

## Harvey Partners, LLC

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This Brochure provides information about the qualifications and business practices of Harvey Partners, LLC ("**Harvey**"). If you have any questions about the contents of this Brochure, please contact Anthony Cimini, the Chief Compliance Officer ("**CCO**"), at (212) 782-3740 or at [anthony@harveypartners.com](mailto:anthony@harveypartners.com). The information in this Brochure has not been approved or verified by the United States Securities and Exchange Commission ("**SEC**") or by any state securities authority.

Registration of an investment adviser does not imply that Harvey or any of its principals or employees possesses a particular level of skill or training in the investment advisory business or any other business.

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

**Item 2: Material Changes**

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We have no material changes to report since our previous Form ADV annual updating amendment dated March 15, 2019.

We will further provide you with a new Brochure as necessary based on changes or new information, at any time, without charge.

Currently, our Brochure may be requested by contacting Anthony Cimini, Harvey's CCO at (212) 782-3740 or [anthony@harveypartners.com](mailto:anthony@harveypartners.com).

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**Item 4: Advisory Business**

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Formed in January 2006, Harvey Partners, LLC (“**Harvey**”, the “**Adviser**”, “**we**”, “**us**”, “**our**” or the “**Firm**”) is a Delaware limited liability company that provides investment management services to Harvey SMidCap Fund, LP, Harvey QP, LP, Harvey SMidCap Offshore Fund, Ltd., and Harvey Master Fund, LP (collectively, the “**Funds**”). We provide advice to the Funds based on specific investment objectives and strategies and do not tailor advisory services to the individual needs of individual investors.

Harvey QP, LP (the “**Onshore Feeder Fund**”) is a domestic fund formed in Delaware whose investors are generally U.S. taxable individuals and entities. Harvey SMidCap Offshore Fund, Ltd. (the “**Offshore Feeder Fund**”) is a fund formed in the Cayman Islands, whose investors are generally foreign individuals and entities or U.S. tax-exempt investors. The assets of the Onshore Feeder Fund and the Offshore Feeder Fund are invested in Harvey Master Fund, LP (the “**Master Fund**”).

In addition to advising the Master Fund, Harvey is also the advisor to the Harvey SMidCap Fund, LP, (the “**Domestic Fund**”) a domestic fund, formed in Delaware. Series L of the Domestic Fund will participate in substantially all of the investments made by the Domestic Fund other than short positions.

In managing the Master Fund and the Domestic Fund, Harvey invests significantly all of its assets in global equity securities. The Master Fund and the Domestic Fund are managed on a pari passu basis.

Harvey also advises a Separately Managed Account (the “**SMA**”) for an institutional client.

In addition to the Funds and the SMA, Harvey advises a non-discretionary Separately Advised Account for an institutional client (the “**SAA**”) whereby Harvey provides the SAA client with certain trade files of the Domestic Fund after each trading day. The SAA client reserves the right to trade based on the trade files provided by Harvey. The SAA client is responsible for its own trades and must provide Harvey with a list of the trades in the SAA.

In the future, we may provide discretionary and/or non-discretionary investment advice to other private investment funds and/or separately managed accounts (collectively with the Funds and the SAA, “**Clients**”).

The Firm is wholly owned and controlled by Jeffrey C. Moskowitz and James A. Schwartz (the “**Managing Members**”).

Katal Partners, LLC is the general partner of the Onshore Feeder Fund, the Master Fund and the Domestic Fund (the “**Fund General Partner**”). Like Harvey, the Fund General Partner is wholly owned by Mr. Moskowitz and Mr. Schwartz. The Fund General Partner is a relying adviser pursuant to the SEC’s no-action guidance and the Instructions to Form ADV. Unless and only to the extent that the context otherwise requires, references to “Harvey,” “we,” “us,” “our” or the “Firm” herein are deemed to include references to the Fund General Partner.

As of December 31, 2019, the Firm managed approximately \$197,423,000 in regulatory assets under management (“**RAUM**”), all of which is managed on a discretionary basis.

