

KPS Capital Partners, LP  
One Vanderbilt Avenue, 52<sup>nd</sup> Floor  
New York, New York 10017  
Part 2A of Form ADV  
The Brochure

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

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This Brochure provides information about the qualifications and business practices of KPS Capital Partners, LP (“KPS”). If you have any questions about the contents of this brochure, please contact us at (212) 338-5100. 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. Any reference to KPS as a “registered investment adviser” or as being “registered,” does not imply a certain level of skill or training.

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

## Material Changes

KPS filed its most recent update to Form ADV Part 2 in March, 2020. This annual amendment reflects updates to the descriptions of potential risks of investment and related potential conflicts of interest under “Methods of Analysis, Investment Strategies and Risk of Loss,” provides information about additional investment vehicles advised by KPS and its affiliates, and supplements existing disclosures relating to the practices of KPS and its affiliates.

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## Advisory Business

KPS is a limited partnership formed under the laws of the state of Delaware in 2006, but has been doing business through its predecessor and subsidiary entities since 1998. KPS is principally owned by Michael G. Psaros, David P. Shapiro, Raquel V. Palmer and Jay Bernstein (collectively, the “Principals”). The Principals, together with Ryan Baker and Kyle J. Mumford, are collectively referred to herein as the “KPS Partners”. KPS is headquartered in New York, New York and also has affiliate offices and/or personnel in Frankfurt, Germany, Amsterdam and Hong Kong.

KPS, through its affiliated management entities, serves as investment manager to private pooled investment vehicles organized and sponsored by KPS and its affiliates (collectively, the “Funds”) to make private equity investments. As of December 31, 2020, KPS and its affiliates, managed \$12.3 billion on a discretionary basis on behalf of the Funds. KPS and its affiliates do not manage assets on a non-discretionary basis.

KPS primarily focuses on making investments in manufacturing and industrial companies across a diverse array of industries, including basic materials, branded consumer, healthcare and luxury

products, automotive parts, capital equipment and general manufacturing. KPS targets investment opportunities involving corporate divestitures and carve-outs, private transactions (e.g., acquisitions from families, entrepreneurs and other financial owners seeking to transition ownership), or restructurings that result in a change of control (whether pursuant to a structure bankruptcy or an out-of-court transaction).

The managers and general partners of each of the Funds listed below are controlled and primarily owned by KPS or the Principals. The Funds for which KPS, through its affiliates (as described below), provides management services are as follows:

- ***KPS Special Situations Fund III, LP (“Fund III”)***  
Delaware limited partnership
- ***KPS Special Situations Fund III (A), L.P. (“Fund III (A)”)***  
Cayman Islands exempted limited partnership
- ***KPS Special Situations Fund III, Ltd. (“Fund III Feeder”)***  
Cayman Islands exempted company
- ***KPS Special Situations Fund III (AIV), LP (“Fund III AIV”)***  
Alberta limited partnership
- ***KPS Special Situations Fund III (AIV II), LP (“Fund III AIV II” and, together with Fund III, Fund III (A), Fund III Feeder and Fund III AIV, “KPS III”)***  
Delaware limited partnership
- ***KPS Special Situations Fund III (Supplemental), LP (“Fund III Supplemental”)***  
Alberta limited partnership
- ***KPS Special Situations Fund III (Supplemental – Feeder), Ltd. (“Fund III Supplemental Feeder”)***  
Cayman Islands exempted company
- ***KPS Special Situations Fund III (Supplemental – AIV), LP (“Fund III Supplemental AIV”)***  
Delaware limited partnership
- ***KPS Special Situations Fund III (Supplemental – AIV II), LP (“Fund III Supplemental AIV II” and, together with Fund III Supplemental, Fund III Supplemental Feeder and Fund III Supplemental AIV, “KPS III Supplemental”)***  
Delaware limited partnership
- ***KPS Special Situations Fund IV, LP (“Fund IV”)***  
Alberta limited partnership

