

# Hercules Adviser LLC Part 2A of Form ADV Brochure

400 Hamilton Avenue  
Palo Alto, CA 94301

[www.htgc.com](http://www.htgc.com)

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This brochure provides information about the qualifications and business practices of Hercules Adviser LLC (the "Adviser"). If you have any questions about the contents of this brochure, please contact us at 650-289-3060. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission (the "SEC") or by any state securities authority. Registration as an investment adviser does not imply any level of skill or training.

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

**Item 2            Material Changes**

Not applicable.

## **Important Note about this Brochure**

### ***This Brochure is not:***

- ***an offer or agreement to provide advisory services to any person***
- ***an offer to sell interests (or a solicitation of an offer to purchase interests) in any investment vehicle***
- ***a complete discussion of the features, risks or conflicts associated with any investment vehicle or advisory service***

*As required by the Investment Advisers Act of 1940, as amended ("Advisers Act"), the Adviser provides this Brochure to current and prospective clients and can also, in its discretion, provide this Brochure to current or prospective investors in an investment vehicle, together with other relevant documents, such as the investment vehicle's offering or private placement memorandum, organizational documents and related transaction documents, as applicable, prior to, or in connection with, such persons' investment. Additionally, this Brochure is available through the SEC's Investment Adviser Public Disclosure website.*

*Although this publicly available Brochure describes investment advisory services and products of the Adviser, persons who receive this Brochure (whether or not from the Adviser) should be aware that it is designed solely to provide information about the Adviser as necessary to respond to certain disclosure obligations under the Advisers Act. As such, the information in this Brochure could differ from information provided in relevant documents. More complete information about each investment vehicle is included in relevant documents, certain of which are provided to current and eligible prospective investors only by the Adviser. To the extent that there is any conflict between discussions herein and similar or related discussions in any applicable relevant documents, such relevant documents shall govern and control.*

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

The Adviser was formed on May 26, 2020. The Adviser is an indirect wholly-owned subsidiary of Hercules Capital, Inc. ("Hercules Capital"). Hercules Capital is an internally managed, non-diversified closed-end investment company that has elected to be regulated as a business development company ("BDC") under the Investment Company Act of 1940, as amended (the "1940 Act"). Hercules Capital is a specialty finance company focused on providing senior secured loans to high-growth, innovative venture capital-backed companies in a variety of technology, life sciences and sustainable and renewable technology industries.

The Adviser does not currently have any clients or any assets under management. The Adviser expects to provide investment management services on a discretionary basis to, without limitation, private funds, registered investment companies, business development companies, or other pooled investment vehicles and institutional investors (through separately managed accounts) (each a "Client" and collectively "Clients") that invest primarily in debt securities ("Assets").

Except as otherwise described herein, Client Assets will be managed in accordance with the particular investment objectives, strategies, restrictions and guidelines set forth in each Client's investment advisory agreement, fund offering materials, supplemental risk and conflicts of interest disclosures, and any other relevant agreements such as a Client's organizational documents and/or financing transaction documents, as applicable ("Client Governing Documents"), which will be made available to investors through the Adviser or another authorized party. Other than for Clients selecting a separately managed account, the Adviser will not generally tailor its advisory services to the needs of individual investors. At inception of a pooled investment vehicle, however, specific investment criteria are expected to be established for the Client which may be established in consultation with prospective investors. Prior to investing in a Client, prospective investors should review Client Governing Documents to confirm the suitability of an investment in a Client based on the investor's particular circumstances.

As of the date of this Brochure, the Adviser manages \$0 on a discretionary basis and \$0 on a non-discretionary basis.

#### **Item 5            Fees and Compensation**

As compensation for the services received, Clients will generally pay a management fee based on the value of the Client's portfolio. In addition, Clients could pay performance fees (as described in Item 6, below). All management fees for Clients that are pooled investment vehicles will be established in connection with the formation of the Client and for Clients that are separately managed accounts, will be specifically negotiated with each Client. The Adviser does not expect to have set fee schedules. Management and performance fees are calculated and paid in accordance with Client Governing Documents, but are expected to generally be payable quarterly in arrears.

Asset-based management fees can create conflicts of interest when the Adviser controls the timing and the amount of leverage, if any, used by a Client, since the use of leverage will provide additional capital to such Client enabling such Client to increase the amount of loans it acquires, thus increasing the base against which the Adviser's management fees will be calculated with a corresponding increase to the amount of management fees the Adviser will be entitled to receive.

This opportunity to earn higher fees could give the Adviser an incentive to allocate investment opportunities based on a Client's use of leverage. The Adviser will seek to mitigate this conflict through an allocation policy (as described in Item 11) that prohibits the Adviser from making allocation decisions favoring clients that generate higher fees (including management fees or performance compensation).

In addition, the Adviser may, from time to time, incur certain Client-related administrative and operational expenses that could be subject to reimbursement by Clients. Any such reimbursement will be made pursuant to Client Governing Documents.

Hercules Capital underwrites, originates, and invests in loans to technology-related industries including technology, drug discovery and development, biotechnology, life sciences, healthcare, and sustainable and renewable technology. It is expected that certain loans that are appropriate for Hercules Capital will also be appropriate for Clients, and Clients could invest in the same loans in which Hercules Capital invests. Hercules Capital receives and Clients could receive compensation from related loan obligors (*i.e.*, each borrower or guarantor of a loan) or otherwise receive fees or compensation in connection with such loans. Fees and compensation currently retained by Hercules Capital include, but are not limited to, commitment, origination, facility, agent and/or other fees for services provided by Hercules Capital in connection with such loans. Such fees or compensation received by Hercules Capital are not expected to be offset by the Adviser against management or incentive fees that will be paid by any Clients to the Adviser for investment management services.

Hercules Capital's receipt of fees for services with respect to loans that could be acquired by Clients represents a conflict of interest to the extent that Hercules Capital would have an economic incentive to underwrite, originate and invest, and recommend or cause Clients to invest in, such loans. The Adviser seeks to mitigate this conflict through an investment allocation policy (as described in Item 11).

## **Item 6            Performance Based Fees and Side-by-Side Management**

As discussed in Item 5, above, the Adviser could receive performance fees from certain Clients. Performance fees can provide an incentive for the Adviser to select or recommend investments for Clients paying such fees that are more risky or speculative than those that would be recommended under a different fee arrangement. Because compensation arrangements will be established or negotiated with each Client, the nature and calculation methodology for compensation the Adviser receives from one Client are expected to differ from that of another Client and the type and amount of compensation paid by Clients will differ. The presence of performance fee arrangements for some Clients but not others, and differences in how performance fees are calculated, would create an incentive for the Adviser to favor Clients that pay higher performance fees over those that pay no or lesser performance fees. For example, the Adviser would have an incentive to allocate investments it believes will perform more favorably to Clients with higher performance fees. The

Adviser will seek to mitigate this conflict through its allocation policy (as described in Item 11, below), which will not permit the Adviser to make allocation decisions to generate higher fees.

## **Item 7           Types of Clients**

The Adviser does not currently have any clients. Clients are expected to generally consist of discretionary accounts managed for (i) privately placed pooled investment vehicles ("Private Funds"); (ii) separately managed accounts for institutional investors; and/or (iii) registered investment companies or business development companies ("Regulated Funds"), each of which are expected to primarily invest in debt securities.

The minimum investment amount, if any and as applicable, and other criteria for investments in Clients will be set forth in the relevant Client Governing Documents.

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

### **Methods of Analysis and Investment Strategies**

Clients are expected to invest primarily in debt investments of companies in technology-related industries including technology, drug discovery and development, biotechnology, life sciences, healthcare, and sustainable and renewable technology. In connection with each Asset and in accordance with each Client Governing Document, the Adviser expects to conduct origination, underwriting, documentation and loan and compliance administration processes. The origination process will include sourcing, screening, preliminary due diligence and deal structuring and negotiation. The underwriting process is expected to include formal due diligence and approval of the proposed investment in the portfolio company by the Adviser's Investment Committee. Once approved by the Investment Committee, the documentation process for investments is expected to include negotiation of loan documentation. Lastly, the loan and compliance administration process is expected to involve administration of loans, tracking of covenant compliance and periodic review, as applicable. The Adviser's loan due diligence reviews, which will vary depending on the particular loan and the related obligor, will typically include any one or more of the following:

- high level company and technology assessments;
- evaluation of its financial sponsors' support;
- market analysis;
- competitive analysis;
- identification of key management;
- risk analysis; and
- transaction size, pricing, return analysis and structure analysis.

After the initial due diligence is conducted, an analysis will be performed, including:

- industry expert, customer, vendor or company competitor calls;
- interviews with management; and
- discussions with Hercules Capital's credit and legal teams.

Upon completion of the full due diligence review, consisting of the origination and underwriting due diligence reviews, the potential transaction will be summarized in an investment memorandum and provided to the Adviser's Investment Committee for approval.

### Risks Related to the Adviser's Business Structure

#### *Restrictions Related to being an Indirect Wholly-Owned Subsidiary of Hercules Capital*

The Adviser is an indirect wholly-owned subsidiary of Hercules Capital, an internally managed investment company that has elected to be regulated as a BDC under the 1940 Act. As an internally managed BDC, Hercules Capital is subject to certain restrictions, including with respect to transactions with affiliates and certain conflicts of interest that could adversely affect the Adviser's business and available resources.

#### *Dependence on Key Management Personnel*

The Adviser will depend upon the performance of its senior management, particularly Scott Bluestein, as well as other key personnel for the identification, final selection, structuring, closing and monitoring of investments for Clients. These employees have critical industry experience and relationships on which the Adviser will rely to implement Client investment programs. If the Adviser loses the services of Mr. Bluestein or any senior management members, it may not be able to operate its business or serve Clients as it expects.

As an internally managed BDC, Hercules Capital's executive compensation structure is determined and set by its Board of Directors. This structure currently includes salary and bonus and incentive compensation, which is issued through grants and subsequent vesting of restricted stock of Hercules Capital. Shared employees could receive separate incentive compensation in connection with their services to the Adviser. The opportunity to earn incentive compensation from Hercules Capital could incentivize shared employees of the Adviser to favor Hercules Capital in the allocation of investment opportunities. Please see Item 11 below and Client Governing Documents for discussion of these conflicts and the allocation of investment opportunities.

#### *Dependence on Strong Referral Relationships*

The Adviser's business will depend to a significant extent upon its management team's strong referral relationships with venture capital and private equity fund sponsors, and the management team's inability to develop or maintain these relationships, or the failure of these relationships to generate investment opportunities, could adversely affect its business and services to Clients.



