

## Silverback Asset Management, LLC

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This brochure ("Brochure") provides information about the qualifications and business practices of Silverback Asset Management, LLC (the "Adviser" or "Silverback"), 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 (919) 969-9300 or [lkleber@silverbackasset.com](mailto:lkleber@silverbackasset.com). The information in this Brochure has not been approved or verified by the SEC or by any state securities authority.

Silverback Asset Management, LLC is a registered investment adviser. Registration with the SEC does not imply any level of skill or training.

Additional information about Silverback Asset Management, LLC also is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

## Item 2 –Material Changes

The Adviser is updating its Brochure as of March 27, 2020 as part of its annual amendment filing. There have been no material changes to the Adviser’s previous Brochure [dated March 31, 2019](#) other [than](#). ~~The Adviser has made certain routine updating changes, including~~ updates to reflect a change in the Adviser’s net assets under management (see Item 4).

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#### Item 4 – Advisory Business

The Adviser is an investment adviser with its principal place of business in Chapel Hill, North Carolina. The Adviser is a Delaware Limited Liability Company organized under the laws of the State of Delaware in April 2002. The Adviser commenced operations as an investment adviser on June 1, 2002 and has been registered with the SEC since October 2006. Elliot Bossen is the founder and principal of Silverback Asset Management, LLC.

The Adviser manages investment advisory accounts for clients on a discretionary basis. The Adviser currently serves as investment manager to a number of private funds (together, the “Funds”), and as adviser or sub-adviser to separately managed accounts (the “Accounts”, and together with the Funds, the “Clients”). The Adviser may also accept other clients, including additional private funds, at any time.

Currently, the Adviser is the investment manager to Silverback Opportunistic Credit Master Fund Limited, Silverback Opportunistic Fund Limited and Silverback Opportunistic Fund LLC that primarily employ a strategy [that focuses on convertible, credit and equity markets to capture returns from investments in credit, equity, volatility, event-driven, special situation and structural opportunities](#). The latter two entities are feeder funds which each invest substantially all of their assets in the master fund. The Adviser also acts as adviser or sub-adviser to the Accounts, which employ a related [opportunistic credit](#), convertible arbitrage [and/or](#) special situations strategy.

The Adviser provides advice to client accounts based on specific investment objectives and strategies. Under certain circumstances, the Adviser may agree to tailor advisory services for the needs of separately managed account clients. Such separately managed account clients may impose restrictions on investing in certain securities or certain types of securities.

As of March 1, 2020, Silverback had approximately \$512.0 million<sup>1</sup> client assets under management, all of which were managed on a discretionary basis.

<sup>1</sup> Note that this asset value is client net assets under management, and not regulatory assets under management as defined in the instructions for Item 5.F of ADV Part 1A.

#### Item 5 – Fees and Compensation

As the investment manager for the Funds, the Adviser receives a monthly management fee ranging from .5% to 1.75% per annum based on the net assets of the Funds as of the last day of the prior month, before deduction of any performance-based compensation (as described below). The management fee is payable by the last day of the month in which such fee is due.

The Adviser is also entitled to performance-based compensation from the Funds in amounts ranging from 10% to 17.5% of the net profits (including realized and unrealized gains), if any,

subject to a loss carry-forward provision and, in certain limited circumstances, a clawback provision. The performance-based compensation is generally paid on an annual basis.

Management fees are prorated for partial periods based on the portion (i.e., number of days) of the relevant period during which the Adviser provided its services. Performance-based compensation is charged to all investors generally at the end of the fiscal year or upon redemption, subject to adjustment (if any) following completion of the annual audit of the Funds' financial statements.

The Adviser may waive or reduce the management fee and/or performance-based compensation for investors that are members, directors, principals, employees or affiliates of the Adviser, relatives of such persons and for certain large, strategic or initial investors.

In addition to the management fees and performance-based compensation, the Funds, a master-feeder structure in which the feeder funds bear a pro rata share of the expenses associated with the related master fund, are also subject to other investment expenses such as custodial charges, brokerage fees, commissions and related costs; research services; interest expenses; taxes, duties and other governmental charges; legal and organizational expenses; fund administration and accounting costs; audit and tax preparation expenses; transfer and registration fees or similar expenses; costs associated with foreign exchange transactions; other portfolio expenses; and costs, expenses and fees associated with products or services that may be necessary or incidental to the operation of the Funds.

