

**Form ADV Part 2A: Disclosure Brochure**

# **MERIT ENERGY COMPANY, LLC**

(SEC File Number: 801-57598)

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This brochure (“Brochure”) provides information about the qualifications and business practices of Merit Energy Company, LLC (“Merit”) and its affiliates. If you have any questions about the contents of this brochure, please contact us at (972) 701-8377. Additional information about Merit is also available on the SEC’s website at <http://www.adviserinfo.sec.gov>.

Merit is registered as an investment advisor with the United States Securities and Exchange Commission (the “SEC”) under the Investment Advisors Act of 1940, as amended (the “Advisors Act”). Registration as an investment advisor with the SEC does not imply a certain level of skill or training. In addition, the information in this Brochure has not been approved or verified by the SEC or by any state securities authority.

This document is not an offer to sell, or a solicitation of an offer to buy, any interest in any current or future Merit sponsored fund.

**Item 2 – Material Changes**

This item identifies and discusses material changes made to the Brochure in Merit's last annual update filed in March 2019.

In 2019, Merit formed an investment fund limited partnership named Merit Energy Partners K, L.P. Its Governing Fund Documents are similar to the other Funds serviced by Merit with similar investors and compensation.

In 2019, Merit liquidated an investment fund limited partnership named Merit Energy Partners F-I, L.P.

There have been no other material changes since our last filing in March 2019.

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#### **Item 4 - Advisory Business**

Merit was founded in 1989 and provides portfolio management and administrative services to investment fund limited partnerships (collectively, the “Funds”) whose investors include institutions such as endowments, foundations and pension funds, as well as fund of funds, family trusts and high net worth individuals (collectively, the “Investors”). The Funds were formed by Merit for the purpose of acquiring mature, producing oil and gas assets with long-lived production profiles. Merit’s principal owner is Merit Energy Management, L.P., a limited partnership owned, directly and indirectly, by William K. Gayden. Typically, within each Fund structure is a designated general partner (the “General Partner(s)”) affiliated with Merit. Unless and only to the extent the context otherwise requires, references to Merit include the General Partner(s).

Merit provides the Funds with discretionary advisory services, portfolio management and administrative services, including investigating, analyzing, structuring and negotiating potential investments, monitoring the performance of assets, and identifying disposition opportunities. Investment advice is provided directly to the Funds and not tailored individually to the Investors. Merit manages the assets of the Funds in accordance with the terms of each Fund’s individual limited partnership agreements and other governing documents (the “Governing Fund Documents”). Within the parameters of the Governing Fund Documents, Merit has discretion over which oil and gas interests the Funds buy, hold and sell, and Investor approval is not required. Except in limited circumstances, Investors are not permitted to withdraw from a Fund prior to the Fund’s dissolution.

Merit also engages in over-the-counter derivative transactions for commodity price risk management practices on behalf of the Funds. Merit does not give advice with respect to other securities.

Equity interests in the Funds are not registered under the U.S. Securities Act of 1933, as amended (the “Securities Act”), and the Funds are not registered under the Investment Company Act of 1940, as amended (the “Investment Company Act”). Accordingly, limited partnership interests in the Funds are offered and sold exclusively to Investors satisfying the applicable eligibility and suitability requirements.

As of December 31, 2019, Merit managed approximately \$4.3 billion of assets on a discretionary basis.

## **Item 5 – Fees and Compensation**

The terms of the Governing Fund Documents for each Fund set forth in detail the fee structure relevant to each such Fund, and may vary by Fund. Merit typically receives compensation in the form of fees based on a percentage of assets under management, carried interest allocations and certain other fees or expenses. Investors should review the Governing Fund Documents to fully understand the total amount of fees to be paid by a Fund.

### Management Fees

Each Fund pays Merit a quarterly management fee, payable in arrears, equal to a percentage of the greater of the Fund's (i) invested capital, or (ii) net book value of its assets. The manner of calculation of such management fee is contained in the Governing Fund Documents. In general, this fee is equal to 0.3125% of the greater of (i) invested capital, and (ii) the net book value of Fund assets up to the amount of capital committed to the Fund, plus 0.25% of the net book value in excess of such amount. The information contained herein is a summary only and is qualified in its entirety by the Governing Fund Documents.