The Adviser expects that members of its management team will maintain their relationships with venture capital and private equity firms, and the Adviser will rely to a significant extent upon these relationships to provide Clients with deal flow. If the Adviser's management team fails to maintain existing relationships, the management team's relationships may become strained as a result of enforcing rights with respect to non-performing portfolio companies in protecting investments or the management team fails to develop new relationships with other firms or sources of investment opportunities, then it is possible it will not be able to grow Client investment portfolios. In addition, persons with whom members of the Adviser's management team have relationships are not obligated to provide Clients with investment opportunities and, therefore, there is no assurance that such relationships will lead to the origination of debt or other investments.

#### *The Adviser or Hercules Capital May be the Target of Litigation*

The Adviser or Hercules Capital may be the target of securities litigation in the future. Hercules Capital could generally be subject to litigation, including derivative actions by its stockholders. Any litigation could result in substantial costs and divert management's attention and resources from the Adviser's business and cause a material adverse effect on its business or the investment programs of Clients.

#### Risks of Loss

Except as otherwise described in this section, the Assets typically expected to be held by Clients are debt investments, such as a senior or subordinated secured loan, and that can be coupled with an equity component, including warrants, options or other rights to purchase common or preferred stock, and unitranche loans.

Each Client is expected to be limited to investing primarily in debt securities and is not expected to be broadly diversified across a variety of asset classes. Clients do not represent a complete investment program for individual investors. The Adviser's investment approach is expected to involve a substantial degree of risk that Clients and investors must be prepared to bear. The Adviser's advisory services to Clients are not expected to be suitable for every investor; they are expected to be suitable only for sophisticated investors who can understand and accept the risks associated with investments in loans, including the partial or total loss of such investment. Clients and investors are responsible for appropriately diversifying their assets to guard against the risk of loss.

Below are descriptions of certain of the risks associated with the Adviser's expected investment strategies and the asset classes in which Clients are expected to invest. Additional information on investment risks will be provided to Clients and investors in Client Governing Documents. To the extent there will be any conflict between the disclosures in this Brochure and those that will be provided in Client Governing Documents, Client Governing Documents shall govern. Prospective Clients and investors should carefully consider the risks associated with the Adviser's investment approach and investments in loans including, but not limited to, those discussed below and set forth in Client Governing Documents.

*Political, Social and Economic Uncertainty Risks.* Social, political, economic and other conditions and events (such as natural disasters, epidemics and pandemics, terrorism, conflicts and social unrest) will occur that create uncertainty and have significant impacts on issuers, industries, governments and other systems, including the financial markets, to which Clients or borrowers are expected to be exposed. As global systems, economies and financial markets are increasingly interconnected, events that once had only local impact are now more likely to have regional or even global effects. Events that occur in one country, region or financial market will, more frequently, adversely impact issuers in other countries, regions or markets, including in established markets such as the United States. These impacts can be exacerbated by failures of governments and societies to adequately respond to an emerging event or threat.

Uncertainty can result in or coincide with, among other things: increased volatility in the loan, securities, derivatives and currency markets; a decrease in the reliability of market prices and difficulty in valuing assets (including Client Assets); greater fluctuations in spreads on debt investments and currency exchange rates; increased risk of default (by both government and private obligors and issuers); further social, economic, and political instability; nationalization of private enterprise; greater governmental involvement in the economy or in social factors that impact the economy; changes to governmental regulation and supervision of the loan, securities, derivatives and currency markets and market participants and decreased or revised monitoring of such markets by governments or self-regulatory organizations and reduced enforcement of regulations; limitations on the activities of investors in such markets; controls or restrictions on foreign investment, capital controls and limitations on repatriation of invested capital; the significant loss of liquidity and the inability to purchase, sell and otherwise fund investments or settle transactions (including, but not limited to, a market freeze); unavailability of currency hedging techniques; substantial, and in some periods extremely high, rates of inflation, which can last many years and have substantial negative effects on credit and securities markets as well as the economy as a whole; recessions; and difficulties in obtaining and/or enforcing legal judgments.

Although it is impossible to predict the precise nature and consequences of these events, or of any political or policy decisions and regulatory changes occasioned by emerging events or uncertainty on applicable laws or regulations that could impact Clients' investments, it is clear that these types of events could impact Clients and borrowers. Clients are expected to be impacted if, among other things, (i) amendments and waivers are granted (or are required to be granted) to borrowers permitting deferral of loan payments, (ii) borrowers default on their loans, are unable to refinance their loans at maturity, or go out of business permanently, and/or (iii) the value of loans held by Clients decreases as a result of such events and the uncertainty they cause. There can be no assurance that such emerging events will not cause a Client to suffer a loss of any or all of its investments or interest thereon. Clients will also be negatively affected if the operations and effectiveness of Hercules Capital, the Adviser, obligors, borrowers or their key personnel or service providers are compromised or if necessary or beneficial systems and processes are disrupted.

*Use of Leverage.* The Adviser expects to direct certain Clients to borrow money or otherwise incur leverage in connection with the acquisition or financing of their loan portfolios and most often such borrowed money is secured by liens and security interests in such Client portfolios, as collateral. While the use of leverage can potentially increase profits, it can also result in an

increased risk of loss and increased volatility to the Client due to possible margin calls, events of default, adverse fluctuations in interest rates, downturns in the leveraged loan market or the economy and the possible inability to refinance such debt when it matures or liquidates the related loan portfolio for an amount sufficient to pay such debt and return capital and/or profits to the Client or its investors. Any such event or any other event that adversely affects the value of a Client's direct or indirect investment in its loan portfolio could result in a substantial loss to the Client and its investors which would be greater than if such Client's account was not subject to leverage. Interest or similar costs associated with such leverage would be a direct or indirect expense of the related Client, and, to the extent not covered by net returns attributable to the assets acquired, will cause the returns of such Clients to be lower than if they have not used leverage. Interest or similar costs associated with leverage could be based on one or more interest rate indices, which can be different from the interest rate indices applicable to the assets supporting such leverage. Any such mismatch will not necessarily be hedged. If an event of default occurs under the related facility, the lenders or other counterparties to the facility (or some designated portion or agent thereof) would be able to exercise remedies with respect thereto including but not limited to the liquidation of or taking title to the collateral for such facility which will terminate the rights thereto of the Client and could result in a full or partial loss of the Client's direct or indirect investment therein. In addition, see *Phase Out of LIBOR as a Benchmark Rate* below.

*Availability of Financing.* To the extent a Client uses leverage or otherwise directly or indirectly incurs indebtedness, the Client's returns will depend significantly on the availability and terms of financing. If a Client were to be unable to obtain financing (or unable to obtain financing on favorable terms), the ability of the Adviser to acquire loans on behalf of the Client will be reduced, and returns will likely be similarly reduced, perhaps significantly, and losses could occur as a result.

*Risk of Default on Underlying Client Portfolio Loans.* Underlying loan obligors within a Client's investment portfolio could be susceptible to economic recession or downturns and might be unable to meet covenant requirements or service their obligations for indefinite periods of time. In addition, the credit markets are subject to volatility and a changing regulatory environment that could limit the availability of credit being provided by lenders with the result that a loan obligor might not be able to refinance its debt at or prior to maturity. This could lead to default under the related loan and, consequently, termination or a write down or other reduction in the value of the loan, and the exercise of remedies. In such cases, Clients (and their investors) would likely suffer losses resulting from an inability to recover all or a portion of their investment in defaulted loans. Moreover, disruption in the credit or other financial markets leading to increased loan defaults and credit downgrades of loan obligors could negatively affect the liquidity and pricing of loans in a Client's portfolio.

These risks may be heightened when the loan obligor is a technology-related company. Certain technology-related companies have narrow product lines and small market shares, which tend to render them more vulnerable to competitors' actions and market conditions, as well as to general economic downturns. The revenues, income (or losses), and valuations of technology-related companies can and often do fluctuate suddenly and dramatically. In addition, technology-related industries are generally characterized by abrupt business cycles and intense competition. These

characteristics may increase the risk of loan defaults and credit downgrades of such loan obligors could negatively affect the liquidity and pricing of loans in a Client's portfolio.

*Portfolio company management.* Clients could make both debt and minority equity investments; such Clients would be subject to the risk that a portfolio company may make business decisions, and the stockholders and management of such company may take risks or otherwise act in ways that do not serve such Client's interests. As a result, a portfolio company may make decisions that could decrease the value of such Client's portfolio holdings.

*Illiquid Assets.* Loans that will be acquired and owned by Clients are generally deemed to be illiquid assets for which no ready market of purchasers exists and often are subject to transfer restrictions and are not publicly traded. Clients' investments in illiquid assets could reduce their ability to dispose of such assets in a timely fashion and for a fair price. Illiquid assets typically trade at a discount from comparable, more liquid investments. As a result, many loans could be directly or indirectly held by Clients to their maturity. As a result, investments should be viewed as long-term and, even if they prove successful, are unlikely to produce realized returns for a number of years.

*Concentration.* A concentration in a Client's portfolio of loans to a limited number of underlying loan obligors or of loans in a limited number of industries or geographic regions or with a limited type of collateral securing such loans could impair the Client's portfolio if the underlying obligors, industries or geographic regions were to experience economic difficulties or if the asset class collateralizing the loans were to fall out of favor in the market. As a result, obligors could default on their loans, and the Client could be unable to recover the full amount owed on such loans. Under such circumstances Clients (and their investors) might not realize their rate of return objectives and could suffer losses.

*Hedging transactions.* If Clients engage in hedging transactions, such Clients may be exposed to risks associated with such transactions. Clients could utilize instruments such as forward contracts, currency options and interest rate swaps, caps, collars and floors to seek to hedge against fluctuations in the relative values of a Client's portfolio positions from changes in currency exchange rates and market interest rates. Hedging against a decline in the values of a Client's portfolio positions will not eliminate the possibility of fluctuations in the values of such positions or prevent losses if the values of such positions decline. However, such hedging can establish other positions designed to gain from those same developments, thereby offsetting the decline in the value of such portfolio positions. Such hedging transactions may also limit the opportunity for gain if the values of the underlying portfolio positions should increase. It may not be possible to hedge against an exchange rate or interest rate fluctuation that is so generally anticipated that the Client is not able to enter into a hedging transaction at an acceptable price. Moreover, for a variety of reasons, Clients may not seek to establish a perfect correlation between such hedging instruments and there can be no assurance that any such hedging arrangements will achieve the desired effect.

*Ability to Acquire Loans on Advantageous Terms; Competition and Supply.* The success of a Client's investment strategy will depend, in part, on the Adviser's ability to identify loans for acquisition by Clients on advantageous terms. In acquiring loans, Clients compete with a broad spectrum of loan originators and loan investors. Increased competition for, or a diminishment in

the available supply of, eligible loans could result in higher prices for, and consequently lower yields on, such loans. If there is increased competition in the market making or acquiring loans in a manner that is more attractive to the loan obligor or loan seller than that of the Adviser on behalf of its Clients, the Adviser might not be able to identify a sufficient number or amount of suitable loans to satisfy its Clients' investment objectives, in which case it is possible that not all of a Client's capital would be deployed or it could need to be deployed in a manner that does not fully achieve the Client's investment objectives. In certain instances the Adviser could identify a suitable investment opportunity but not be able to realize on it without the participation of other market participants whose participation the Adviser cannot control with the result that some of those opportunities would not come to fruition or might not be made available to Clients.