The allocation of expenses by the Adviser between it and any client and among clients represents a conflict of interest for the Adviser. The Adviser allocates expenses to each of its clients in accordance with its arrangements with that client (including applicable client disclosures). The Adviser seeks to allocate shared expenses for products and services benefitting the Adviser and a particular client and not covered in the client's arrangements in a fair and reasonable manner. The Adviser may use a variety of methods to allocate common client expenses among multiple clients, including methods based on assets under management, relative use of a product or service, the nature or source of a product or service, the relative benefits derived by a client from a product or service, or other relevant factors. Because the Adviser's expense allocations often depend on inherently subjective determinations, it is possible that the portion of a common expense that the Adviser allocates to a client for a particular product or service may not reflect the relative benefit derived by that client from that product or service in any particular instance.

The Adviser receives monthly management fees from the Accounts in amounts ranging from 0.5% to 1.75 ~~2.0~~% per annum based on the net assets of the relevant Account and is also entitled to performance-based compensation, both at rates which are privately negotiated in the applicable advisory agreements.

Please refer to Item 12 of this Brochure for a discussion of the Adviser's brokerage practices.

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

The Adviser and its investment personnel may provide investment management services to multiple portfolios for multiple clients. The Adviser is entitled to be paid performance-based compensation by its Clients as noted in Item 5. In addition, the Adviser's investment personnel are typically compensated on a basis that includes a performance-based component. Certain client accounts may have higher asset-based fees or more favorable performance-based compensation arrangements than other accounts. When the Adviser and its investment personnel manage more than one client account a potential exists for one client account to be favored over another client account. The Adviser and its investment personnel have a greater incentive to favor client accounts that pay the Adviser higher management fees or higher performance-based compensation or in which the Adviser or its personnel have significant investments.

The Adviser has adopted and implemented policies and procedures intended to address conflicts of interest relating to the management of multiple client accounts, including client accounts with different fee arrangements, and the allocation of investment opportunities. The Adviser's basic policy is that no client for whom the Adviser has investment decision responsibility shall receive preferential treatment over any other client. The Adviser reviews investment decisions for the purpose of ensuring that all client accounts with substantially similar investment objectives are treated equitably. The Adviser's policies relating to the allocation of investment opportunities among client accounts allow for a number of factors to be taken into account, including, but not limited to, investment objectives and strategies, risk tolerances, tax status, size of client account, timing of cash flows and account liquidity (e.g. subscriptions and redemptions) and any other information determined to be relevant to the fair allocation of securities. However, for similarly managed client accounts the Adviser's allocation policies and procedures require that to the extent possible eligible clients accounts with the same or substantially similar investment mandates or strategies (e.g., clients that invest pari passu) participate in investment opportunities on pro rata basis based on the relative value of the assets of each participating account; provided, however that the Adviser may allocate investment opportunities to such accounts on a non-pro rata basis due to a consideration of factors including, but not limited to, hedging maintenance, delta adjustments, and the avoidance of odd lots. To the extent allocations are split or orders are aggregated, client accounts will participate at the same net price including any transaction costs (e.g. commissions); provided, however, that the aggregated order may be allocated on a different basis for reasons including, but not limited to, partially filled orders and to avoid odd lots or excessively small allocations. The performance of similarly managed client accounts are regularly compared to determine whether there are any unexplained significant discrepancies. Finally, the Adviser's procedures also require the objective allocation for limited opportunities (such as initial public offerings and private placements) to ensure fair and equitable allocation among accounts. These areas are monitored by the Adviser's Chief Compliance Officer.

## Item 7 – Types of Clients

The Adviser currently provides investment advice and portfolio management services to private investment funds and separately managed accounts set up for investment by [individuals, banks and thrift institutions, investment companies, private funds, pension and profit sharing plans, trusts, estates, charitable organizations, corporations and other business entities].

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For the Adviser's private investment fund clients, any initial and additional subscription minimums are disclosed in the offering memorandum for each private fund.

Additionally, the Adviser provides investment advisory services to separately managed accounts, provided such managed accounts meet certain size and other appropriate criteria as determined by the Adviser in its sole discretion on a case by case basis.