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**Item 5: Fees and Compensation**

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Harvey receives fees for investment management services based on the net assets of the Fund, as disclosed in each Fund's offering memorandum. An annual management fee of 1% or 1.5%, based on the liquidity of the investor's share class or series, is calculated and payable quarterly in advance. Harvey or its affiliate is also entitled to an incentive fee or allocation that ranges from 17.50% to 20% of the annual net profits allocable to an investor's capital account (or shares). For Series L interests, Harvey is entitled to an incentive allocation equal to 15% of the outperformance of the relevant index. While the management fee and incentive fee are generally not negotiable, Harvey or its affiliate may waive or reduce the management fee or the incentive allocation, as applicable, to be paid by investors that are members, principals, employees or affiliates of Harvey, relatives of such persons and certain large or strategic investors.

The SAA and any separately managed accounts that we may manage will be charged fees on a case-by-case basis, which may include management fees and/or performance-based compensation. The expenses that are charged to the SAA and any separately managed accounts that we may manage are negotiated on a case-by-case basis. The compensation received from the SAA is for the sole benefit of Harvey and does not offset the fees or expenses paid by the Funds (or any other Client of Harvey) in any way.

**Expenses**

We will be responsible for and will pay or cause to be paid the following overhead expenses: office rent; utilities; furniture and fixtures; stationary, secretarial/internal administrative services; salaries; entertainment expenses; employee insurance and payroll taxes.

All other expenses will be paid by the Funds and will include: the management fee; legal, compliance, audit, and accounting expenses (including third party accounting services); administrator fees and expenses; organizational expenses; investment expenses such as commissions, research fees and expenses; order management systems; partnership related insurance costs; interest on margin accounts and other indebtedness; borrowing charges on securities sold short; custodial fees; and any other expenses related to the purchase, sale or transmittal of partnership assets.

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**Item 6: Performance-Based Fees and Side-By-Side Management**

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Harvey is entitled to receive an annual incentive allocation or fee as described in Item 5. Performance-based compensation with respect to the Funds will conform to Rule 205-3 under the Investment Advisers Act of 1940, as amended (the "**Advisers Act**"), to the extent applicable.

The terms of the performance-based compensation that we receive may differ between the various Funds that we advise. This may result in a conflict of interest when we allocate opportunities among these Funds because we will have an incentive to favor an account that pays higher performance-based compensation. To avoid such a conflict of interest we generally follow documented procedures in allocating opportunities among such Funds, which do not take into account the performance-based compensation to which such accounts are subject. Clients of Harvey and investors in the Funds are urged to review their respective investment management agreements and Fund offering documents, as applicable, as well as this brochure, for complete information on the fees, compensation and expenses applicable to them.

Performance based compensation arrangements such as the incentive allocation may create an incentive for us to recommend investments which may be riskier or more speculative than those which would be recommended under a different compensation arrangement.

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

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The Firm's clients are the Funds, the SMA, and the SAA. Investors in the Funds consist primarily of institutional investors and high net worth individuals. Depending on whether the Fund advised by us relies on a 3(c)(1) or 3(c)(7) exemption, investors must meet the requirements for an "accredited investor" under the Securities Act of 1933, as amended (the "**1933 Act**") or an "accredited investor" and a "qualified purchaser" under the Investment Company Act of 1940, as amended (the "**Investment Company Act**").

The minimum investment routinely required to invest in the Funds is U.S. \$1,000,000. The subsequent minimum additional investment routinely required by investors is U.S. \$250,000. The General Partner reserves the right to reduce the minimum investment.

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

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#### ***Methods of Analysis and Investment Strategy***

The Funds primarily invest in stocks, options, ETFs and swaps and are focused on the U.S. markets. We combine active money management with innovative fundamental research to provide investors with superior absolute and relative returns. We generally pursue a fundamentally driven, value oriented long/short equity strategy where investment research, portfolio management, and trading skills are focused where stock market inefficiencies are greatest: small and mid-cap stocks.

We use a value oriented approach focusing on companies with identifiable catalysts, both on the long and short side. The portfolios generally consist of small and mid-cap stocks with market caps of U.S. \$250 million - \$5 billion. The maximum investment in longs is approximately 8% of capital at cost, 12% at market. The maximum investment in shorts is approximately 3% of capital at cost, 4% at market. The target net exposure is -20% - +60%. The target gross exposure is 100% - 140%. The position targets are 25-35 long positions and 20-30 short positions.