*Diversification.* It is not anticipated that any Client will be substantially diversified across asset classes other than loans. It is possible that a relatively substantial portion of a Client's capital could be invested in one or a small group of loans and/or cash or temporary investments, particularly as a Client's portfolio is ramping up or winding down. Unfavorable performance by one or more of such loans could have a substantial adverse economic impact on the Client and the holding of cash or investment of cash in temporary investments for a longer period of time than initially contemplated could have an adverse economic impact on the Client's rate of return objectives.

*Inability to Acquire and/or Maintain a Portfolio of Loans Consistent with a Client's Investment Criteria; Reserves; Uninvested Cash.* The Adviser might not always be able to acquire and/or maintain a portfolio of loans that satisfies a Client's investment criteria and expected portfolio profile due to, among other factors, market conditions and the availability of suitable loans for allocation to the Client, which could affect the returns of the Client. Reduced liquidity, relatively lower volumes of origination or trading in loans, increased competition for loans and the reduction, if any, of amounts of loans available for allocation to the Client, in addition to restrictions on investments under the Client Governing Documents, could result in periods of time during which a Client is not able to directly or indirectly fully invest in loans or during which the loans available for investment will not be of comparable quality. In these cases, the Adviser could be required to acquire for the Client loans having lower yields than those that had previously been held by the Client as existing loans mature, prepay or are sold. Reinvestment of amounts from the payment, prepayment, redemption or disposition of existing loans would expose Clients to market conditions prevailing at the time of reinvestment which are not as favorable as prior market conditions and could result in adverse changes in the characteristics and quality of the loans held by a Client. Additionally, the Adviser could create, accrue and fund reserves with respect to a Client for known or contingent liabilities, or for other reasons, in such amounts as the Adviser deems necessary or appropriate in its reasonable sole discretion. To the extent a Client maintains cash balances or reserves or holds amounts in temporary investments instead of investing in higher yielding loans, for the foregoing reasons or due to other causes (which are difficult to predict), income from the Client's portfolio of loans will be reduced which will result in reduced return on investment. In addition, temporary investments could also suffer losses and any expenses associated with such temporary investments could exceed returns on those investments.

*Assignments and Participations.* Clients are expected to invest in loans directly by acting as an original lender making a loan to the loan obligor at its inception. Clients could also invest in loans by assignment from a lender selling such loans to a Client or, in some instances, by acquiring a

participation interest therein. Holders of participation interests will be subject to additional risks not applicable to a holder of a direct interest in such loans. Participation interests typically constitute the unsecured obligation of the participation seller to pay over principal, interest and certain fees when and as received from the loan obligor. The holder of the participation interest will take not only the credit risk of the related loan obligor but also the credit risk of the participation seller; such holder will lack direct contractual privity with the loan obligor under the loan and will frequently lack certain voting rights with respect to the loan. Furthermore, to the extent the participation seller sells all or a significant portion of its economic interest in a loan, it will have less incentive to monitor and exercise the voting rights it retains with respect to such loan, and its interests might not align with those of the participation buyer.

*Prepayments.* Loans can be prepayable in whole or in part at any time at the option of the obligor thereof at par plus accrued unpaid interest thereon. Prepayments on loans are caused by a variety of factors which are often difficult to predict. Consequently, there exists a risk that loans purchased at a price greater than par will experience a capital loss as a result of such a prepayment. In addition, loans that include excess cash flow capture and other mandatory prepayment provisions, can result in accelerated amortization. If a Client is delayed in reinvesting, or unable or not permitted to reinvest, payments or other proceeds from such loans in loans with comparable interest rates, Clients will be adversely affected. The Adviser cannot predict the actual rate of prepayments, accelerated amortization or defaults which will be experienced.

*Investments in portfolio companies that have limited operating histories and resources.* Client portfolios are expected to consist of investments that may have relatively limited operating histories. These companies may be particularly vulnerable to U.S. and foreign economic downturns may have more limited access to capital and higher funding costs, may have a weaker financial position and may need more capital to expand or compete. These businesses also may experience substantial variations in operating results. They may face intense competition, including from larger, more established companies with greater financial, technical and marketing resources. Furthermore, some of these companies do business in regulated industries and could be affected by changes in government regulation applicable to their given industry. Accordingly, these factors could impair their cash flow or result in other events, such as bankruptcy, which could limit their ability to repay their obligations to Clients, and may adversely affect the return on, or the recovery of, Client investment in these companies. There can be no assurance that any Client investments in portfolio companies will be successful. Clients may lose their entire investment in any or all of their portfolio companies.

*Investing in publicly traded companies can involve a high degree of risk and can be speculative.* Clients' portfolios are expected to include publicly traded companies or companies that are in the process of completing their IPO. As publicly traded companies, the securities of these companies may not trade at high volumes, and prices can be volatile, particularly during times of general market volatility, which may restrict a Client's ability to sell its positions and may have a material adverse impact on Clients.

*Risks associated with investments in technology-related companies.* The Adviser expects to invest Client assets in technology-related companies, many of which may have narrow product lines and small market shares, which tend to render them more vulnerable to competitors' actions and market

conditions, as well as to general economic downturns. The revenues, income (or losses), and valuations of technology-related companies can and often do fluctuate suddenly and dramatically. In addition, technology-related industries are generally characterized by abrupt business cycles and intense competition. Overcapacity in technology-related industries, together with cyclical economic downturns, may result in substantial decreases in the market capitalization of many technology-related companies. Such decreases in market capitalization may occur again, and any future decreases in technology-related company valuations may be substantial and may not be temporary in nature. Therefore, a Client's investments in technology-related companies may face considerably more risk of loss than companies in other industry sectors.

Because of rapid technological change, the average selling prices of products and some services provided by technology-related companies have historically decreased over their productive lives. As a result, the average selling prices of products and services offered by technology-related companies may decrease over time, which could adversely affect their operating results, their ability to meet obligations under their debt securities and the value of their equity securities. This could, in turn, materially adversely affect the value of a Client's investments.

Clients' investments in sustainable and renewable technology companies will be subject to substantial operational risks, such as underestimated cost projections, unanticipated operation and maintenance expenses, loss of government subsidies, and inability to deliver cost-effective alternative energy solutions compared to traditional energy products. In addition, sustainable and renewable technology companies employ a variety of means of increasing cash flow, including increasing utilization of existing facilities, expanding operations through new construction or acquisitions, or securing additional long-term contracts. Thus, some energy companies may be subject to construction risk, acquisition risk or other risks arising from their specific business strategies. Furthermore, production levels for solar, wind and other renewable energies may be dependent upon adequate sunlight, wind, or biogas production, which can vary from market to market and period to period, resulting in volatility in production levels and profitability. Demand for sustainable and renewable technology is also influenced by the available supply and prices for other energy products, such as coal, oil and natural gases. A change in prices in these energy products could reduce demand for alternative energy.

A natural disaster may also impact the operations of companies in which Clients could invest, including technology-related companies. The nature and level of natural disasters cannot be predicted and may be exacerbated by global climate change. Certain technology-related portfolio companies rely on items assembled or produced in areas susceptible to natural disasters, and may sell finished goods into markets susceptible to natural disasters. A major disaster, such as an earthquake, tsunami, flood or other catastrophic event could result in disruption to the business and operations of such technology-related companies and increase the risk of default for certain Client investments.

Clients are expected to invest in technology-related companies that are reliant on U.S. and foreign regulatory and governmental programs. Any material changes or discontinuation, due to change in administration or U.S. Congress or otherwise could have a material adverse effect on the operations of a portfolio company in these industries and, in turn, impair a Client's ability to timely collect principal and interest payments owed to such Client, to the extent applicable.

*Risks of sustainable and renewable technology companies.* Client assets could be invested in portfolio companies in sustainable and renewable technology sectors that may be subject to extensive regulation by foreign, U.S. federal, state and/or local agencies. Changes in existing laws, rules or regulations, or judicial or administrative interpretations thereof, or new laws, rules or regulations could have an adverse impact on the business and industries of a Client's portfolio companies. In addition, changes in government priorities or limitations on government resources could also adversely impact a Client's portfolio companies. The Adviser is unable to predict whether any such changes in laws, rules or regulations will occur and, if they do occur, the impact of these changes on a Client's portfolio companies and investment returns. Furthermore, if any portfolio companies fail to comply with applicable regulations, they could be subject to significant penalties and claims that could materially and adversely affect their operations, which would also impact a Client's ability to realize value since an exit from the investment may be subject to the portfolio company obtaining the necessary regulatory approvals. Certain portfolio companies may be subject to the expense, delay and uncertainty of the regulatory approval process for their products and, even if approved, these products may not be accepted in the marketplace.

In addition, there is considerable uncertainty about whether foreign, U.S., state and/or local governmental entities will enact or maintain legislation or regulatory programs that mandate reductions in greenhouse gas emissions or provide incentives for sustainable and renewable technology companies. Without such regulatory policies, investments in sustainable and renewable technology companies may not be economical and financing for sustainable and renewable technology companies may become unavailable, which could materially adversely affect the ability of these companies to repay their loans. Any of these factors could materially and adversely affect the operations and financial condition of a portfolio company and, in turn, increase the risk of default on loans in which Clients could invest.

*Cyclical nature within the energy sector may adversely affect some portfolio companies.* Industries within the energy sector are cyclical with fluctuations in commodity prices and demand for, and production of commodities driven by a variety of factors. The highly cyclical nature of the industries within the energy sector may lead to volatile changes in commodity prices, which may adversely affect the earnings of energy companies in which Clients may invest and the performance and valuation of a Client's portfolio.

*Investments in the life sciences industry are subject to extensive government regulation, litigation risk, and certain other risks.* Companies in the life sciences industry are subject to extensive regulation by the FDA and to a lesser extent, other federal, state, and other foreign agencies. If any of these portfolio companies fail to comply with applicable regulations, they could be subject to significant penalties and claims that could materially and adversely affect their operations. Portfolio companies that produce medical devices or drugs are subject to the expense, delay and uncertainty of the regulatory approval process for their products and, even if approved, these products may not be accepted in the marketplace. In addition, governmental budgetary constraints effecting the regulatory approval process, new laws, regulations or judicial interpretations of existing laws and regulations might adversely affect a portfolio company in this industry. Portfolio companies in the life sciences industry may also have a limited number of suppliers of necessary components or a limited number of manufacturers for their products, and therefore face a risk of disruption to their manufacturing process if they are unable to find alternative suppliers when needed. Any of these factors could materially and adversely affect the operations of a portfolio



company in this industry and, in turn, impair a Client's ability to timely collect principal and interest payments owed.