### Fund Expenses

Each Fund bears its own organizational expenses incurred in connection with its formation, in general up to a cap set forth in the applicable Governing Fund Documents, with any excess borne by Merit. Each Fund also bears its own expenses associated with its investment program and operations, including, without limitation, fees, costs and expenses related to proposed and actual purchases and sales of properties, expenses incurred in the operation of the Fund (including attorneys, auditors, insurance, indemnity or litigation expenses), all costs of the Fund's administration (financial statement preparation, reports to limited partners, leverage costs, if any, and holding any meetings of limited partners), and any taxes, fees or governmental charges levied against such Fund.

Merit employs engineers, geologists, accountants, attorneys, land professionals and other office support staff and field level personnel to carry out activities associated with the assets owned by all Funds managed by Merit. Fund expenses that are common to more than one Fund are allocated among the Funds as reasonably determined in good faith by Merit, generally based on relative revenues. Field-level operating expenses are, as is customary in the oil and gas business, charged against the applicable property and allocated to the Funds in proportion to their relative ownership interests in such property, with any expenses recouped from third-party interest owners being credited back against such costs in the same percentages as borne by the Funds.

In the ordinary course of business, Merit receives all revenues and pays all expenses associated with the properties owned by the Funds. Merit accounts for all such revenues and expenses on

behalf of each Fund, and all cash held by Merit is allocated to each Fund on the quarterly financial statements delivered to such Fund's limited partners.

## **Item 6 – Performance-Based Fees and Side-By-Side Management**

### Carried Interest Allocations

As additional compensation for Merit's services, a portion of each Fund's net profits may be allocated to Merit's capital account as a "carried interest." The manner of calculating such carried interest is set forth in the Governing Fund Documents. Generally, however, 13% of each Fund's net profits are allocated to Merit each year as a carried interest once the Investors have first been allocated a minimum return of 8% on their investment.

### Net Profits Interest

When Merit successfully closes on the acquisition of an oil and gas asset, participation in the acquisition is allocated among the Funds in the discretion of Merit. In allocating investment opportunities among the Funds, Merit will act in good faith and will consider factors reasonably appropriate for such determinations, including, but not limited to, investment strategies, the nature of the investment, investment time frames and other similar factors. Each participating Fund will be conveyed a net profits royalty interest in such asset that is 2% less than the percentage of the acquisition cost allocated to, and paid by, such Fund. The additional 2% paid by each Fund is consideration for the various contingent expenses and liabilities borne by Merit in connection with owning the oil and natural gas working interests.

The carried interest allocation and acquisition allocation described above may create an incentive for Merit to make investments on behalf of the Funds that are riskier or more speculative than would be the case in the absence of such allocations. However, this incentive is mitigated by the fact that (i) Merit or an affiliate co-invests in, and alongside of, the Funds in each acquisition and (ii) any losses will reduce a Fund's performance and, therefore, the returns to Merit.

### Other

Each Fund generally issues a Preferred Limited Partner (PLP) Interest in order to facilitate its intended leverage program, and the PLP will be an affiliate of Merit or the General Partner of such Fund. Merit has the authority to establish the terms of the PLP Interests, subject to certain parameters set forth in the Governing Fund Documents. The Preferred Limited Partner generally receives an amount, calculated as a percentage of its investment, to compensate it for its organizational costs. The percentage is calculated at the time of initial formation based on Merit's reasonable discretion, but could result in the Preferred Limited Partner receiving more (or less) than the amount of its actual organizational costs.

All discussions of the Funds in this Brochure, including but not limited to the compensation and fees in connection with the management of the Funds, are qualified in their entirety by reference to each Fund's respective Governing Fund Documents.