We rely on our trading skills and agility to augment existing fundamental positions as circumstances dictate. We add to positions if market volatility creates opportunities. We decrease positions as shares approach their price targets. By managing position size actively, we are able to achieve the best price and entry points.

Our stock picking process begins with filtering out the best ideas from trade shows, proprietary screens and newsworthy, catalyst provoking events. We then do our due diligence on the selected names, digging deeper into its financial models.

Our investment strategy has been designed to play to our strengths. Fundamental research gives us an advantage. Our trading experience and successful history with risk management gives us an edge in the execution of our strategy. Well researched, core fundamental positions combined with opportunistic trading and risk management will enable us to capture maximum upside gains and protect the downside to the fullest.

We may modify the investment objectives and strategies of the Funds at any time. Our right to modify their strategies depends upon the terms of the agreements governing such accounts and vehicles.

### ***Risk of Loss Factors***

Investing in securities involves risk of loss that investors should be prepared to bear. The following list of risk factors does not purport to be a complete enumeration or explanation of the risks involved in an investment in the Funds. Prospective investors are urged to consult their professional advisers and review the legal documents for each particular Fund before deciding to make an investment in a Fund.

#### *Nature of Investments*

We have broad discretion in making investments for the Funds. Investments will generally consist of U.S. equity securities and other assets that may be affected by business, financial market or legal uncertainties. There can be no assurance that we will correctly evaluate the nature and magnitude of the various factors that could affect the value of and return on investments. Prices of investments may be volatile, and a variety of factors that are inherently difficult to predict, such as domestic or international economic and political developments, may significantly affect the results of the Funds' activities and the value of their investments.

In addition, the value of the Funds' portfolios may fluctuate as the general level of interest rates fluctuates. No guarantee or representation is made that the Funds' investment objectives will be achieved.

#### *Use of Leverage*

The Funds may utilize leverage. This results in the Funds controlling substantially more assets than they have equity. Leverage increases the Funds' returns if they earn a greater return on investments purchased with borrowed funds than the Funds' cost of borrowing such funds. However, the use of leverage exposes the Funds to additional levels of risk, including: (i) greater losses from investments than would otherwise have been the case had the Funds not borrowed to make the investments; (ii) margin calls or interim margin requirements which may force premature liquidations of investment positions; and (iii) losses on investments where the investment fails to earn a return that equals or exceeds the Funds' cost of borrowing such funds. In the event of a sudden, precipitous drop in value of the Funds' assets, they might not be able to liquidate assets quickly enough to repay their borrowings, further magnifying losses.

#### *Special Situations*

The Funds may invest in companies involved in (or the target of) acquisition attempts or tender offers or in companies involved in or undergoing work-outs, liquidations, spin-offs, reorganizations, bankruptcies or other catalytic changes or similar transactions. In any investment opportunity involving any such type of special situation, there exists the risk that the contemplated transaction either will be unsuccessful, will take considerable time or will result in a distribution of cash or a new security the value of which will be less than the purchase price to the Funds of the security or other financial instrument in respect of which such distribution is received. Similarly, if an anticipated transaction does not in fact occur, the Funds may be required to sell their investment at a loss. Because there is substantial uncertainty concerning the outcome of transactions involving financially troubled companies in which the Funds may invest, there is a potential risk of loss by the Funds of their entire investment in such companies.

*Small-to-Medium Capitalization Companies*

The Funds invest a substantial portion of their assets in the stocks of companies with small-to medium-sized market capitalizations. While we believe these investments often provide significant potential for appreciation, those stocks, particularly smaller capitalization stocks, involve higher risks in some respects than do investments in stocks of larger companies. For example, prices of such stocks are often more volatile than prices of large-capitalization stocks. In addition, due to thin trading in some such stocks, an investment in these stocks may be more illiquid than that of larger capitalization stocks.

*Short Sales*

The Funds utilize short sales of common stocks, bonds, and options as part of their investment program. Short sales can, in certain circumstances, substantially increase the impact of adverse price movements on the Funds' portfolios. A short sale involves the risk of a theoretically unlimited increase in the market price of the particular investment sold short, which could result in an inability to cover the short position and a theoretically unlimited loss. There can be no assurance that securities necessary to cover a short position will be available for purchase.