*Investments in the drug discovery industry.* Client investments in the drug discovery industry would be subject to numerous risks. The successful and timely implementation of the business model of a Client's drug discovery portfolio companies would depend on their ability to adapt to changing technologies and introduce new products. As competitors continue to introduce competitive products, the development and acquisition of innovative products and technologies that improve efficacy, safety, patient's and clinician's ease of use and cost-effectiveness are important to the success of such companies. The success of new product offerings will depend on many factors, including the ability to properly anticipate and satisfy customer needs, obtain regulatory approvals on a timely basis, develop and manufacture products in an economic and timely manner, obtain or maintain advantageous positions with respect to intellectual property, and differentiate products from those of competitors. Failure by a company to introduce planned products or other new products or to introduce products on schedule could have a material adverse effect on a Client's investment.

Further, the development of products by drug discovery companies requires significant research and development, clinical trials and regulatory approvals. The results of product development efforts may be affected by a number of factors, including the ability to innovate, develop and manufacture new products, complete clinical trials, obtain regulatory approvals and reimbursement in the U.S. and abroad, or gain and maintain market approval of products. In addition, regulatory review processes by U.S. and foreign agencies may extend longer than anticipated as a result of decreased funding and tighter fiscal budgets. Further, patents attained by others can preclude or delay the commercialization of a product. There can be no assurance that any products now in development will achieve technological feasibility, obtain regulatory approval, or gain market acceptance. Failure can occur at any point in the development process, including after significant funds have been invested. Products may fail to reach the market or may have only limited commercial success because of efficacy or safety concerns, failure to achieve positive clinical outcomes, inability to obtain necessary regulatory approvals, failure to achieve market adoption, limited scope of approved uses, excessive costs to manufacture, the failure to establish or maintain intellectual property rights, or the infringement of intellectual property rights of others.

*The FDA or other U.S. or foreign regulatory authorities.* The FDA has established regulations, guidelines and policies to govern the drug development and approval process, as have foreign regulatory authorities, which affect some of companies in which Clients are expected to invest. Any change in regulatory requirements due to the adoption by the FDA and/or foreign regulatory authorities of new legislation, regulations, or policies may require such companies to amend existing clinical trial protocols or add new clinical trials to comply with these changes. Such amendments to existing protocols and/or clinical trial applications or the need for new ones, may significantly impact the cost, timing and completion of the clinical trials.

In addition, increased scrutiny by the U.S. Congress of the FDA's and other authorities' approval processes may significantly delay or prevent regulatory approval, as well as impose more stringent product labeling and post-marketing testing and other requirements. Foreign regulatory authorities may also increase their scrutiny of approval processes resulting in similar delays. Increased

scrutiny and approvals processes may limit the ability of a Client's portfolio companies to market and commercialize their products in the U.S. and in foreign countries.

Life sciences companies, including drug development companies, device manufacturers, service providers and others, are also subject to material pressures when there are changes in the outlook for healthcare insurance markets. The ability for individuals, along with private and public insurers, to account for the costs of paying for healthcare insurance can place strain on the ability of new technology, devices and services to enter those markets, particularly when they are new or untested. As a result, it is not uncommon for changes in the insurance marketplace to lead to a slower rate of adoption, price pressure and other forces that may materially limit the success of companies bringing such technologies to market. Changes in the health insurance sector might then have an impact on the value of companies in a Client's portfolio or a Client's ability to invest in the sector generally.

*Changes in healthcare laws and other regulations.* Changes in healthcare or other laws and regulations, or the enforcement or interpretation of such laws or regulations, applicable to the businesses of companies in which Clients could invest may occur that could increase such companies' compliance and other costs of doing business, require significant systems enhancements, or render their products or services less profitable or obsolete, any of which could have a material adverse effect on their results of operations. There has also been an increased political and regulatory focus on healthcare laws in recent years, and new legislation could have a material effect on the business and operations of a Client's portfolio companies.

Additionally, the possibility of additional changes to healthcare laws and regulations under the new U.S. presidential administration, the Adviser cannot quantify or predict with any certainty the likely impact on a Client's portfolio companies, the Adviser's business model, prospects, financial condition or results of operations. The Adviser also anticipates that Congress, state legislatures, and third-party payors may continue to review and assess alternative healthcare delivery and payment systems and may in the future propose and adopt legislation or policy changes or implementations effecting additional fundamental changes in the healthcare delivery system. The Adviser cannot make any assurances as to the ultimate content, timing, or effect of changes, nor is it possible at this time to estimate the impact of any such potential legislation on companies in which Clients could invest, the Adviser's business model, prospects, financial condition or results of operations.

*The potential inability of companies in the healthcare industry to charge desired prices with respect to prescription drugs could impact their revenues.* Some of the healthcare companies in which Clients are expected to invest are subject to risks associated with the pricing for prescription drugs. It is uncertain whether customers of a Client's healthcare industry portfolio companies will continue to utilize established prescription drug pricing methods, or whether other pricing benchmarks will be adopted for establishing prices within the industry. Legislation may lead to changes in the pricing for Medicare and Medicaid programs. Regulators have conducted investigations into the use of prescription drug pricing methods for federal program payment, and whether such methods have inflated drug expenditures by the Medicare and Medicaid programs. Federal and state proposals have sought to change the basis for calculating payment of certain drugs by the Medicare and Medicaid programs. Any changes to the method for calculating prescription drug costs may reduce the revenues of a Client's portfolio companies in the healthcare

industry which could in turn impair their ability to timely make any principal and interest payments owed to such Client.

*Repayment and refinance risk.* Client portfolio companies may be unable to repay or refinance outstanding principal on their loans at or prior to maturity. This risk and the risk of default is increased to the extent that the loan documents do not require the portfolio companies to pay down the outstanding principal of such debt prior to maturity. In addition, if general interest rates rise, there is a risk that Client portfolio companies will be unable to pay escalating interest amounts, which could result in a default under their loan documents. Any failure of one or more portfolio companies to repay or refinance its debt at or prior to maturity or the inability of one or more portfolio companies to make ongoing payments following an increase in contractual interest rates could have a material adverse effect on Clients.

*The disposition of investments may result in contingent liabilities.* A portion of Client investments could involve private securities. In connection with the disposition of an investment in private securities, Clients may be required to make representations about the business and financial affairs of the portfolio company typical of those made in connection with the sale of a business. Clients may also be required to indemnify the purchasers of such investment to the extent that any such representations turn out to be inaccurate or with respect to certain potential liabilities. These arrangements may result in contingent liabilities that ultimately yield funding obligations that must be satisfied.

*Lack of IPO or merger and acquisition opportunities.* A lack of IPO or merger and acquisition, or M&A, opportunities for venture capital-backed companies could lead to companies staying longer in Client portfolios as private entities still requiring funding. This situation may adversely affect the amount of available funding for early-stage companies in particular as, in general, venture-capital firms are being forced to provide additional financing to late-stage companies that cannot complete an IPO or M&A transaction. In the best case, such stagnation would dampen returns, and in the worst case, could lead to unrealized depreciation and realized losses as some companies run short of cash and have to accept lower valuations in private fundings or are not able to access additional capital at all. A lack of IPO or M&A opportunities for venture capital-backed companies can also cause some venture capital firms to change their strategies, leading some of them to reduce funding of their portfolio companies and making it more difficult for such companies to access capital and to fulfill their potential, which can result in unrealized depreciation and realized losses in such companies by other companies such as ourselves who are co-investors in such companies.

*Portfolio companies requiring substantial additional equity financing.* Each round of venture financing is typically intended to provide a company with only enough capital to reach the next stage of development. The Adviser cannot predict the circumstances or market conditions under which Client portfolio companies will seek additional capital. It is possible that one or more of Client portfolio companies will not be able to raise additional financing or may be able to do so only at a price or on terms unfavorable to Clients, either of which would negatively impact Client investment returns. Some of these companies may be unable to obtain sufficient financing from private investors, public capital markets or traditional lenders. This may have a significant impact if the companies are unable to obtain certain federal, state or foreign agency approval for their products or the marketing thereof, or if regulatory review processes extend longer than anticipated, and the companies need continued funding for their operations during these times.

*Lack sufficient collateral to cover losses.* To attempt to mitigate credit risks, Clients may take a security interest in the available assets of portfolio companies. There is no assurance that Clients will obtain or properly perfect liens. There is a risk that the collateral securing loans may decrease in value over time, may be difficult to sell in a timely manner, may be difficult to appraise and may fluctuate in value based upon the success of the Client's business and market conditions, including as a result of the inability of a portfolio company to raise additional capital. In some circumstances, a Client's lien could be subordinated to claims of other creditors. Consequently, the fact that a loan is secured does not guarantee that the Client will receive principal and interest payments according to the loan's terms, or that such Client will be able to collect on the loan should it be forced to enforce remedies.

In addition, because Clients may invest in technology-related companies, a substantial portion of the assets securing such investment may be in the form of intellectual property, if any, inventory and equipment and, to a lesser extent, cash and accounts receivable. Intellectual property, if any, that is securing a Client's loan could lose value if, among other things, the company's rights to the intellectual property are challenged or if the company's license to the intellectual property is revoked or expires, the technology fails to achieve its intended results or a new technology makes the intellectual property functionally obsolete. Inventory may not be adequate to secure a Client's loan if the valuation of the inventory at the time that the Client made the loan was not accurate or if there is a reduction in the demand for the inventory.

Similarly, any equipment securing the Client's loan may not provide the Client with the anticipated security if there are changes in technology or advances in new equipment that render the particular equipment obsolete or of limited value, or if the company fails to adequately maintain or repair the equipment. Any one or more of the preceding factors could materially impair a Client's ability to recover earned interest and principal in a foreclosure.

*Clients may suffer a loss if a portfolio company defaults on a loan and the underlying collateral is not sufficient.* In the event of a default by a portfolio company on a secured loan, Clients will only have recourse to the assets collateralizing the loan. If the underlying collateral value is less than the loan amount, Clients will suffer a loss. In addition, Clients could make loans that are unsecured, which are subject to the risk that other lenders may be directly secured by the assets of the portfolio company. In the event of a default, those collateralized lenders would have priority over Clients with respect to the proceeds of a sale of the underlying assets. In cases described above, Clients may lack control over the underlying asset collateralizing its loan or the underlying assets of the portfolio company prior to a default, and as a result the value of the collateral may be reduced by acts or omissions by owners or managers of the assets.