## **Item 7 – Types of Clients**

Merit's only clients are the Funds, all of which are subject to the direction and control of Merit. Investors in the Funds include, but are not limited to, large institutional investors such as endowments, foundations and pension funds as well as fund of funds, family trusts and high net worth individuals. Investment in each Fund was subject to a minimum capital commitment, although investments of lesser amounts were accepted on a case-by-case basis. Each of the Funds is exempt from registration as an investment company under Section 3(c) (7) (and, as applicable, Section 3(c) (1)) of the Investment Company Act of 1940. Investors will be required to meet certain suitability qualifications, such as being an "accredited investor" within the meaning set forth in Rule 501(a) of Regulation D under the Securities Act. Also, Investors will be required to make certain representations when investing in a Fund, including, but not limited to, (i) it is acquiring an interest for its own account, (ii) it received or had access to all information it deemed relevant to evaluate the merits and risks of the prospective investment, and (iii) it has the ability to bear the economic risk of an investment in the Fund. Details concerning applicable Investor suitability criteria are set forth in the respective Governing Fund Documents and subscription materials, which are furnished to each Investor.

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

### Method of Analysis

Prior to making any investment on behalf of a Fund, Merit undertakes an extensive technical and financial evaluation of the assets. A typical evaluation will include participation by personnel from various departments within Merit, including operations, geology, land, accounting, marketing, legal, environmental and regulatory. Merit's financial evaluation of the assets involves analyzing each Fund's returns and cash flows based on various performances and pricing sensitivities.

After closing, Merit regularly compares each asset's actual operating and financial results against Merit's acquisition assumptions.

### Investment Strategy

Merit strives to acquire diverse, high-quality, mature, producing oil and gas properties that Merit can operate efficiently and develop appropriately. Merit targets assets that fit its operating profiles and are designed to generate returns from production, rather than trying to time the market to generate returns from an exit. The ability to pay for assets with cash, close acquisitions quickly and take over field operations at closing has proven to be a significant competitive advantage for

Merit. Merit maintains a consistent presence in the acquisition market and has strong relationships with majors, large independents and private companies, as well as investment banks and asset brokers.

Strives for a low-risk approach to capital development, Merit emphasizes drilling for proven reserves, wellbore recompletions, stimulations, and facility upgrades. Merit implements capital projects that are appropriate for the current operating environment and add the most long-term value over the life of the portfolio.

Merit routinely reviews its portfolio for divestiture opportunities of assets that are either scattered from core operations or not performing as expected. In addition, Merit also considers strategic divestitures when market valuations are attractive.

After acquiring an asset, Merit focuses on improving its operating efficiency by evaluating operating expense details and targeting specific projects to increase production. Conducting regular field studies helps Merit identify development programs to add reserves and further increase production.

Merit employs hedging strategies designed to mitigate the natural volatility in commodity prices, as well as to aid in the acquisition of new properties. Merit seeks to protect against the downside of nearer term pricing volatility, while maintaining adequate price exposure to capture upside opportunities. In addition, Merit utilizes leverage to enhance returns, but not in excess of the limits contained in the Governing Fund Documents.

#### Associated Risks

All investing involves a risk of loss and the investment strategy offered by Merit and the Funds could lose money over short or even long periods. An investment in the Funds may be deemed a speculative investment and is not intended as a complete investment program. It is designed for sophisticated investors who fully understand and are capable of bearing the risk of an investment in the Funds. No guarantee or representation is made that a Fund will achieve its investment objective or that Investors will receive a return of their capital.

The success of the Funds will also largely depend on Merit's ability to (i) identify investment opportunities that meet its investment criteria, (ii) accurately evaluate the opportunities and negotiate advantageous terms relating to the acquisition of its investments, and (iii) operate the properties prudently and efficiently, including by enhancing production and increasing reserves. Identifying, analyzing and acquiring assets on behalf of the Funds are challenging. Many investment decisions made by Merit will be dependent upon the ability of its investment professionals to obtain relevant information predominantly from non-public sources, and reliance upon information provided by third parties that is impossible or impracticable to verify. The marketability and value of each investment will depend upon many factors beyond the control of Merit.



