paid for the security may include an undisclosed commission, markup or selling concession.

In connection with its best execution obligations with respect to the Mutual Funds, Fairholme is prohibited from considering the promotion and sale of shares of a Mutual Fund by a broker-dealer when selecting a broker-dealer to effect portfolio securities transactions on behalf of the Mutual Fund. This prohibition is in accordance with the provisions of Rule 12b-1(h) under the 1940 Act.

Fairholme may select a broker-dealer that furnishes Fairholme, directly or through correspondent relationships, with research services that provide, in Fairholme's view, appropriate assistance to Fairholme in its investment decision-making process. Such research services may include: research reports on companies, industries, and securities; economic and financial data; financial publications; computer data bases; and other research oriented services. The use of Account commissions (or markups or markdowns) to obtain research and brokerage products and services raises conflicts of interest. For example, Fairholme will not have to pay for the products and services itself. This creates an incentive for Fairholme to select or recommend a broker-dealer based on its interest in receiving those products and

services, rather than on an Account's interest in receiving most favorable execution. Research and other services obtained in this manner may be used in servicing any or all Accounts and may be used in connection with Accounts other than those that pay commissions to the broker-dealer relating to the research or other service arrangements. Furthermore, Fairholme does not attempt to allocate among its Accounts the relative costs or benefits of the services obtained, believing that the services, in the aggregate, assist Fairholme in fulfilling its overall duty to its Account holders. Fairholme periodically determines in good faith that the commissions paid for the services are reasonable in relation to the value of the services provided by the broker-dealers, viewed either in terms of a particular transaction or Fairholme's overall duty to its Account holders. Fairholme may endeavor to direct sufficient commissions to broker-dealers who, pursuant to such arrangements, provide research or other services in order to ensure the continued receipt of research or other services Fairholme believes is useful in its investment decision-making process.

A MAP Account holder may limit Fairholme's discretionary authority in executing securities transactions by directing Fairholme to use a particular broker-dealer to execute portfolio transactions for the Account ("Directed Accounts"). When an Account holder directs Fairholme to use a particular broker-dealer, Fairholme generally has not negotiated the terms and conditions (including, but not limited to, commission rates) of the broker-dealer's services. Therefore, Fairholme may not be able freely to negotiate commission rates or spreads, and the Account may not obtain as favorable prices or commission rates as it might otherwise have obtained if Fairholme had selected the broker-dealer. In addition, the Accounts may receive execution prices and pay commission rates that differ from the execution prices received and commissions paid by Accounts that have given Fairholme discretion to select broker-dealers ("Non-Directed Accounts").

Fairholme cannot aggregate orders for Directed Accounts with orders for the same securities or instruments for Non-Directed Accounts. Therefore, when different brokers are used to execute orders for Directed and Non-Directed Accounts, it is Fairholme's policy to rotate the orders on an equitable basis. It is possible that the priority of an order may affect the quality of execution each Account receives.

Any Account that, in whole or in part, directs Fairholme to use a certain broker/dealer to execute transactions should be aware that it may adversely affect Fairholme's ability to, among other things, negotiate commissions and to obtain volume discounts on aggregated orders or achieve best execution with respect to the Account's trades or the Account's ability to participate in certain non-U.S. investments should the directed broker/dealer be unable to effect a transaction in such investments. In addition, a disparity in commission charges may exist between the commissions charged to Directed Accounts and directed transactions may be delayed relative to transactions for Non-Directed Accounts.

Fairholme has adopted written policies and procedures that govern investment allocation and trade allocation and aggregation. Fairholme transacts in securities and other investments based on several factors including the market price of a security, general market conditions, the economic conditions of the business underlying the security, the perceived value of the security and other factors. In general, investment decisions for each Account are made independently from those of other Accounts and are made with specific reference to the circumstances and objectives of each Account. A particular Account may or may not participate in any specific transaction, or may receive allocations of securities or investments that differ from those provided to other Accounts, based on a number of factors including, but not limited to, the Account restrictions, investment objectives and strategies, broker-

dealers/custodian, Account size, tax status, risk profile/tolerance, characteristic of security to be allocated, current market conditions, positions, cash and liquidity. Although Fairholme generally will seek to be consistent in its investment approach for all Accounts with the same or substantially similar investment objectives, strategies and restrictions, the act of purchasing, selling or holding a security for one Account does not mean it will be purchased, sold or held for another Account. Fairholme will transact for some Accounts in securities already owned by other Accounts. Due to differing market conditions and factors previously cited, Fairholme may purchase (or sell) a security on behalf of some Accounts that Fairholme has sold (or purchased) on behalf of other Accounts.