There is also the risk that the securities borrowed by the Funds in connection with a short sale must be returned to the securities lender on short notice. If a request for return of borrowed securities occurs at a time when other short sellers of the security are receiving similar requests, a "short squeeze" can occur, and the Funds may be compelled to replace borrowed securities previously sold short with purchases on the open market at the most disadvantageous time, possibly at prices significantly in excess of the proceeds received in originally selling the securities short. The Funds' inability to continue to borrow securities previously sold short may also force the Funds to unwind other elements of an investment position, possibly at a loss.

*Limited Rights of Investors*

Substantially all decisions with respect to the management of the Funds are made exclusively by us. Investors have no right or power to take part in the management of the Funds. We also make all of the trading and investment decisions of the Funds. In the event of our withdrawal or bankruptcy, generally the Funds will be liquidated.

*Market Disruption and Geopolitical Risk*

Clients are subject to the risk that war, terrorism, pandemics (including, without limitation, COVID-19) and related geopolitical events may lead to increased short-term market volatility and have adverse long-term effects on the U.S. and world economies and markets generally, as well as adverse effects on issuers of securities and the value of a Client's investments. These events, as well as other changes in U.S. and non-U.S. economic and political conditions, also could adversely affect individual issuers or related groups of issuers, securities markets, interest rates, credit ratings, inflation, investor sentiment and other factors affecting the value of a Client's investments.

*Business Continuity and Disaster Recovery*

Harvey's business operations may be vulnerable to disruption in the case of catastrophic events such as fires, natural disaster (e.g., tornadoes, floods, hurricanes and earthquakes), terrorist attacks or other circumstances resulting in property damage, network interruption



and/or prolonged power outages. Although the Firm has implemented measures to manage risks relating to these types of events, there can be no assurances that all contingencies can be planned for.

#### *Cyber Security Breaches and Identity Theft*

Harvey and our service providers' information and technology systems may be vulnerable to damage or interruption from computer viruses, network failures, computer and telecommunication failures, infiltration by unauthorized persons, other security breaches and/or usage errors by their respective professionals. The techniques used to obtain unauthorized access to data, disable or degrade service, or sabotage systems change frequently and may be difficult to detect for long periods of time. Hardware or software acquired from third parties may contain defects in design or manufacture or other problems that could unexpectedly compromise information security.

Although Harvey has implemented, or expect to implement, measures 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, Harvey and/or our service providers may have to make a significant investment to fix or replace them. The failure of these systems for any reason could cause significant interruptions in our operations and/or a failure to maintain the security, confidentiality or privacy of sensitive data, including personal information relating to investors (and the beneficial owners of investors). Such a failure could harm the reputation of the Firm, subject any such entity and their respective affiliates to legal claims and/or otherwise affect their business and financial performance. Specifically, cyberattacks and the failure of such systems may interfere with the processing of Limited Partner subscriptions or withdrawals, impact the partnership's ability to value its assets, cause the release of confidential information and/or subject the partnership to regulatory fines, penalties or financial losses, reimbursement or other compensation costs, and/or additional compliance costs. The partnership also may incur substantial costs for cyber-security risk management to prevent any cyber incidents in the future. The partnership and the limited partners could be negatively impacted as a result.

#### *Trading in the SAA*

Harvey provides the SAA client with certain trade files of the Domestic Fund. Harvey does not have discretion over trading in the SAA. The SAA client reserves the right to trade based on the trade files provided by Harvey. All trade execution in the SAA will be done by the institutional SAA client and Harvey will be provided with a list of trades in the SAA. Although the SAA client has indicated that it intends to trade in the same direction as the trades executed in the Domestic Fund by Harvey, there could be instances where the SAA client trades in the opposite direction of the Domestic Fund and could thereby negatively impact the price of certain securities in the Domestic Fund.

### **Item 9: Disciplinary Information**

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We have not been subject to any disciplinary action, whether criminal, civil or administrative (including regulatory) in any jurisdiction. Likewise, no persons involved in the management of the Firm have been subject to any such action.

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

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The management and employees of Harvey plan to dedicate substantially all of their professional efforts to Harvey and our affiliates, and currently have no significant outside business interests.