There are many inherent risks arising from the operations of oil and gas properties including, without limitation: (i) the uncertainty of estimating hydrocarbon reserves and their value; (ii) commodity price fluctuations; (iii) the ability to acquire oil and gas reserves; (iv) the risks of conducting drilling operations (including risks of substantial losses to properties, bodily injury and environmental damage arising from operations that do not proceed as planned and the risk of failing to find commercially productive reserves); (v) risks associated with the marketing of hydrocarbon production; (vi) risks of compliance with increasingly burdensome environmental regulations and other regulations governing the production of natural resources; (vii) geopolitical risks associated with governments who play significant roles in the production and distribution of natural resources; and (viii) risk of catastrophic and other force majeure events. The Funds' investments are concentrated in oil and gas producing properties in the United States, the value of which is directly correlated to existing reserves, expected future reserves and production rates, and forward prices for oil and natural gas, which are highly volatile and dependent on numerous factors that are beyond the control of the Funds and Merit. While the Funds' investments are generally diversified across multiple wells, they may be concentrated in a limited number of portfolio acquisitions, or in a single geographic region or type of geological play, and therefore the Funds' entire portfolio of properties may be subject to a common set of operational or investment risks.

In general, Merit causes the Funds to leverage their investment program and cash flow needs in amounts deemed prudent from time to time by Merit in accordance with the terms of the Governing Fund Documents. While this leverage component is intended to enhance returns to the Investors, it also magnifies the risk of loss if the value of a Fund's assets declines. In addition, there can be no assurance that leverage will be available to the Funds in amounts and on terms desired.

Merit causes the Funds to enter into commodity-price risk management transactions for a portion of expected production. While such hedging techniques are intended to reduce the effects of volatile oil and gas prices, commodity-price risk management transactions may limit potential gains if oil and gas prices rise substantially over the price utilized in the commodity-price risk management transaction. Conversely, commodity-price risk management transactions may be insufficient if oil and gas prices decline significantly. In addition, hedging transactions may expose a Fund to the risk of financial loss regardless of the underlying value of its oil and gas properties. Furthermore, there can be no assurance that Merit will be able to execute the transactions necessary to implement its hedging strategy. Although Merit's strategy is generally to hedge a significant proportion of anticipated near- to medium-term production around the time of acquisition of a property, it does not typically hedge longer-term production, and amounts actually realized by the Funds, particularly in the later years of their respective terms, will inevitably be impacted by changes in prevailing prices for oil and natural gas.

Merit does not guarantee the future performance of the Funds or any specific level of performance, the success of any investment decision or strategy that Merit may use, or the success of Merit's overall management of the Funds. Investment decisions that Merit makes for the Funds are subject

to various market, economic, political and business risks, and those investment decisions will not always be profitable and may result in a total loss of invested capital.

The foregoing does not purport to be a complete list of all risks to which the Funds are subject. Investors in the Funds should review the Governing Documents and private placement memorandums carefully for a more detailed discussion of the potential risk factors applicable to their particular Funds.

#### **Item 9 – Disciplinary Information**

There have been no legal or disciplinary actions against Merit or any of its management persons that would be material to an Investor's or prospective Investor's evaluation of Merit or its advisory business.

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

Merit has no other financial industry activities or affiliations. Merit has no relationships or arrangements with "related persons" i.e. broker-dealers, investment companies, banks, consultants, accountants, lawyers, etc. regarding Merit's advisory services.

Merit is responsible for all decisions regarding portfolio transactions of the Funds and has full discretion over the management of the Funds' investment activities. The potential for conflicts of interest exists between the Funds, on the one hand, and Merit, on the other, or among individual Funds. Merit's management oversees the operation of all of the Funds, which creates potential conflicts in the allocation of management resources. There are also potential conflicts of interest in the allocation of general and administrative expenses among the Funds. Prior to the date upon which a Fund is fully invested, Merit may allocate new investments partly to such Fund and partly to a different Fund. In addition, the organizational structure of each Fund requires that certain transactions involving conflicts of interest are entered into between a Fund and an affiliate of Merit. For example, in Merit Energy Partners H, L.P., ("MEP H"), (i) MEP H purchases net profits interests in all oil and gas properties acquired by Merit Management Partners IV, L.P., or an affiliate thereof ("MMPIV"), (ii) MEP H lends funds and issues production payments to MMPIV in connection investments made by MMPIV or Merit, and (iii) a Merit affiliate owns preferred equity interests issued by MEP H that earn a return which is, in part, determined by Merit. Corresponding relationships exist within the organizational structures for other Merit Energy Partners Funds.