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

### Opportunistic Credit, Convertible Arbitrage and Special Situations Strategy Focus

The Adviser utilizes a variety of methods and strategies to make investment decisions and recommendations. The methods of analysis include, but are not limited to, fundamental research, charting analysis, cyclical analysis as well as the use of quantitative tools, models and investment approaches, or technical analytical tools and approaches. The Adviser's security analyses focus on, but are not limited to, quantitative modeling of convertible securities and derivative instruments as well as fundamental credit and structural analysis.

The Adviser focuses primarily on an opportunistic credit, convertible arbitrage and/or a special situations strategy to capture returns from investments in credit, equity, volatility, and other opportunities; but also may make investments in related strategies, including capital structure arbitrage and equity volatility arbitrage. These strategies generally seek to take advantage of fundamentally driven investment analysis paired with appropriate security selection to monetize views held primarily (but not only) in credit, equity and volatility related investments. The Adviser pursues investments that it believes present the best risk-reward dynamics at a given point in time, a flexible approach designed to produce attractive risk-adjusted returns with low correlation to and less volatility than the equity and fixed income markets. The investments utilized by the Adviser in the Funds and the Accounts include convertible securities, equities, options, corporate debt securities, bank loans, credit default swaps, interest rate swaps, asset swaps, warrants, and other related securities and derivatives.

The Adviser actively manages exposures to equity, credit, volatility and interest rates, and may mitigate these risks via hedges where appropriate. To implement hedges and hedging strategies the Adviser engages in short selling and options trading and may utilize derivatives (e.g. credit default swaps), interest rate swaps, and futures and forward contracts.

The Adviser utilizes leverage and margin borrowing from prime brokers for some of its Clients in order to be able to increase the amount of capital available for marketable securities investments.

These methods, strategies and investments involve the risk of loss to clients, including loss of principal, a reduction in earnings (including interest, dividends and other distributions) and the loss of future earnings. The following summary identifies the material risks related to the Adviser's significant investment strategies and should be carefully evaluated before making investment with the Adviser; however, the following does not intend to identify all possible risks of an investment with the Adviser or provide a full description of the identified risks. Clients must be prepared to bear the loss of their entire investment.

*Arbitrage Transaction Risks.* If the requisite elements of an arbitrage strategy are not properly analyzed or unexpected events or price movements intervene, losses can occur which can be magnified to the extent the Adviser is employing leverage. Moreover, arbitrage strategies often depend upon identifying favorable "spreads", which can also be identified, reduced or eliminated by other market participants.

*Leverage.* Performance may be more volatile if investment strategies employ leverage.

*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. The value of securities of smaller, less well-known issuers can be more volatile than that of larger issuers. Smaller issuers can have more limited product lines, markets, or financial resources.

*Hedging.* There can be no assurances that a particular hedge is appropriate, or that certain risk is measured properly. Further, while the Adviser may enter into hedging transactions to seek to reduce risk, such transactions may result in poorer overall performance and increased (rather than reduced) risk for the Adviser's investment portfolios than if the Adviser did not engage in any such hedging transactions.

*Short Selling Risk.* The Adviser's investment program includes a significant amount of short selling. Short selling transactions expose the Adviser to the risk of loss in an amount greater than the initial investment, and such losses can increase rapidly and without effective limit. There is the risk that the securities borrowed by the Adviser in connection with a short sale would need to be returned to the securities lender on short notice. If such request for return of securities occurs at a time when other short sellers of the subject security are receiving similar requests, a "short squeeze" can occur, wherein the Adviser might be compelled, at the most disadvantageous time, to replace the borrowed securities previously sold short with purchases on the open market, possibly at prices significantly in excess of the proceeds received earlier.

*Fixed-Income and Debt Securities.* Investment in fixed-income and debt securities such as bonds, notes and asset-backed securities, subject a client's portfolios to the risk that the value of these securities overall will decline because of rising interest rates. Similarly, portfolios that hold such



securities are subject to the risk that the portfolio's income will decline because of falling interest rates. 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. Lastly, investments in debt securities will also subject the 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.

*Equity Securities.* The value of equity securities fluctuates in response to issuer, political, market, and economic developments. Fluctuations 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 geopolitical 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.

*Derivatives.* Certain swaps and options and other custom derivative or synthetic instruments are subject to the risk of nonperformance by the counterparty to such instruments (which would include a derivatives clearing organization, in the case of derivatives that are cleared), 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 the client or the Adviser. Further, some transactions in derivative instruments are not undertaken on recognized exchanges, and will expose the client's account to greater risks than regulated exchange transactions that provide greater liquidity and more accurate valuation of securities.