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

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***Participation or Interest in Client Transactions***

We serve as the investment adviser to the Funds. Employees, affiliates of the employees, and relatives of the employees may make investments in the Funds.

***Code of Ethics & Personal Trading***

Pursuant to Rule 204A-1 of the Advisers Act, we have adopted a Code of Ethics and Employee Investment Policy that establishes various procedures with respect to investment transactions in accounts in which employees of Harvey or related persons have a beneficial interest or accounts over which an employee has investment discretion.

The foundation of the Code of Ethics is based on the underlying principles that:

- Employees must at all times place the interests of the clients first;
- Employees must make sure that all personal securities transactions are conducted consistent with the Employee Investment Policy; and
- Employees should not take inappropriate advantage of their position at Harvey.

In general, employees are not permitted to trade securities in their personal accounts. In addition, employees may not acquire securities for their own account in an initial public offering. Employees must also obtain pre-approval from the CCO before engaging in any outside business activities or private placements.

These policies apply to any personal transactions involving equity, debt, options, futures (or municipal products related to these securities). This policy does not apply to transactions involving government securities or open-end mutual funds, exchange traded funds (ETFs) or other instruments which afford the investor no discretion over individual securities transactions.

All employees must direct their brokers to send duplicate copies of brokerage statements to the CCO. These records are used to monitor compliance with the foregoing policies.

Our Code of Ethics, including the Employee Investment Policy, is available to clients upon request.

***Principal Trading***

The Firm, its principals and employees do not purchase or sell any securities for their own accounts to or from its clients. However, subject to investment guidelines and restrictions applicable to the Funds, we may affect rebalancing or internal cross transactions between the Funds. In such cases, one Fund will purchase securities held by another Fund. We intend to affect these transactions at all times in a manner which is consistent with our valuation policy

and procedures. We affect these transactions based on the closing price of the security on the last business day of the month.

Neither the Firm nor any related party receives any compensation in connection with these rebalancing transactions. To the extent that such transactions could be viewed as principal transactions due to the ownership interest in a Fund by the Firm and its personnel, Harvey complies with the requirements of Section 206(3) of the Advisers Act, including that the Firm will notify an independent representative of the Fund in writing of the transaction and obtain the consent of the independent representative.

### ***Privacy Policy***

We are committed to maintaining the confidentiality, integrity and security of our Investor's personal information. It is our policy to collect only information necessary or relevant to our management business and use only legitimate means to collect such information. We do not disclose any non-public personal information about our investors or former investors to anyone except for servicing and processing transactions and as required by law. We restrict access to non-public personal information about investors to those employees with a legitimate business need for the information. Harvey maintains security practices, physical, electronic, and procedural safeguards to guard Investor's non-public personal information.

Upon request, we will provide you with a copy of our written privacy policy and procedures.

## **Item 12: Brokerage Practices**

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As an adviser and a fiduciary to our Clients, our Clients' interests must always be placed first and foremost, and our trading practices and procedures prohibit unfair trading practices and seek to disclose and avoid any actual or potential conflicts of interests or resolve such conflicts in the Client's favor. We have adopted the following policies and practices to meet our fiduciary responsibilities and to ensure our trading practices are fair to all Clients and that no Client is advantaged or disadvantaged over any other.

### ***Aggregation and Allocation***

There are no specific statutory provisions or rules adopted under the federal securities laws applicable to trade aggregation or allocation. Rather, as a matter of fiduciary duty, advisers must ensure that, when aggregating and allocating securities investments, clients are treated in a fair and equitable manner, as is generally required under the Advisers Act.

To the extent that a portfolio manager seeks to acquire the same security at the same time for more than one client account, it may not be possible to acquire or sell a sufficiently large quantity of the security, or the price at which the security is obtained for clients or different funds may vary.

Our policy is to equitably allocate and buy and sell executions among clients when feasible and appropriate over time and in a manner that our proprietary accounts, affiliated accounts, or any particular client(s) do not receive more favorable treatment than others.

Our aggregation and allocation policies are fully disclosed in the private placement memoranda for the Funds.

**Best Execution**

As an investment advisory firm, we have a fiduciary duty to seek best execution for client transactions. As a matter of policy and practice, we seek to obtain best execution for client transactions, i.e., seeking to obtain not necessarily the lowest commission but the best overall qualitative execution in the particular circumstances.