In the future, there may be instances where the interests of Merit, the General Partners, and their respective affiliates conflict with the interest of the Funds (or certain Funds) and their Investors. Also, as a result of existing investments and activities, Merit, the General Partners and their affiliates may from time to time acquire confidential information that they will not be able to use for the benefit of all of the Funds.

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

### Code of Ethics and Personal Trading

As a Registered Investment Advisor, each of Merit's employees is required to sign a Code of Ethics, which addresses compliance with rules and regulations, avoiding conflicts of interest and actions regarding the use of material, non-public information. The Code of Ethics executed by Merit's access (control) persons also addresses the tracking of personal security transactions. Merit requires its employees to act in the Funds' best interests, abide by all applicable regulations and avoid any action that is, or could appear to be, legally or ethically improper. Copies of Merit's Codes of Ethics are available upon request.

Merit or its employees may, from time to time, come into possession of material nonpublic or other confidential information about public companies which, if disclosed, might affect an investor's decision to buy, sell or hold a security. Under applicable law, Merit and its employees are prohibited from improperly disclosing or using such information for their personal benefit.

### Participation or Interest in Client Transactions

As described in Item 10 above (Other Financial Industry Activities and Affiliations), certain Funds issue preferred equity interests to Merit. In addition, Merit invests alongside of the Funds in oil and gas assets for its own account, owning oil and gas assets directly, and operating oil and gas assets for itself and the Funds (as well as third party undivided working interest owners). This ownership and operation of oil and gas assets is Merit's principal business.

In general, in a typical transaction for Funds which acquire net profits interests ("NPI Funds"), Merit will purchase oil and gas working interests from a third party and then sell each participating NPI Fund a net profits royalty interest carved out of such working interests. For Funds which acquire working interests ("WI Funds"), when Merit purchases oil and gas working interests from third parties, the WI Funds acquire their working interests from Merit at the same time. Merit purchases for its own account an undivided working interest in each oil and gas property bought by the Funds at the same time as the Funds acquire their interests. Because the price at which Merit sells net profits interests to the Funds, or at which the Funds acquire undivided working interests in the same oil and gas properties as Merit, is a specified percentage of Merit's actual cost to acquire the property, these transactions are economically indistinguishable from buying the net profits interest or working interest directly from the third party. Therefore, Merit does not believe these transactions to be principal transactions as contemplated by Item 9(A) of Form ADV Part 2.

## **Item 12 – Brokerage Practices**

Each Fund purchases and divests of oil and gas interests or net profits royalty interests in oil and gas assets. The Governing Fund Documents with respect to each Fund do not preclude Merit from engaging such brokers as it determines are in the best interests of such Funds for purposes of the transaction, or limit the amount of fees paid in connection with such engagement. In the event Merit was to engage such a broker, Merit would select such third-party broker based on his, her or its overall qualifications and negotiate a reasonable fee arrangement in the context of the particular transaction.

Merit focuses on making investments in private securities, and does not ordinarily deal with any financial intermediary such as a broker-dealer; therefore commissions are not ordinarily payable in connection with such investments except for certain commodity hedges. To the limited extent Merit were to transact in public securities, or other non-private equity investments (e.g., commodity hedging), Merit will seek to obtain best execution. Merit will select brokers based upon the broker's ability to provide best execution for the Funds.

## **Item 13 – Review of Accounts**

Merit's engineers and geologists regularly monitor the oil and gas working interests owned by Merit and the Funds by reviewing production data and drilling or other development activity reports from the field. These staff technical individuals are instructed to monitor performance and propose field and well management techniques consistent with prudent oil and gas operator industry standards. A Regional Manager reviews weekly production and production sales performance of the oil and gas investments, and reports from the engineers for each Fund asset in his or her region. The Vice President of each Division's operations reviews such information with respect to all properties. For Funds investing in oil and gas net profit interests, Merit's accounting and financial personnel review the net profits accounts monthly to ensure that the debits and credits conform to the net profits interest agreement defining and creating each net profits interest. Each Division Accounting Controller and the Corporate Controller review their work with the same instructions.

Investors receive quarterly and annual oil and gas production reports and financial statements prepared in accordance with generally accepted accounting principles. Annual financial statements are audited by an independent third party accounting firm and annual reserve reports are audited by a third party engineering firm.