*Interest Rate Risks.* 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. This risk is greater for long-term securities than for short-term securities. The Adviser may attempt to minimize exposure to interest rate changes through the use of interest rate swaps, interest rate futures and/or interest rate options. However, there can be no guarantee that the Adviser will be successful in fully mitigating the impact of interest rate changes.

*Security Futures and Options.* In connection with the use of futures contracts and options, 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 client's account. In addition, the Adviser'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.

*Distressed Securities.* Investment in distressed situations exposes the client to significant risks, including: the difficulty in obtaining information as to the issuer's true condition; regulatory risk, including laws relating to fraudulent conveyances, voidable preferences, lender liability and bankruptcy; litigation risk; liquidity risk; and collection risk. 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.

*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 experience 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.

*Non-U.S. Securities.* Foreign securities, foreign currencies, and securities issued by U.S. entities with substantial foreign operations can involve additional 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. All 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.

*Emerging Markets.* The risks of foreign investments typically are greater in less developed countries, sometimes referred to as emerging markets. For example, political and economic structures in these countries may be less established and may change rapidly. These countries also are more likely to experience high levels of inflation, deflation, or currency devaluation, which can harm their economies and securities markets and increase volatility. Restrictions on currency trading that may be imposed by emerging market countries will have an adverse effect on the value of the securities of companies that trade or operate in such countries.

*REITs.* REITs in which the Adviser invests client accounts are affected by underlying real estate values, which may have an exaggerated effect to the extent that REITs in which the Adviser 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 Instruments.* Certain instruments may have no readily available market or third-party pricing. Reduced liquidity may have an adverse impact on market price and the Adviser'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 the Adviser to obtain market quotations based on actual trades for the purpose of valuing a Client's portfolio.

*Cybersecurity Risk.* The information and technology systems of the Adviser and of key service providers to the Adviser 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, hurricanes and earthquakes. Although the Adviser has implemented various measures 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, it may be necessary for the Adviser to make a significant investment to fix or replace them and to seek to remedy the effect of these issues. The failure of these systems and/or of disaster recovery plans for any reason could cause significant interruptions in the operations of the Adviser or its client accounts and result in a failure to maintain the security, confidentiality or privacy of sensitive data, including personal information.

*Risk Management Failures.* Although the Adviser attempts to identify, monitor and manage significant risks, these efforts do not take all risks into account and there can be no assurance that these efforts will be effective. Moreover, many risk management techniques, including those employed by the Adviser, are based on historical market behavior, but future market behavior may be entirely different and, accordingly, the risk management techniques employed on behalf of clients may be incomplete or altogether ineffective. Similarly, the Adviser may be ineffective in implementing or applying risk management techniques. Any inadequacy or failure in risk management efforts could result in material losses to clients.

*Systems and Operational Risk.* The Adviser relies heavily on certain financial, accounting, data processing and other operational systems and services that are employed by the Adviser and/or by third party service providers, including prime brokers, the third party administrator, market counterparties and others. Many of these systems and services require manual input and are susceptible to error. These programs or systems may be subject to certain defects, failures or interruptions. For example, the Adviser and its clients could be exposed to errors made in the confirmation or settlement of transactions, from transactions not being properly booked, evaluated or accounted for or related to other similar disruptions in the clients' operations. In addition, despite certain measures established by the Adviser and third party service providers to safeguard information in these systems, the Adviser, 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.

## **Item 9 – Disciplinary Information**

This Item is not applicable.

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

Each of the Funds [has and] may in the future enter into agreements (“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 the Funds, other investment vehicles or managed accounts; special withdrawal or redemption rights, including, but not limited to, a reduction or rebate in fees or withdrawal or redemption charges to be paid by the investor; a reduction in the management fee or incentive fee or allocation applicable to the investor or other modification in the terms of such fees; rights to receive reports 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 applicable Fund and such investors. The modifications are solely at the Adviser’s discretion and may, among other things, be based on the size of the investor’s investment, an agreement by an investor to maintain its investment for a significant period of time, or other similar commitment by an investor.