In the event of bankruptcy of a portfolio company, Clients may not have full recourse to its assets in order to satisfy the Client's loan, or the Client's loan may be subject to "equitable subordination." This means that depending on the facts and circumstances, a bankruptcy court might re-characterize the Client's debt holding and subordinate all or a portion of its claim to that of other creditors. In addition, Client loans could be subordinate to other debt of the portfolio company. If a portfolio company defaults on a Client's loan or on debt senior to such Client's loan, or in the event of a portfolio company bankruptcy, such Client's loan will be satisfied only after the senior debt receives payment. Where debt senior to the Client's loan exists, the presence of intercreditor arrangements may limit the Client's ability to amend its loan documents, assign loans,

accept prepayments, exercise remedies (through "standstill" periods) and control decisions made in bankruptcy proceedings relating to the portfolio company. Bankruptcy and portfolio company litigation can significantly increase collection losses and the time needed for Clients to acquire the underlying collateral in the event of a default, during which time the collateral may decline in value, causing Clients to suffer losses.

If the value of collateral underlying a Client's loan declines or interest rates increase during the term of a Client's loan, a portfolio company may not be able to obtain the necessary funds to repay the Client's loan at maturity through refinancing. Decreasing collateral value and/or increasing interest rates may hinder a portfolio company's ability to refinance the Client's loan because the underlying collateral cannot satisfy the debt service coverage requirements necessary to obtain new financing. If a borrower is unable to repay a Client's loan at maturity, the Client could suffer a loss which may adversely impact the Client's financial performance.

*The inability of portfolio companies to commercialize technologies or create or develop commercially viable products or businesses would have a negative impact on investment returns.* The possibility that a Client's portfolio companies will not be able to commercialize their technology, products or business concepts presents significant risks to the value of the Client's investment. Additionally, although Client portfolio companies may already have a commercially successful product or product line when the Client invests, technology-related products and services often have a more limited market or life-span than have products in other industries. Thus, the ultimate success of these companies often depends on their ability to continually innovate, or raise additional capital, in increasingly competitive markets. Their inability to do so could affect the Client's investment return. In addition, the intellectual property held by portfolio companies could represent a substantial portion of the collateral, if any, securing the Client's investments. There can be no assurance that any portfolio companies will successfully acquire or develop any new technologies, or that the intellectual property the companies currently hold will remain viable. Even if portfolio companies are able to develop commercially viable products, the market for new products and services is highly competitive and rapidly changing. Portfolio companies, the Adviser, and Clients have no control over the pace of technology development. Commercial success is difficult to predict, and the marketing efforts of portfolio companies may not be successful.

*Challenges presented by investments focused on privately-held companies.* Clients are expected to invest primarily in privately-held companies. Generally, very little public information exists about these companies, and Clients will be required to rely on the ability of the Adviser, its management and investment teams to obtain adequate information to evaluate the potential returns from investing in these companies. Such small, privately held companies as Clients are expected to invest in may also lack quality infrastructures, thus leading to poor disclosure standards or control environments. If the Adviser is unable to uncover all material information about these companies, then it may not be able to make a fully informed investment decision, and Clients may not receive the expected return on their investment or lose some or all of the money invested in these companies.

Also, privately-held companies frequently have less diverse product lines and a smaller market presence than do larger competitors. Privately-held companies are, thus, generally more vulnerable

to economic downturns and may experience more substantial variations in operating results than do larger competitors. These factors could affect Client investment returns, results of operations, and financial condition.

In addition, the success of a Client's portfolio depends, in large part, upon the abilities of the key management personnel of portfolio companies, who are responsible for the day-to-day operations of portfolio companies. Competition for qualified personnel is intense at any stage of a company's development, and high turnover of personnel is common in technology-related companies. The loss of one or more key managers can hinder or delay a company's implementation of its business plan and harm its financial condition. Portfolio companies may not be able to attract and retain qualified managers and personnel. Any inability to do so may negatively impact investment returns and results of operations and financial condition.

*Risks related to intellectual property rights.* A Client's success is expected to depend in part upon the ability of portfolio companies to obtain and maintain proprietary technology used in their products and services, which will often represent a significant portion of the collateral, if any, securing an investment. Portfolio companies will rely, in part, on patent, trade secret and trademark law to protect that technology, but competitors could misappropriate their intellectual property, and disputes as to ownership of intellectual property could arise. Portfolio companies can, from time to time, be required to institute litigation in order to enforce their patents, copyrights or other intellectual property rights, to protect their trade secrets, to determine the validity and scope of the proprietary rights of others or to defend against claims of infringement. Such litigation could result in substantial costs and diversion of resources. Similarly, if a portfolio company is found to infringe upon or misappropriate a third party's patent or other proprietary rights, that portfolio company could be required to pay damages to such third party, alter its own products or processes, obtain a license from the third party and/or cease activities utilizing such proprietary rights, including making or selling products utilizing such proprietary rights. Any of the foregoing events could negatively affect both the portfolio company's ability to service a Client's debt investment and the value of any related debt and equity securities that the Client owns, as well as any collateral securing the Client's investment.

*Lack of control of portfolio companies.* In some instances, Clients may control portfolio companies. However, Clients are not expected to control the decision making in many portfolio companies, even though a Client could have board representation or board observation rights, and a Client's debt agreements may contain certain restrictive covenants. As a result, Clients are expected to be subject to the risk that a portfolio company in which it invests will make business decisions with which the Client or the Adviser disagrees and the management of such company, as representatives of the holders of their common equity, will take risks or otherwise act in ways that do not serve a Client's interests as debt investors. Due to the lack of liquidity for Client investments in non-traded companies, Clients may not be able to dispose of their interests in their portfolio companies as readily as the Client or the Adviser would like or at an appropriate valuation. As a result, a portfolio company may make decisions that would decrease the value of a Client's portfolio holdings.

*Risk of negative pledge or lack of a security interest on the intellectual property of venture growth stage companies.* In some cases, a Client could collateralize a loans with a secured collateral

position in a portfolio company's assets, which may include a negative pledge or, to a lesser extent, no security on their intellectual property. In the event of a default on a loan, the intellectual property of the portfolio company will most likely be liquidated to provide proceeds to pay the creditors of the company. There can be no assurance that Client security interests, if any, in the proceeds of the intellectual property will be enforceable in a court of law or bankruptcy court or that there will not be others with senior or pari passu credit interests.

*Exposure to trade secrets and confidential information.* Relationships with portfolio companies may expose the Adviser or Clients to portfolio companies' trade secrets and confidential information (including transactional data and personal data about their employees and clients) that may require the Adviser or Clients to be parties to non-disclosure agreements and restrict the Adviser or Clients from engaging in certain transactions. Unauthorized access or disclosure of such information may occur, resulting in theft, loss or other misappropriation. Any theft, loss, improper use, such as insider trading or other misappropriation of confidential information could have a material adverse impact on Clients, relationships with portfolio companies, and could subject the Adviser or Clients to regulatory inquiries, enforcement and fines, civil litigation (which could cause Clients to incur significant expense or expose Clients to losses) and possible financial liability or costs.

*Clients may not be able to realize its entire investment on equipment-based loans, if any, in the case of default.* Clients could from time-to-time provide loans that will be collateralized only by equipment of the portfolio company. If the portfolio company defaults on the loan the Client would take possession of the underlying equipment to satisfy the outstanding debt. The residual value of the equipment at the time the Client would take possession may not be sufficient to satisfy the outstanding debt and the Client could experience a loss on the disposition of the equipment.

*Clients may not have sufficient funds to make follow-on investments. A decision not to make a follow-on investment may have a negative impact on a portfolio company in need of such an investment or may result in a missed opportunity for Clients.* After a Client's initial investment in a portfolio company, a Client may be called upon from time to time to provide additional funds to such company or have the opportunity or need to increase its investment in a successful situation or attempt to preserve or enhance the value of its initial investment, for example, the exercise of a warrant to purchase common stock, or a negative situation, to protect an existing investment. The Adviser may have the discretion to make any follow-on investments, subject to the availability of capital resources and regulatory considerations. The Adviser may determine or recommend that the Client should not make follow-on investments or that the Client otherwise lacks sufficient funds to make those investments. Any decision the Adviser makes not to make a follow-on investment or any inability of the Client to make such an investment may have a negative impact on a portfolio company in need of such an investment or may result in a missed opportunity for the Client to increase its participation in a successful operation and may dilute its equity interest or otherwise reduce the expected yield on its investment. Moreover, a follow-on investment may limit the number of companies in which the Client can make initial investments. In determining whether to make a follow-on investment, the Adviser will exercise its judgment and, subject to Client Governing Documents, expects to apply criteria similar to those used when making the initial investment. There is no assurance that a Client will make, or will have sufficient funds to

make, follow-on investments and this could adversely affect such Clients or result in the loss of a substantial portion or all of the Client's investment in a portfolio company.

*Portfolio companies may incur debt or issue equity securities that rank equally with, or senior to, Client investments in such companies.* Clients are expected to invest primarily in debt securities issued by portfolio companies. In some cases, portfolio companies will be permitted to incur other debt, or issue other equity securities, that rank equally with, or senior to, a Client's investments. Such instruments may provide that the holders thereof are entitled to receive payment of distributions, interest or principal on or before the dates on which Clients are entitled to receive payments in respect of their investments. These debt instruments would usually prohibit the portfolio companies from paying interest on or repaying Client investments in the event and during the continuance of a default under such debt. Also, in the event of insolvency, liquidation, dissolution, reorganization or bankruptcy of a portfolio company, holders of securities ranking senior to Client investment in that portfolio company would typically be entitled to receive payment in full before Clients receive any distribution in respect of their investment. After repaying such holders, the portfolio company might not have any remaining assets to use for repaying any obligation to Clients. In the case of securities ranking equally with Client investments, Clients would have to share on a pari passu basis any distributions with other security holders in the event of an insolvency, liquidation, dissolution, reorganization or bankruptcy of the relevant portfolio company.

The rights Clients may have with respect to the collateral securing any junior priority loans Clients make to portfolio companies may also be limited pursuant to the terms of one or more intercreditor agreements that Clients enter into with the holders of senior debt. Under such an intercreditor agreement, at any time that senior obligations are outstanding, Clients may forfeit certain rights with respect to the collateral to the holders of the senior obligations. These rights may include the right to commence enforcement proceedings against the collateral, the right to control the conduct of such enforcement proceedings, the right to approve amendments to collateral documents, the right to release liens on the collateral and the right to waive past defaults under collateral documents. Clients may not have the ability to control or direct such actions, even if as a result Client rights as junior lenders are adversely affected.

Portfolio companies that may be appropriate investments for Clients may also be appropriate investments for Hercules Capital and Hercules Capital is expected to invest in portfolio companies in which Clients are expected to invest, which investment may be senior, pari passu, or junior to Client investments. In such cases, investments by Hercules Capital could create conflicts of interests (*See Item 11 for more information*).

*Covenants may be waived or enforcement deferred, which may cause Clients to lose all or part of their investment in these companies.* Debt investments in portfolio companies are expected to be structured to include business and financial covenants placing affirmative and negative obligations on the operation of the company's business and its financial condition. However, from time to time Clients may waive breaches of these covenants, including the right to payment, or waive or defer enforcement of remedies, such as acceleration of obligations or foreclosure on collateral, depending upon the financial condition and prospects of the particular portfolio company. These actions may reduce the likelihood of receiving the full amount of future payments of interest or



principal and be accompanied by a deterioration in the value of the underlying collateral as many of these companies may have limited financial resources, may be unable to meet future obligations and may go bankrupt. This could negatively impact Clients.