In selecting an appropriate broker-dealer to effect a client trade, Harvey seeks to obtain “best execution,” meaning generally the execution of a securities transaction for a client in such a manner that a client’s total costs or proceeds in the transaction are most favorable under the circumstances. Accordingly, in seeking best execution, Harvey takes into consideration the price of a security offered by the broker-dealer, as well as a broker-dealer’s full range and quality of their services including, among other things, their facilities, reliability and financial responsibility, execution capability, commission rates, responsiveness to Harvey, brokerage and research services provided to Harvey (e.g., research ideas, analysis, and investment strategies), special execution and block positioning capabilities, clearance, and settlement and custodial services.

**Soft Dollars**

We use “soft dollars” generated by our clients’ trading activities to purchase research services or products that would otherwise have been an expense of the Firm. We intend to keep any such arrangements within the parameters of Section 28(e) of the United States Securities Exchange Act of 1934, as amended.

**Trade Errors**

As a fiduciary, we have the responsibility to effect orders correctly, promptly and in the best interests of our clients. In the event any error occurs in the handling of any client transactions, due to our actions, or inaction, or actions of others, our policy is to assess each trade error on a case-by-case basis.

**Item 13: Review of Accounts**

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**Review of Accounts**

The Funds are reviewed and reconciled on a daily basis by the Portfolio Manager and our operations group to assure conformity with investment objectives and guidelines.

We engage in active management and frequent transactions for the Funds and, accordingly, review our transactions, positions and cash balances on a daily basis.

Financial statements are audited by an independent auditor and are distributed on an annual basis.

**Reporting**

As soon as practicable after the end of each year, we will distribute an audited financial report for each Fund with respect to the previous fiscal year to all investors within 120 days of year-end. In addition, each Fund will generally distribute net asset value updates and performance reports with attribution analysis on a monthly basis.

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

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Rule 206(4)-3 of the Advisers Act permits registered investment advisers to pay referral fees to finders and solicitors. We may from time to time, pay referral fees to finders or solicitors for obtaining new advisory clients. In such cases, our CCO reviews all solicitor fee arrangements to ensure that they comply with the requirements set forth under our compliance policies and determine whether the solicitation agreement is subject to and complies with applicable regulations.

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**Item 15: Custody**

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We will comply with the requirements of the Rule 206(4)-2 of the Advisers Act with regards to custody of assets of the Funds ("**Custody Rule**"). Harvey does not have custody of the assets of the SMA and the SAA.

We currently use Morgan Stanley & Co. LLC, and Northern Trust Securities, Inc., as our custodians. Through this arrangement, Morgan Stanley & Co. LLC, and Northern Trust Securities, Inc., will provide among other things, clearing, custodial and record keeping services. Annually, upon completion of each Fund's annual audit, Harvey will distribute the audited financials to the investors. In addition, Harvey will provide copies of the K-1s for the limited partners in the Domestic Funds.

The CCO shall ensure that the Funds' audited financials are delivered to all investors within 120 days of the fiscal year end.

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**Item 16: Investment Discretion**

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Harvey has full discretionary authority to manage the Funds and the SMA, including authority to make decisions with respect to which securities are bought and sold, the amount and price of those securities, the brokers or dealers to be used for a particular transaction, and the commissions paid. Harvey's authority is limited by its own internal policies and procedures and each Fund's investment guidelines. These terms are set out in the Confidential Private Placement Memorandum for each Fund.

Harvey does not have investment discretion over the SAA.

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**Item 17: Voting Client Securities**

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**Proxy Voting**

We vote proxies as we deem necessary on a case-by-case basis. Prior to voting a proxy, the relevant employees of Harvey will make a determination, in their opinion, as to what vote if any, is in the best interest of the Funds. We maintain written records of the proxy vote on each occasion a proxy is voted.

Upon request, we will provide a client with a copy of our proxy voting policies and procedures and/or a record of all proxy votes cast.

**Item 18: Financial Information**

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Registered investment advisers are required in this Item to provide you with certain financial information or disclosures about Harvey's financial condition. Harvey has no financial commitment that impairs its ability to meet contractual and fiduciary commitments to clients and has not been the subject of a bankruptcy proceeding.