## **Item 11 – Code of Ethics**

The Adviser has adopted a Code of Ethics (the “Code”) that obligates the Adviser (or its principals, members or employees) to put the interests of the Adviser’s clients before its own interests and to act honestly and fairly in all respects in their dealings with clients. All of the Adviser’s principals and employees are also required to comply with applicable federal securities laws. Clients or prospective clients may obtain a copy of the Adviser’s Code by contacting Laura Kleber via e-mail at [lkleber@silverbackasset.com](mailto:lkleber@silverbackasset.com) or by telephone at (919) 969-4325. See below for further provisions of the Code as they relate to the preclearance and reporting of securities transactions by the Adviser’s personnel.

The Adviser’s Code of Ethics includes procedures designed to avoid or resolve any potential conflicts of interest in cases where the Adviser (or its principals, members or employees) buys or

sells securities recommended by the Adviser to clients. The Adviser (or its principals, members or employees) may make investments in securities in which the Clients also invest. Such practices present a conflict where, because of the information an Adviser has, the Adviser (or its principals, members or employees) is in a position to trade in a manner that could adversely affect clients (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 the Adviser's objectivity (or the objectivity of its principals, members or employees), these practices by the Adviser (or its principals, members or employees) may also harm clients by adversely affecting the price at which the clients' trades are executed. The Adviser has adopted the following procedures in an effort to minimize such conflicts: The Adviser's principals and employees generally may not trade for [their](#) own accounts, or the account of an affiliated party (an "Affiliated Account"), without the prior written consent of Mr. Bossen. Subject to certain exceptions, before an employee [effects](#) trades in certain types of securities, the employee must submit a Trade Preclearance Form that describes the following: (a) the name and type of security; (b) the reason for the purchase or sale; and (c) the type of transaction (e.g., buy, sell, short sale). Approval for each trade will only be granted if Mr. Bossen concludes that the transaction will not have any adverse economic impact on clients and will not present a conflict of interests with clients. A personal trade will be approved only for a specific period of time. The Chief Compliance Officer will review employee trades on a regular basis and will report to management any transactions that appear to be violations of the Adviser's Code of Ethics. In addition, employees are required to submit to the Chief Compliance Officer a list of all personal trading activity in which they have engaged during the prior quarter, or copies of account statements, by the 30<sup>th</sup> day following each quarter-end.

The Adviser's personnel (principals, members and employees) may have varying investment objectives and may employ investment techniques for themselves that differ from those employed by the Adviser for [its](#) clients. These different techniques, investment and tax considerations may not always be consistent with decisions made for the [Adviser's](#) clients. The Adviser's personnel may not buy or sell securities for their personal accounts where their decision is substantially derived, in whole or in part, by reason of [their](#) employment unless the information is also available to the investing public after reasonable inquiry.

The Adviser, 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 the Adviser or its personnel have invested or seek to invest on behalf of clients. The Adviser 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 is a client. The Adviser 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 the Adviser is meeting its obligations to clients and remains in compliance with applicable law. In certain circumstances, the Adviser 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 the Adviser will be prohibited from communicating such information to the client or using such information for the client's benefit. In such circumstances,

the Adviser will have no responsibility or liability to the client for not disclosing such information to the client (or the fact that the Adviser possesses such information), or not using such information for the client's benefit, as a result of following the Adviser's policies and procedures designed to provide reasonable assurances that it is complying with applicable law.

## **Item 12 – Brokerage Practices**

The Adviser has the authority to decide what securities are to be purchased and sold for the clients and the quantity of those securities to be purchased and sold.

The Adviser is authorized to determine the broker or dealer to be used for each securities transaction for the clients without obtaining specific client consent. The Adviser considers a number of factors in selecting brokers or dealers to execute transactions and determining the reasonableness of the broker-dealer's compensation. Such factors include, among others, financial stability of the broker-dealer; the actual executed price of the security and the broker-dealer's commission rates; research; custodial and other services provided by such broker-dealers that are expected to enhance the Adviser's general portfolio management capabilities; the size and type of the transaction; the difficulty of execution and the broker-dealer's ability to handle difficult trades; the operational facilities of the brokers and/or dealers involved (including back office efficiency); and the ability to handle a block order for securities and distribution capabilities. In selecting a broker-dealer to execute transactions (or series of transactions) and determining the reasonableness of the broker-dealer's compensation, the Adviser need not solicit competitive bids and does not have an obligation to seek the lowest available commission cost. It is not the Adviser's practice to negotiate "execution only" commission rates, thus clients may be deemed to be paying for research and other services provided by the brokers which are included in the commission rate. On at least an annual basis, the Chief Investment Officer, Chief Compliance Officer and other portfolio management staff if necessary will meet to evaluate the execution performance of brokers.