Clients may also be subject to lender liability claims for actions taken with respect to a borrower's business or instances where the Client exercises control over the borrower. It is possible that Clients could become subject to a lender's liability claim, including as a result of actions taken in rendering significant managerial assistance or actions to compel and collect payments from the borrower outside the ordinary course of business.

*Loans could be subject to equitable subordination by a court which would increase risk of loss with respect to such loans or Clients could be subject to lender liability claims.* Courts may apply the doctrine of equitable subordination to subordinate the claim or lien of a lender against a borrower to claims or liens of other creditors of the borrower, when the lender or its affiliates is found to have engaged in unfair, inequitable or fraudulent conduct. The courts have also applied the doctrine of equitable subordination when a lender or its affiliates is found to have exerted inappropriate control over a client, including control resulting from the ownership of equity interests in a client or providing of significant managerial assistance. Clients are expected to make direct equity investments or receive warrants in connection with loans. Payments on one or more Clients' loans, particularly certain loans to clients in which Clients also hold equity interests, may be subject to claims of equitable subordination. If a Client were deemed to have the ability to control or otherwise exercise influence over the business and affairs of one or more of its portfolio companies resulting in economic hardship to other creditors of that company, this control or influence may constitute grounds for equitable subordination and a court may treat one or more of such Client's loans as if it were unsecured or common equity in the portfolio company. In that case, if the portfolio company were to liquidate, such Client would be entitled to repayment of its loan on a pro-rata basis with other unsecured debt or, if the effect of subordination was to place such Client at the level of common equity, then on an equal basis with other holders of the portfolio company's common equity only after all of its obligations relating to its debt and preferred securities had been satisfied.

In addition to these risks, in the event a debt position is converted to equity, or a Client otherwise takes control of a portfolio company (such as through placing a representative on its board of directors), as part of a restructuring, the Client faces additional risks acting in that capacity. It is not uncommon for unsecured, or otherwise unsatisfied creditors, to sue parties that elect to use their debt positions to later control a company following a restructuring or bankruptcy. Apart from lawsuits, key customers and suppliers might act in a fashion contrary to the interests of a portfolio company if they were left unsatisfied in a restructuring or bankruptcy. Any combination of these factors might lead to the loss in value of a company subject to such activity and otherwise harm Clients.

*Risk of economic recessions or slowdowns.* Global economies are currently in a period of disruption and many have entered recessions. Many companies in which Clients are expected to invest may be susceptible to the current economic slowdowns or recessions in both the U.S. and foreign countries, and may be unable to repay loans during these periods. Therefore, during these periods the value of a Client's portfolio is likely to decrease. Adverse economic conditions also

may decrease the value of collateral securing loans in which Clients may invest and the value of a Client's equity investments. Economic slowdowns or recessions could lead to financial losses in a Client's portfolio.

*Valuation.* Client Assets could primarily consist of loans that are not publicly traded. The fair value of loans that are not publicly traded are often not easy to determine — particularly in volatile, unusual or disrupted market conditions. The Adviser will value Assets in accordance with Client Governing Documents and the Adviser's Valuation Procedures (as defined below). Valuations of illiquid loans require judgment, are inherently uncertain, can fluctuate and are generally based on estimates. It is possible that the Adviser's determinations of fair value will differ materially from the values that would have been used if an active market for these loans existed. If the Adviser's determinations regarding the fair value of such loans are materially higher than the values that are ultimately realized upon the sale of such loans, the returns to Clients would be adversely affected.

The Adviser will adopt valuation policies and procedures (the "Valuation Procedures") for use in the valuation of Assets held by Clients. The Adviser expects to value Assets at fair value generally in accordance with U.S. generally accepted accounting principles ("GAAP") and as more fully described below. Where the Adviser believes a reliable market price is readily ascertainable for an Asset, the Adviser expects to value such Asset at such current market price. Assets for which the Adviser believes reliable market prices are not readily ascertainable are expected to be fair valued by the Adviser in good faith and in accordance with its policies and procedures and Client Governing Documents.

The Adviser's fair value methodology generally is consistent with the fair value principles established by FASB Accounting Standards Codification (ASC) Topic 820-10, *Fair Value Measurements and Disclosures* ("ASC Topic 820-10"). ASC Topic 820-10 specifies a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. ASC Topic 820-10 also provides guidance regarding a fair value hierarchy, which prioritizes information used to measure fair value and the effect of fair value measurements on earnings and provides for enhanced disclosures determined by the level within the hierarchy of information used in the valuation. In accordance with ASC Topic 820-10, these inputs are summarized in the three broad levels listed below:

Level 1 — Inputs are unadjusted, quoted prices in active markets for identical assets at the measurement date. The types of assets carried at Level 1 fair value generally are equities listed in active markets.

Level 2 — Inputs (other than quoted prices included in Level 1) are either directly or indirectly observable for the asset in connection with market data at the measurement date and for the extent of the instrument's anticipated life. Fair valued assets that are generally included in this category are publicly held debt investments and warrants held in a public company.

Level 3 — Inputs reflect a best estimate of what market participants would use in pricing the asset at the measurement date. It includes prices or valuations that require inputs that are both significant to the fair value measurement and unobservable. Generally, assets

carried at fair value and included in this category are the debt investments and warrants and equities held in a private company.

Generally, it is expected that Assets held by Clients will consist principally of loans, which are expected to be valued quarterly (or more frequently, as deemed necessary or appropriate) consistent with Client Governing Documents.

*Information Technology Risks.* The Adviser is heavily reliant on Hercules Capital's information technology infrastructure, processes and procedures and those of its service providers, and Hercules Capital has devoted significant resources to achieving competitive informational technology systems. Information technology changes rapidly, however, and the Adviser and Hercules Capital might not be able to stay ahead of such advances. Moreover, Hercules Capital, the Adviser or their service providers could find themselves a target of cybersecurity attacks. While steps have been taken by Hercules Capital to mitigate the risk of such attacks, no system is fully attack-proof, and a cybersecurity attack could have an impact on the Adviser and its Clients.

*Legal, Regulatory and Tax Risks.* Clients could be adversely impacted by laws, rules and regulations, including tax laws, that impact lending or the business of loan obligors. Legal, regulatory and tax changes have occurred and in the future might occur that could adversely affect Clients. For example, Clients could invest in loans to obligors in a number of different industries, some of which are or could become subject to regulation by one or more U.S. federal agencies and by various agencies of the states, localities and counties in which they operate, or, with respect to obligors with operations outside of the U.S., equivalent foreign bodies. New and existing regulations, changing regulatory schemes and the burdens of regulatory compliance all could have a material negative impact on the performance of companies that operate in these industries.

It is impossible to predict whether further new legislation or regulations governing those industries or the U.S. tax code will be enacted by legislative bodies or governmental agencies, nor can the Adviser predict what effect any new legislation or regulation might have, directly or indirectly, on the loan obligors, the Clients' investments or the availability of investment opportunities in the middle market. There can be no assurance that new legislation or regulations, including changes to existing laws and regulations, will not have a material negative impact on the value of investments typically made by the Adviser, the Clients' investment performance or any related investment opportunities.

*Market Risk.* Investments in loans are subject to financial market risks, including changes in interest rates. Interest rate risk is defined as the sensitivity of an investments' current and future earnings to interest rate volatility, variability of spread relationships and the difference in repricing intervals between Client Assets and liabilities. Changes in interest rates could affect a Client's interest income from portfolio investments. A Client's investment income will be affected by changes in various interest rates, including LIBOR and Prime rates, to the extent a Client's debt investments include variable interest rates.

*Risks Related to Current Economic and Market Conditions.* Capital markets can experience periods of disruption and instability and the Adviser cannot predict when these conditions will occur. Such market conditions could materially and adversely affect debt and equity capital

markets in the United States and abroad, which could have a negative impact on Client investments. Significant changes in the capital markets, including the disruption and volatility, have had, and may in the future have, a negative effect on the valuations of Client investments and on the potential for liquidity events involving Client investments.

Various social and political tensions in the United States and around the world, including in the Middle East, Eastern Europe North Korea, and Russia, may continue to contribute to increased market volatility, may have long-term effects on the United States and worldwide financial markets, and may cause further economic uncertainties or deterioration in the United States and worldwide. In addition, continuing uncertainty arising from the United Kingdom's decision to leave the European Union, or Brexit, could lead to further market disruptions and currency volatility, potentially weakening consumer, corporate and financial confidence and resulting in lower economic growth for companies that rely significantly on Europe for their business activities and revenues. In December 2020, the United Kingdom reached the end of the transition period which followed its exit from the European Union on January 31, 2020. The new Trade and Cooperation Agreement reached between the European Union and United Kingdom in late 2020 is untested and may lead to ongoing political and economic uncertainty and periods of exacerbated volatility in both the United Kingdom and in wider European and global markets for some time. The Adviser may in the future have difficulty accessing debt and equity capital markets, and a severe disruption in the global financial markets, deterioration in credit and financing conditions or uncertainty regarding U.S. government spending and deficit levels, Brexit or other global economic conditions could have a material adverse effect on Clients' investments.

The unprecedented COVID-19 (Coronavirus) pandemic has created significant market volatility. If adverse market conditions continue or increase in severity and duration, such market conditions could materially and adversely affect debt and equity capital markets in the United States and abroad, which could have a negative impact on Client investments. In addition, the debt capital that will be available, if any, may be at a higher cost and on less favorable terms and conditions in the future.

*Phase Out of LIBOR as a Benchmark Rate.* The interest payable with respect to loans expected to be held in a Client's portfolio and indebtedness that could be incurred by a Client under any leverage facility generally is expected to be based on LIBOR (although it could be based on an alternative index under certain circumstances) and such interest rate is currently expected to fluctuate based on changes in LIBOR. On July 27, 2017, the head of the UK Financial Conduct Authority announced that it will phase out LIBOR after 2021. To identify a successor rate for U.S. dollar LIBOR, the Federal Reserve System, in conjunction with the Alternative Reference Rates Committee, a steering committee comprised of large U.S. financial institutions, has identified the Secured Overnight Financing Rate, or SOFR, as its preferred alternative rate for LIBOR. SOFR is a measure of the cost of borrowing cash overnight, collateralized by U.S. Treasury securities, and is based on directly observable U.S. Treasury-backed repurchase transactions. Although there have been a few transactions in the market utilizing SOFR or the Sterling Overnight Index Average, or SONIA, it is not possible to predict whether either of these alternative reference rates will attain market traction as a LIBOR replacement tool or the effect of any such changes as the establishment of alternative reference rates or other reforms to LIBOR may be enacted in the United States,

United Kingdom or elsewhere. As such, the potential effect of SOFR and LIBOR on a Client's portfolio cannot yet be determined.