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

Merit does not receive any monetary compensation or any other economic benefit from a non-client for Merit's provision of advisory services to a client. Merit does not compensate any third party for client referrals.

## **Item 15 - Custody**

Due to its position as manager of the General Partners, and the General Partners' position as general partners of the Funds, Merit may be deemed to have custody of the assets of the Funds. All assets and securities of the Funds are held by qualified custodians with the exception of assets that are considered to be "privately offered securities" under Rule 206(4)-2(b). As noted in Item 13 above, Fund Investors receive annual financial statements audited by an independent public accounting firm. Fund Investors are urged to carefully review these statements.

## **Item 16 – Investment Discretion**

In accordance with the terms and conditions of the Governing Fund Documents, and subject to the direction and control of the General Partner of each Fund, Merit generally has discretionary authority to determine the investments and the amounts to be bought or sold on behalf of the Funds and to perform the day-to-day investment operations of the Funds. Merit allocates investment opportunities and operational resources in a manner intended to maximize returns for all of the Funds in Merit's sole discretion, the effect of which may be to reduce the investment returns of some Funds relative to other Funds. It is Merit's policy to allocate acquisitions among all Funds that have not reached their cessation date on a blind pool basis, which means that the Investors do not pre-approve acquisitions, other than with respect to the acquisition size limitations set forth in the applicable partnership agreement of each Fund. In allocating acquisitions, Merit prioritizes uncalled capital but also takes diversification, investment period, and other factors into account. Merit's allocation policy does not follow a mathematical formula and some factors may be given greater weight depending on the nature of a particular investment opportunity. In any particular transaction, the participating Funds will invest in the same properties on a pro rata basis relative to their respective capital calls in such transaction.

## **Item 17 – Voting Client Securities**

The Funds invest in oil and gas assets or net profits royalty interests directly and Merit operates those assets on behalf of the Funds. While Merit is permitted to invest in stock or bond securities related to the oil and gas industry on behalf of the Funds, such investment is generally not intended unless it is in connection with the acquisition of an oil and gas operator. In the event a Fund were

to acquire any securities for which proxies were to be voted, Merit would vote such proxies on behalf of the Fund. Merit would vote client proxies in a way it believes would maximize shareholder value on behalf of the Fund.

## **Item 18 – Financial Information**

A balance sheet is not required to be provided as Merit does not solicit fees more than six months in advance. There is no financial condition that is reasonably likely to impair Merit's ability to meet Merit's contractual commitments to the Funds.

## **Item 19 – Requirements for State-Registered Advisers**

Merit's principal executive officers and management persons are set forth on Schedule A to Form ADV.

A portion of each Fund's net profits may be allocated to Merit's capital account as a "carried interest." The manner of calculating such carried interest is set forth in the Governing Fund Documents. Generally, however, 13% of each Fund's net profits are allocated to Merit each year as a carried interest once the Investors have first been allocated a minimum return of 8% on their investment.

In addition, when Merit successfully closes on the acquisition of an oil and gas asset, participation in the acquisition is allocated among the Funds in the discretion of Merit. In allocating investment opportunities among the Funds, Merit will act in good faith and will consider factors reasonably appropriate for such determinations, including, but not limited to, investment strategies, the nature of the investment, investment time frames and other similar factors. Each participating Fund will be conveyed a net profits royalty interest in such asset that is 2% less than the percentage of the acquisition cost allocated to, and paid by, such Fund. The additional 2% paid by each Fund compensates for the various contingent expenses and liabilities borne by Merit in connection with owning the oil and natural gas working interests.

The carried interest allocation and acquisition allocation described above may create an incentive for Merit to make investments on behalf of the Funds that are riskier or more speculative than would be the case in the absence of such compensation. However, this incentive is mitigated by the fact that (i) Merit or an affiliate co-invests in, and alongside of, the Funds in each acquisition and (ii) any losses will reduce a Fund's performance and, therefore, Merit's compensation.

Except as otherwise provided in this Brochure, neither Merit nor any of its management persons have any relationship or arrangement with any issuer of securities with whom Merit or the Funds purchase or sell oil and gas interests, or otherwise engages in business.