The Adviser may receive research or brokerage from a broker-dealer and/or a third party in connection with client securities transactions. This is known as a "soft dollar" relationship. The Adviser has no formal soft dollar arrangements in place to receive any specific research or brokerage services. To the extent the Adviser may enter into soft dollar arrangements in the future, the Adviser will limit the use of "soft dollars" to obtain research and brokerage services to services that constitute research and brokerage within the meaning of Section 28(e) of the Securities Exchange Act of 1934 ("Section 28(e)"). Research services within Section 28(e) may include, but are not limited to, research reports (including market research); certain financial newsletters and trade journals; software providing analysis of securities portfolios; corporate governance research and rating services; attendance at certain seminars and conferences; discussions with research analysts; meetings with corporate executives; consultants' advice on portfolio strategy; data services (including services providing market data, company financial data and economic data); advice from broker-dealers on order execution; and certain proxy services. Brokerage services within Section 28(e) may include, but are not limited to, services related to the execution, clearing

and settlement of securities transactions and functions incidental thereto (i.e., connectivity services between an adviser and a broker-dealer and other relevant parties such as custodians); trading software operated by a broker-dealer to route orders; software that provides trade analytics and trading strategies; software used to transmit orders; clearance and settlement in connection with a trade; electronic communication of allocation instructions; routing settlement instructions; post trade matching of trade information; and services required by the SEC or a self regulatory organization such as comparison services, electronic confirms or trade affirmations.

From time to time the Adviser may participate in capital introduction programs arranged by broker-dealers, including firms that serve as prime brokers to a private fund managed by the Adviser or recommend these private funds as an investment to clients. The Adviser may place client portfolio transactions with firms who have made such recommendations or provided capital introduction opportunities, if the Adviser determines that it is otherwise consistent with seeking best execution. In no event will the Adviser select a broker-dealer as a means of remuneration for recommending the Adviser or any other product managed by the Adviser (or an affiliate) or affording the Adviser with the opportunity to participate in capital introduction programs.

Concerning the allocation and aggregation of securities among advisory clients, the Adviser's basic policy is that all clients should be treated fairly and that, to the extent possible, all clients should receive equivalent treatment.

In the event that, the Adviser enters a simultaneous trade order in a given security with a single broker for groups of its clients, each participating client will be allocated securities on an average price basis for all the Adviser's transactions in that security for that trade order on a given day and transaction costs will be shared pro rata based on each client's participation in the transaction. When allocating any purchases or sales of securities among clients the Adviser will take into account a number of factors determined to be relevant to the fair allocation of securities. (See Item 16.)

### Item 13 – Review of Accounts

The investment team, led by Elliot Bossen and Robert Barron, review the investments in the portfolios of the Clients (i.e., the Funds and the Accounts) on a regular basis for soundness of opportunity and risk/reward profile in light of current market conditions on an ongoing basis.

Investors in the Funds receive account statements on a monthly basis which provide monthly performance and the net asset value of the applicable Fund in which they have invested. Investors also receive unaudited reports of the performance of the applicable Fund at least quarterly and audited year-end financial statements of the applicable Fund annually.

Each Account receives reports in accordance with the requirements of its advisory agreement.

## Item 14 – Client Referrals and Other Compensation

This Item is not applicable.

## Item 15 – Custody

The Adviser is deemed to have custody of client assets and intends 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

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

Unless otherwise instructed or directed by a discretionary client, the Adviser has the authority to determine (i) the securities to be purchased and sold for the client account (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 the client account. Because of the differences in client investment objectives and strategies, risk tolerances, tax status and other criteria, there may be differences among clients in invested positions and securities held. The Adviser may consider the following factors, among others, in allocating securities among clients: (i) client investment objectives and strategies; (ii) client risk profiles; (iii) tax status and restrictions placed on a client's portfolio by the client or by applicable law; (iv) size of the client account; (v) nature and liquidity of the security to be allocated; (vi) size of available position; (vii) current market conditions; and (viii) account liquidity, account requirements for liquidity and timing of cash flows. Although it is the Adviser's policy to allocate investment opportunities to eligible client accounts with the same or substantially similar investment mandates or strategies on an equitable and a pro rata basis (based on the value of the assets of each participating account relative to value of the assets of all participating accounts) when applicable, these factors may lead the Adviser to allocate securities to client accounts in varying amounts. Even client accounts that are typically managed on a pari passu basis may from time to time receive differing allocations of securities because of these factors.