For purposes of its investment allocation and trade rotation and aggregation policies, Fairholme groups Accounts into the following groups: (i) MAP Accounts and Fairholme Private Funds and (ii) Mutual Funds (each, a "Group" and together, the "Groups"). Fairholme's portfolio manager identifies investment opportunities that might meet or advance the investment objectives of one or both Groups and Accounts within each Group. After identifying a particular investment opportunity, the portfolio manager determines whether each Group is eligible to participate in the investment opportunity and the level of participation of each Group. If an investment opportunity is eligible and appropriate for one or both Groups, the portfolio manager determines whether orders for Accounts in the participating Groups should be aggregated.

Trade orders that are anticipated to be completed in one trading day for Accounts in participating Groups are typically aggregated and executed that day. Trade allocations within the participating Groups are made on a pro rata basis or in accordance with other methods that are designed to treat participating Accounts fairly. Accounts receiving an odd lot or a de minimis amount (less than 1%) may be allocated securities over Accounts that receive sufficient securities.

Trade orders that are anticipated to take two or more trading days to be completed for Accounts are executed in accordance with Fairholme's standard allocation procedures. Under these procedures, trades are executed by Group in accordance with a trade rotation sequence for the Groups. This sequence is determined daily by referencing an independent selection source. Account Group priority is first determined. Then, Account priority within an Account Group is next determined. Then, each Account is reviewed for various restrictions, including size of the potential position relative to the total value of the Account. Trades are executed in the same order and in the same manner for as many cycles as necessary to complete the trades for participating Accounts, unless consideration of extraneous factors requires such order and manner to stop. Securities are allocated to participating Accounts within a Group using standard allocation methods (e.g. pro rata or rotation/bottom up/top down) based on particular characteristics of the order and the security to which it relates. Under the trade rotation procedures, an Account may receive a more favorable or less favorable price compared with prices received by other Accounts.

Trades entered by employees of Fairholme prior to the determination of Account participation in an investment opportunity are aggregated with participating Account trades in accordance with the foregoing. All other employee trades are executed only after all Account trades have been executed. If such executed price will better the aggregate price for all Accounts, then the transaction will be aggregated. If such executed price will not, then the transaction will not be aggregated. Accounts participating in each aggregated order at a broker receive the average price for the security.

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

Each Account is reviewed by the portfolio manager of Fairholme, at least monthly, to determine whether securities positions should be maintained in view of current market conditions. Matters reviewed include specific securities held, adherence to investment guidelines and the performance of each Account. Prior to each asset allocation, the Account is reviewed by the trade administration team and the portfolio manager. Trade confirmations for each client are reconciled daily by members of the trade administration team to records maintained by Fairholme with respect to each client. Custodial records are reviewed and reconciled to internal records on a monthly basis by members of the financial accounting team.

Account holders receive a confirmation for each transaction effected for their Account and monthly statements reflecting all Account activity directly from their custodians via postal mail, or if requested, electronically. Subject to the applicable Agreement, each Account also is issued appraisal and performance reports periodically by electronic means and may receive a more customized report. Performance reports reflect the realized and unrealized gains and losses in an Account and compare the performance in the Account to at least one index.

Investors in the Mutual Funds and, to the extent applicable, the Fairholme Private Funds receive reports in the manner described in the applicable offering document.

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

Please see response to Item 12, which includes information regarding Fairholme's brokerage practices.

### **ITEM 15. CUSTODY.....**

Each Account receives account statements from the broker-dealer, bank or other institution that serves as the qualified custodian for the Account. Account holders should carefully review those statements.

Fairholme also sends quarterly statements directly to Accounts in addition to those sent by the qualified custodian. Accounts holders should compare statements received from Fairholme with those received from the Account's custodian.

Fairholme and its affiliate are deemed to have custody of the assets of the Fairholme Private Funds and intend to comply with Rule 206(4)-2 under the Investment Advisers Act of 1940, as amended, by meeting the conditions of the pooled vehicle annual audit provision.