*Combination or "Layering" of Multiple Risks.* Although the various risks to which Clients will be subject are discussed in this Item 8 and in the Client Governing Documents separately, the risks that Clients bear will be increased based on the effects of the interplay of risk factors; where more than one significant risk factor is present, the risk of loss can be significantly increased.

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

Not applicable.

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

The Adviser is an indirect wholly-owned indirect subsidiary of Hercules Capital. The Adviser and Hercules Capital have entered into an agreement pursuant to which Hercules Capital will share with the Adviser certain employees, premises, facilities and systems, to assist the Adviser in providing investment advisory and other services to Clients. In consideration of the shared services, the Adviser will reimburse Hercules Capital for the allocable portion of Hercules Capital's costs and related overhead in performing such services.

In providing services through the Adviser, such shared personnel will be supervised by the Adviser and subject to the Adviser's compliance policies and procedures, including the Adviser's Code of Ethics and applicable provisions of the Advisers Act. Clients will not be direct beneficiaries of any employment or personnel sharing arrangements between the Adviser and Hercules Capital, and their respective employees or shared personnel, as applicable, which arrangements are in any event subject to change without notice to, or the consent of, Clients.

In light of the relationship between Hercules Capital and the Adviser, there are various conflicts of interests among Hercules Capital and the Adviser and its Clients. Furthermore, as discussed above, Clients are expected to invest primarily in loans of the type invested in by Hercules Capital, and Hercules Capital (and certain of its direct and indirect subsidiaries) could invest in the same loans as Clients. Please see Item 11 below and Client Governing Documents for a discussion of the conflicts of interests relating to these investments.

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

##### Code of Ethics and Personal Trading

To mitigate conflicts of interest involving personal trades, the Adviser's Code of Ethics will include formal policies and procedures with respect to personal and insider trading policies and procedures. Among other things, the policy will require that all relevant personnel of the Adviser ("Access Persons") act with integrity, place the interests of Clients above their own, avoid conflicts of interest and comply with applicable provisions of the federal securities laws. The policy also will require Access Persons to pre-clear certain personal securities transactions, certify adherence to the Code of Ethics annually, report personal securities transactions on at least a quarterly basis

and provide the Adviser with a list of all personal brokerage accounts over which the Access Person has beneficial interest and/or control and holdings of reportable securities. The Code of Ethics will forbid any Access Person from engaging in any insider trading or disclosing or using material non-public information in violation of applicable law. Personal trading will be monitored by the Adviser's Chief Compliance Officer pursuant to the Code of Ethics in order to reasonably prevent or address conflicts of interest among the Adviser, Access Persons and the Clients.

A copy of the Adviser's Code of Ethics will be provided to any current or prospective Client (or current or prospective investor in a Client) upon request.

#### Participation or Interest in Client Transactions

Hercules Capital originates, holds, sells and/or acquires for its own account, in the ordinary course of business, existing and new loans that are the type of loans in which Clients could invest. All or a substantial portion of Client Assets could be comprised of investments in loans that could also be held by Hercules Capital. Clients (and investors in Clients) thus should understand that various conflicts of interest can arise from the overall investment activity of Hercules Capital. The following briefly summarizes some of these conflicts, but is not intended to be an exhaustive list of all such conflicts. Clients and investors in Clients should review Client Governing Documents for additional information.

*Principal and Cross Transactions.* The Adviser could effect principal transactions where a Client acquires an Asset from or sells an Asset to Hercules Capital (or an affiliate thereof). Before completion of a principal transaction, the Adviser will provide disclosures to and obtain the consent of the Client in accordance with Section 206(3) of the Advisers Act and any applicable Client Governing Document.

The Adviser could also cause Clients to enter into cross-transactions whereby one Client sells Assets to another Client. Whenever the Adviser intends to have two Clients enter into cross trades with each other, the Adviser will first make a determination that the cross trade is fair and equitable to each Client. Cross trades involving loans are executed at prices as determined in accordance with Client Governing Documents and the Adviser's Valuation Procedures.

Because most of the Assets in which Clients are expected to invest are not publicly traded, the value of such Assets can be difficult to determine. The Adviser will seek to value such assets in good faith, as described in Item 8 above. Such good faith valuations require the application of a significant amount of judgment, are inherently uncertain, will fluctuate and will often be based on estimates and assumptions. The Adviser's determination of the fair value of an Asset could differ materially from the values that would have been applied if an active market for the Asset existed and from the price at which such Asset could ultimately be sold. Differences in fair value and actual sale value could adversely impact Clients.

For Regulated Funds, participation in a principal or cross transaction would generally be prohibited under the 1940 Act, unless an exception or exemption applies. Regulated Funds are subject to additional restrictions with respect to, among other things, portfolio management, the use of leverage, and conflicts of interest. Additional information about restrictions applicable to any

Clients that are Regulated Funds will be disclosed to Regulated Funds and their investors in Client Governing Documents.

*Other Investment Related Conflicts.* It is anticipated that Hercules Capital or an affiliate will, at times, acquire, hold, sell or take other actions with respect to loans or securities of a type that are suitable Assets for a Client and, except as required by applicable law or contract, will not be required to offer the same to the Client or provide notice of such activities to the Client. The Adviser reserves the discretion to make different investment recommendations and decisions for different Clients. The Adviser could determine to sell a loan for one or more Clients while retaining a portion of such loan in the portfolio of other Clients and/or while all or a portion of such loan is retained by Hercules Capital, or vice-versa, as applicable. The Adviser will make its decisions as to whether Clients should acquire or sell a loan pursuant to its duties under the applicable Client Governing Documents and the implementation of such decisions will be governed by the Adviser's Allocation Procedures (as defined and described below). Hercules Capital will make its own independent decisions with respect to acquisitions and dispositions that can differ from those the Adviser makes on behalf of Clients. Conflicts of interest can arise if the Adviser seeks to acquire or sell portions of one or more loans for one or more Clients while Hercules Capital also seeks to acquire or sell portions of such loans for itself. Clients should be aware that all of or any portion of a loan could be disproportionately allocated to Hercules Capital, which will reduce the amount of the loan that is allocated to Clients. These conflicts of interest, and the Adviser's policies to mitigate them, are described in more detail below under the heading "Allocation of Investment Opportunities" and in Client Governing Documents.

In addition, Hercules Capital could invest in a range of asset classes throughout the corporate capital structure (which could include investments in loans and debt securities, equity securities, and warrants) of issuers in which Clients invest. Accordingly, Clients could invest in issuers in which Hercules Capital is also an investor, and could hold interests that are of a different class or type than the class or type of interest held by Hercules Capital and which could be senior, *pari passu* or junior to the Client's investment. Investments in the same class and type as a Client could be held by Hercules Capital in a different amount than is held by the Client.

The Adviser and Hercules Capital and its affiliates could provide services to others or engage in business lines that are unrelated to or not performed by Clients. The compensation that the Adviser and Hercules Capital and its affiliates can accept in connection with such services or businesses could give rise to additional conflicts of interest. As a general matter, subject to applicable Client Governing Documents, any fees that the Adviser, Hercules Capital and its affiliates receive for performing services unrelated to Clients will be retained thereby and not made available to the Client including, without limitation, fees from loan origination and/or syndication activities (whether paid as a fee or earned as an underwriting spread), servicing fees, investment advisory fees (including performance based compensation) and fees or other economic benefits received in connection with any other services. Subject to Client Governing Documents, no such compensation will offset any fees paid by Clients to the Adviser.

A Client could also receive fees (other than for services) and premiums as a lender under a loan facility, such as fees and/or premiums paid in connection with loan modifications and early pre-payments made at the option of the obligor among other reasons. When Hercules Capital receives

fees for services or fees or premiums with respect to a proposed loan modification or requested consent or vote relating to positions held by Hercules Capital or an affiliate in the capital structure of an obligor or in the loan facility that are different than those that could be held or received by a Client, the Client and Hercules Capital can have different incentives in evaluating an investment in a loan, a loan modification or a requested consent or other vote. The Adviser's activity (including exercising consent or voting rights under the terms of a portfolio loan) on behalf of a Client in certain circumstances could result in fees and premiums being paid to Hercules Capital for services, as an administrative agent or otherwise.

*Shared Services Expense.* In the operation of the Adviser's business and the management of Clients, an inherent conflict might arise in connection with shared service expenses. Pursuant to the Client Governing Documents, certain overhead and back office expenses could be allocated to certain Clients. In the case of certain categories of services expected to be provided pursuant to the Client Governing Documents, the allocation of expenses will require judgment to determine whether the expense is to be allocated to the Adviser or Hercules Capital, to Clients or split ratably between the Adviser and one or more Clients. Additionally, the Adviser will bear the portion of any shared service expense attributable to a Client whose Client Governing Documents prohibit the Client from bearing such expense. Where the Adviser must allocate a shared service expense with respect to an item that is attributable to the Adviser and Clients or to multiple Clients, the Adviser would have an incentive to allocate relatively more of an expense to Clients who can bear such expenses under their Client Governing Documents and relatively less of an expense to the Adviser or to Clients whose Client Governing Documents prohibit bearing such expense. Accordingly, the Adviser's exercise of judgment in allocating shared service expenses would create a conflict of interest since it would be both in the Adviser's best interest and in the Clients' best interest to pay less service expenses.

*Fiduciary Duty to Multiple Holders of Loans.* The Adviser could have fiduciary duties to multiple holders of loans, and it is not always the case that each such holder's interest is aligned with the interests of other holders' (including, Hercules Capital) with respect to waivers of prepayment or call protections. Those who participate in a refinancing of a loan could benefit from a waiver, while those that do not participate could prefer to receive the benefit of any prepayment premiums that would otherwise be due and other prepayment protections. Whether or not a Client would be able to participate in a refinancing depends on a variety of factors that would vary based on each Client.

Where one or more Clients do not participate in a refinancing, the Adviser would face a conflict of interest between its duty to such Clients and the interests of those Clients, if any, that do participate in the refinancing, as well as, in certain cases, the interests of Hercules Capital which would benefit from such refinancing.

Any of the foregoing circumstances could give rise to conflicts of interest, or the appearance of a conflict of interest. Hercules Capital could take actions that could be adverse to certain Clients. Furthermore, the Adviser might take, or be required to take, actions which could materially adversely affect certain Clients relative to others.



Except as might be required by applicable law, Hercules Capital does not have any duty, in making or maintaining such investments or roles, to act in a way that would be favorable to a Client. In such instances Hercules Capital could take action with respect to its investments which could differ from the timing or nature of any action taken with respect to the investments of a Client. Such actions could be adverse to Clients. As a result of such actions, the prices and availability of Assets in which a Client could invest or might seek to invest, and the performance of the Assets expected to be owned by a Client, could be materially adversely affected.