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

Securities acquired by the Adviser for its clients through a limited offering will be allocated pursuant to the procedures set forth in the Adviser's allocation policy. The policy provides that the Adviser 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 client 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.

The Adviser may effect cross transactions between discretionary client accounts, except as otherwise noted below. Cross transactions enable the Adviser to affect a trade between two clients 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. The Adviser has a potentially conflicting division of loyalties and responsibilities regarding both parties to cross transactions. Cross transactions between client accounts are not permitted if they would constitute principal trades or trades for which the Adviser or its affiliates are compensated as a broker unless client consent has been obtained based upon written disclosure to the client of the capacity in which the Adviser or its affiliates will act. In addition, cross transactions are not permitted for benefit plan or other similar accounts that are subject to ERISA.

If it appears that a trade error has occurred, the Adviser will review the relevant facts and circumstances to determine an appropriate course of action. To the extent that trade errors occur, the Adviser's [policy](#) is to ensure that clients are treated fairly, provided that in the case of a particular Client, the Adviser must rectify the error in a manner that would not disadvantage the Client or benefit the Adviser in any way. The Adviser has discretion to resolve a particular error in any appropriate manner that is consistent with the above stated policy. In the event that a client account incurs a trade error as a result of the Adviser's willful malfeasance, bad faith or gross negligence, trade errors will be corrected by the Adviser as soon as practicable, in a manner such that the client incurs no loss. Trade errors that result other than by breach of the standard of care above are generally borne by the client account, except as otherwise agreed between the Adviser and the relevant Client.

[To the extent the Adviser has authority, pursuant to the investment management agreement or other governing documents of a client account, to participate in class action claims \(each, a "Claim"\) it will do so on a case-by-case basis. Once the Adviser receives a Claim, the Adviser, or its designee with the assistance of a third-party service provider retained to process Claims, will determine whether any clients or former clients of the Adviser owned the security during the period covered](#)

by the Claim. Appropriate personnel of the Adviser or the Adviser's designee will determine whether they agree with the basis of the Claim and whether or not to participate in the Claim depending upon (i) the nature of the Claim; (ii) prospects for recovery; (iii) resources required to pursue the Claim; (iv) other relevant factors pertaining to the particular Claim; and (v) any other factors that the Adviser deems relevant. To the extent the Adviser receives proceeds from a Claim on behalf of a client, including a private fund, the Adviser's general policy is that only current clients or private fund investors at the time of receipt of the proceeds will participate in the proceeds. The Adviser may under certain circumstances elect not to participate in the proceeds of a Claim.

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

Because of the nature of the Adviser's investment strategies, the Adviser does not often hold (i.e. buy long) voting equity securities on behalf of clients. Nevertheless, the Adviser has adopted Proxy Voting Policies and Procedures ("Procedures") that are designed to ensure that when it does vote proxies for client securities, the Adviser votes in the best interests of its clients. The Procedures require that the Adviser identify and address conflicts of interest between the Adviser and its clients. If a material conflict of interest exists, the Adviser will determine whether voting in accordance with the guidelines set forth in the Procedures is in the best interests of the client or to take some other appropriate action.

The Adviser will abstain from voting or affirmatively decide not to vote if the Adviser determines that abstention or not voting is in the best interests of the client. In making this determination, the Adviser 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. The Adviser may determine not to vote proxies relating to securities in which clients have no position as of the receipt of the proxy (for example, when the Adviser has sold, or has otherwise closed, a client position after the proxy record date but before the proxy receipt date).

The Adviser generally votes in favor of routine corporate housekeeping proposals, such as electing directors and selection of auditors. For all other proposals, the Adviser will determine whether a proposal is in the best interests of its clients and may take into account the following factors, among others: (i) whether the proposal was recommended by management and the Adviser'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.

Clients may obtain a copy of the Adviser's Procedures and information about how the Adviser voted a client's proxies by contacting Laura Kleber by telephone at (919) 969-4325 or via e-mail (lkleber@silverbackasset.com).

**Item 18 – Financial Information**

This Item is not applicable.

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