### **ITEM 16. INVESTMENT DISCRETION.....**

Fairholme provides investment advisory services on a discretionary basis to Accounts. Please see Item 4 for a description of any limitations clients may place on Fairholme's discretionary authority. Prior to assuming full discretion in managing Account assets, Fairholme enters into an investment management agreement or other agreement that sets forth the scope of Fairholme's discretion.

Unless otherwise instructed or directed by Account holders, Fairholme has the authority to determine (i) the securities to be purchased and sold for Accounts (subject to restrictions on its activities set forth in

the applicable investment management agreement and any written investment guidelines) and (ii) the amount of securities to be purchased or sold for Accounts. Please see Item 12 for a discussion of Fairholme's written policies and procedures governing investment allocations and trade allocation and aggregation.

In addition, allocations will be made among Accounts eligible to participate in initial public offerings (IPOs) and secondary offerings on a pro rata basis, except when Fairholme determines in its discretion that a pro rata allocation is not appropriate, which may include an Account holder's investment guidelines explicitly prohibiting participation in IPOs or secondary offerings and an Account holder's status as a "restricted person" under applicable regulations.

Fairholme will determine the proposed allocation of limited offering securities after considering the factors described above with respect to general allocations of securities and determining those Accounts eligible to hold such securities. Eligibility will be based on the legal status of the clients and the client's investment objectives and strategies.

Fairholme may effect cross transactions between Accounts, except as otherwise noted below. Cross transactions enable Fairholme to effect a trade between two Accounts for the same security at a set price, thereby possibly avoiding an unfavorable price movement that may be created through entrance into the market and saving commission costs for both Accounts. Cross transactions may include rebalancing transactions that are undertaken so that, after withdrawals or contributions have occurred, the portfolio compositions of similarly managed Accounts remain substantially similar. Fairholme has a potentially conflicting division of loyalties and responsibilities regarding both parties to cross transactions. Fairholme will only engage in a cross transaction between Accounts when Fairholme has determined that the cross transaction is in the best interest of each Account. Cross transactions between Accounts are not permitted if they would constitute principal trades or trades for which Fairholme or its affiliates are compensated as a broker unless Account holder consent has been obtained based upon written disclosure to the Account holder of the capacity in which Fairholme or its affiliates will act. In addition, cross transactions are not permitted for benefit plan or other similar Accounts that are subject to ERISA. Cross transactions involving a registered investment company for which Fairholme serves as adviser are permitted only in accordance with the Company's procedures pursuant to Rule 17a-7 under the 1940 Act.

## **ITEM 17. VOTING CLIENT SECURITIES.....**

To the extent Fairholme has been delegated proxy voting authority on behalf of its Account holders, Fairholme seeks to comply with its proxy voting policies and procedures that are designed to ensure that in cases where Fairholme votes proxies with respect to Account securities, such proxies are voted in the best interests of its Account holders. Fairholme will vote against proposals that make it more difficult to replace members of a board of directors. For all other proposals, Fairholme will determine whether a proposal is in the best interests of its Account holders and may take into account the following factors, among others: (i) whether the proposal was recommended by management and Fairholme's opinion of management; (ii) whether the proposal acts to entrench existing management; and (iii) whether the proposal fairly compensates management for past and future performance. Fairholme will abstain from voting or affirmatively decide not to vote if Fairholme determines that abstention or not voting is in the best interests of the client. In making this determination, Fairholme will consider various factors, including, but not limited to, (i) the costs associated with exercising the proxy (e.g., translation or travel

costs); and (ii) any legal restrictions on trading resulting from the exercise of a proxy. Fairholme may determine not to vote proxies relating to securities in which clients have no position as of the receipt of the proxy (e.g., when Fairholme has sold, or has otherwise closed, a client position after the proxy record date but before the proxy receipt date).

Accounts that have delegated proxy voting authority to Fairholme may obtain from Fairholme information on how Fairholme voted proxies and a copy of Fairholme's proxy voting policies, procedures and guidelines by contacting the Compliance Department by email at [fcminfo@fairholme.net](mailto:fcminfo@fairholme.net).

As previously disclosed, there may be circumstances in which Fairholme relinquishes the proxy voting authority provided to it by an Account. Those circumstances include when Fairholme has obtained material, non-public information about the company to which a proxy relates or when Fairholme has a conflict of interest with respect to that company.

**ITEM 18. FINANCIAL INFORMATION.....**

This Item is not applicable.

**ITEM 19. REQUIREMENTS FOR STATE-REGISTERED ADVISERS.....**

This Item is not applicable.