*Access to Material Non-Public Information.* Hercules Capital currently does not expect to impose internal information barriers or impose information barriers between Hercules Capital and the Adviser. When the Adviser participates in creditors' committees with respect to the bankruptcy, restructuring or workout of obligors of loans it could obtain material, non-public information that it would be prohibited by applicable law from providing to Clients. As a result, the Adviser could from time to time come into possession of, or be imputed to have, material non-public information that will limit the Adviser's ability to effect a transaction for a Client, and in these circumstances, the Client's investments would be constrained as a consequence of the Adviser's inability to effect transactions that it otherwise would have initiated on behalf of Clients. The Adviser will refrain from directing the purchase or sale hereunder of loans issued by persons about whom Hercules Capital or the Adviser has information that they determine might prohibit them from trading such loans in accordance with applicable law. In addition, Hercules Capital or the Adviser could elect not to receive material non-public information with respect to various obligors. In these cases, Hercules Capital or the Adviser would not have access to information relating to obligors of loans that is or might be known to other persons who are investing in the same loan.

#### Allocation of Investment Opportunities

To mitigate conflicts, the Adviser has adopted Allocation Policies and Procedures (the "Allocation Procedures") for use in the allocation of investment opportunities among Hercules Capital and Clients. The investment criteria of each Client are expected to be different and could prevent a Client from being able to participate in all or a portion of an investment purchase or sale opportunity. A Client could also be prevented from being able to participate in all or a portion of an investment purchase or sale opportunity by regulatory, tax or legal requirements.

As a fiduciary to its Clients, the Adviser has a duty to treat Clients fairly and equitably over time in the allocation of investment opportunities. In making allocation decisions, the Adviser will consider (i) each Client's investment program as established in Client Governing Documents as well as the types of investments that the Adviser reasonably believes the Client would expect to be allocated; (ii) the amount of capital each Client has available to invest; and (iii) any other factors deemed to be appropriate by the Adviser.

The Adviser will not make allocation decisions to (i) unduly favor one Client (or group of Clients) at the expense of another over time; (ii) generate higher fees (including advisory fees or performance compensation); (iii) develop or enhance a relationship with a Client or prospective Client; (iv) compensate a Client for past services rendered to the Adviser or Hercules Capital or to induce future services or benefits to be rendered to the Adviser or Hercules Capital; or (v) manage or equalize investment performance among different Client accounts. In addition, the Adviser will

not favor or disfavor any Client (or group of Clients) in making available an investment opportunity or allocation on the basis of: (i) the impact of any fee or expense arrangements with respect to a Client; or (ii) any other interest the Adviser, Hercules Capital or their related persons have in a Client.

If the amount of aggregated demand from participating Clients for an investment opportunity exceeds the total amount of that opportunity available for allocation, the Adviser expects to allocate the investment opportunity between participating Clients on *apro rata* basis based on each Client's available capital. However, consistent with its duty to allocate investment opportunities fairly and equitably over time, the Adviser can deviate from allocating opportunities strictly as described above to allocate such opportunities on a basis that the Adviser determines in good faith is appropriate at the time of the allocation and that seeks to ensure that all Clients receive fair and equitable access to investment opportunities over time.

### Co-Investment Transactions

The 1940 Act generally prohibits Regulated Funds from co-investing with other Clients where terms other than price are negotiated, unless an exception or exemption applies. If the Adviser were to manage Regulated Fund Clients, such Regulated Funds, the Adviser, Hercules Capital, certain Clients, and related entities may apply for an exemptive order from the SEC ("Co-Investment Order"), which, if granted would permit the parties to enter into co-investments where the Adviser may negotiate terms other than price, subject to certain conditions set-out in the application to the SEC. The conditions of a Co-Investment Order seek to ensure that participation in a co-investment transaction by Regulated Funds is not on a basis different from or less advantageous than that of other participants by, among other things, giving Regulated Funds the opportunity to participate. Accordingly, if Regulated Funds participate in co-investment pursuant to a Co-Investment Order, it is expected that such Regulated Funds would invest on equal footing, including identical terms, conditions, price, class of securities purchased, settlement date, and registration rights as other participating Clients. Further, the conditions of a Co-Investment Order are expected to require that investment opportunities with limited supply (as well as certain dispositions and follow-on investments) be allocated among participating Clients pro-rata. By permitting Regulated Funds to co-invest, a Co-Investment Order would generally increase the amount of available capital allocable by the Adviser, which may reduce the overall level of investment opportunities allocable to non-Regulated Fund Clients. No Client or investor can be assured that any Co-Investment Order will be sought, nor can any Client or investor be assured that any co-investment with a Regulated Fund will occur.

### **Item 12      Brokerage Practices**

The Adviser has a duty to execute transactions for each Client in the best interests of the Client and, accordingly, will seek to obtain best execution of Client portfolio transactions. However, unlike trading in public securities, the Adviser's focus on acquiring loans in private companies generally will not require the engagement of a broker-dealer. In the event that a Client were to acquire marketable securities (for example, in connection with a warrant or workout or restructuring) and the Adviser were to execute transactions in such securities through brokers, dealers or other intermediaries on behalf of Clients, the Adviser would seek to obtain best execution for such transactions by selecting broker-dealers or other intermediaries that the Adviser

believes would provide appropriate execution quality at acceptable costs, but would not be required to execute through the broker offering the most favorable spread, lowest commissions or trading expenses or otherwise resulting in the lowest trading expenses. Rather, in seeking best execution, the Adviser would take into account a variety of quantitative and qualitative factors including, as relevant under the circumstances, price, transaction costs, experience of the broker, anticipated speed of execution, as well as any research services provided to the Adviser. However, the Adviser currently does not expect to receive research or other products or services from a broker-dealer or a third party in connection with Client securities transactions.

As discussed in Item 11 above, if more than one Client purchases or sells the same security, such orders will generally be aggregated in a single transaction unless the Adviser determines that aggregation is not the best interests of the relevant Client or Clients.

### **Item 13          Review of Accounts**

The Adviser will establish policies and procedures to monitor and manage the individual investments in, and the overall investment objectives of, each Client. Policies and procedures related to the review of individual Assets are described in Item 8, "Methods of Analysis, Investment Strategies and Risk of Loss."

Client Governing Documents will also specify the Adviser's reporting requirements. The Adviser has developed policies and procedures and appropriate systems and controls to ensure that it is able to meet the specific reporting requirements described in each Client Governing Document.

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

From time to time, the Adviser could enter into solicitation or placement agent agreements pursuant to which third parties will be entitled to receive fees based on providing client or investor referrals. These fees can be based on the amount of assets such clients or investors invest with the Adviser. In certain cases, such fees can be payable for a period of time, including a trailing period following termination of the arrangement.

### **Item 15          Custody**

The Adviser might, due to certain arrangements giving it or an affiliate control over or access to Client assets, be deemed to have custody of certain Client assets for purposes of the SEC's custody rule. Except as permitted by the Advisers Act, cash and securities of Clients are maintained in accounts established with qualified custodians, as defined in Rule 206(4)-2 of the Advisers Act (each, a "Qualified Custodian").

The Adviser expects that it, Hercules Capital or an affiliate will serve as the administrative agent for certain loans in which the Adviser's Clients invest. Funds related to such loans and attributable to such Clients ("Client Funds" related to "Client Loans") would be commingled in an account established by the Adviser or Hercules Capital for that purpose (the "Agent Account") with funds attributable to other lenders (including Hercules Capital) and/or related to other loans ("Other Funds" and "Other Loans"). The Agent Account would be held with a Qualified Custodian in Hercules Capital's name for the benefit of lenders which would include clients who are lenders

under various loans and would hold only cash and not loans. Account statements for the Agent Account are not expected to be provided to the Adviser's Clients.

In its role as administrative agent, Hercules Capital would perform a variety of traditional services pursuant to credit agreements in accordance with negotiated guidelines regarding the movement of cash into and out of the Agent Account for such purposes as collecting and distributing loan proceeds or payments. As administrative agent, Hercules Capital would be required to apply the terms of the credit agreement in dealing with funds in the Agent Account and would have no authority to determine how such funds are used, allocated or disbursed; however, other than the terms of the credit agreements, nothing prevents an administrative agent from withdrawing cash from the Agent Account for unrelated purposes. Therefore, and in light of SEC Staff guidance, the Adviser considers itself to have custody over the Client Funds in the Agent Account for purposes of Rule 206(4)-2 under the Advisers Act.

The Adviser will also be deemed to have custody of the assets of a Client that is a pooled investment vehicle if it, or an affiliate, serves as general partner, managing member or in a similar capacity. Investors in such Clients are expected to receive annually, within 120 days of the Client's fiscal year end, audited financial statements prepared in accordance with GAAP (or an equivalent non-U.S. accounting standard). Investors should contact the Adviser if they have questions about the financial statements or fail to receive them in a timely manner.

If the Adviser is deemed to have custody of the funds or securities of other Clients, or of a pooled investment vehicle Client that is not audited in the manner described above, other than with respect to the Client's funds held in the Agent Account, the Qualified Custodian is expected to send account statements (other than account statements for the Agent Account) to the Client, each investor in the Client or the Client's or investors' independent representative(s), as applicable, not less frequently than quarterly. Recipients should review those account statements carefully and are urged to compare those account statements with any account statements sent by the Adviser and to contact the Adviser in the event of any discrepancy.

#### **Item 16      Investment Discretion**

The Adviser expects that it will generally have decision-making authority for most Clients in accordance with the applicable Client Governing Document. As discussed above, investments for a Client will be managed in accordance with the Client's particular investment objectives, strategies, restrictions and guidelines as outlined in the Client Governing Document.

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

The Adviser will vote proxies in the best interest of Clients. Proxy voting decisions will be made by members of the Investment Team, who review on a case-by-case basis each proposal submitted to a vote to determine its impact on Client portfolios. Although the Adviser expects to generally vote against proposals that may have a negative impact on Client portfolios, it may vote for such a proposal if there exists compelling long-term reasons to do so.

To ensure that a vote is not the product of a conflict of interest, the Adviser will require that: (i) anyone involved in the decision making process disclose to the Chief Compliance Officer any

potential conflict that he or she is aware of and any contact that he or she has had with any interested party regarding a proxy vote; and (ii) employees involved in the decision making process or vote administration are prohibited from revealing how the Adviser intends to vote on a proposal in order to reduce any attempted influence from interested parties.

The Adviser will provide a copy of the Proxy Voting Policy and Client voting records to any Client upon request. Such request should be made to the Adviser's Chief Compliance Officer using the contact information provided on the cover page.

#### **Item 18        Financial Information**

The Adviser has never filed for bankruptcy and is not aware of any financial condition that is expected to affect its ability to manage Client accounts in accordance with its contractual and fiduciary commitments.