- ***KPS Special Situations Fund IV (A), LP (“Fund IV (A)”)***  
Alberta limited partnership
- ***KPS Special Situations Fund IV (B), LP (“Fund IV (B)”)***  
Alberta limited partnership
- ***KPS Special Situations Fund IV (A-Delaware), LP (“Fund IV (A-Delaware)” and, together with Fund IV, Fund IV (A) and Fund IV (B), “KPS IV”)***  
Alberta limited partnership
- ***KPS IV Dex Co-Investors (Delaware), LP (“Fund IV (Dex Co-Invest Delaware)”)***  
Delaware limited partnership
- ***KPS IV Dex Co-Investors, LP (“Fund IV (Dex Co-Invest)” and, together with Fund IV (Dex Co-Invest Delaware), the “KPS IV Co-Investments”)***  
Alberta limited partnership
- ***KPS Special Situations Fund V, LP (“Fund V”)***  
Ontario limited partnership
- ***KPS Special Situations Fund V (A-Delaware), LP (“Fund V (A-Delaware)”)***  
Delaware Limited Partnership
- ***KPS Special Situations Fund V (A), LP (“Fund V (A)” and, together with Fund V and Fund V (A-Delaware) “KPS V”)***  
Ontario limited partnership
- ***KPS Special Situations Mid-Cap Fund, LP (“Mid-Cap”)***  
Ontario limited partnership
- ***KPS Special Situations Mid-Cap Fund (A), LP (“Mid-Cap (A)”)***  
Ontario limited partnership
- ***KPS Special Situations Mid-Cap Fund (A-Delaware), LP (“Mid-Cap (A-Delaware)” and, together with Mid-Cap and Mid-Cap (A), “KPS Mid-Cap”)***  
Delaware limited partnership

KPS III, KPS III Supplemental, KPS IV, the KPS IV Co-Investments, KPS V and KPS Mid-Cap are closed to new capital commitments.

Information about the Funds is included in this Brochure and is qualified in its entirety by information contained in the Funds’ confidential offering documents, including any private placement memoranda, limited partnership agreements or similar governing documents (the “Governing Documents”). The Funds’ Governing Documents contain complete information on the investment objectives and investment restrictions applicable to each Fund.

KPS Management III, LP (“Management III”) is, directly and indirectly, a wholly-owned subsidiary of KPS. It was formed in 2007 and provides investment advisory services to KPS III and KPS III Supplemental.

KPS Management IV, LLC (“Management IV”), KPS Management V, LLC (“Management V”) and KPS MC Management, LLC (“Management MC”) are each wholly-owned subsidiaries of KPS. Management IV was formed in 2013 and provides investment advisory services to KPS IV and the KPS IV Co-Investments, Management V and Management MC were formed in 2019 and provide advisory services to KPS V and KPS Mid-Cap, respectively.

KPS Cayman Management, Ltd. (“Cayman Management”) was formed in 2009 and serves as the sole shareholder of the KPS sub-managers as further detailed below. Cayman Management is owned, directly and indirectly, by the Principals and employees.

KPS Capital Germany GmbH is wholly-owned by Cayman Management, was formed in 2010 and provides investment advisory services to certain entities of KPS III, KPS III Supplemental, KPS IV, the KPS IV Co-Investments, KPS V and KPS Mid-Cap with respect to non-U.S. investments, primarily in Europe, pursuant to a sub-management agreement with Management III, Management IV, Management V and Management MC.

KPS Netherlands Management BV is wholly-owned by Cayman Management, was formed in 2018 and provides investment advisory services to certain entities of KPS III, KPS III Supplemental, KPS IV, the KPS IV Co-Investments, KPS V and KPS Mid-Cap with respect to non-U.S. investments, primarily in Europe, including activities conducted through Dutch Cooperatives, pursuant to a sub-management agreement with Management III, Management IV, Management V and Management MC.

KPS HK Management Limited is wholly-owned by Cayman Management, was formed in 2013 and provides investment advisory services to certain entities of KPS III, KPS III Supplemental, KPS IV, the KPS IV Co-Investments, KPS V and KPS Mid-Cap with respect to non-U.S. investments, primarily in Asia, pursuant to a sub-management agreement with Management III, Management IV, Management V and Management MC.

In providing services to the Funds, KPS formulates each Fund’s investment objective, directs and manages the investment and reinvestment of each Fund’s assets, and provides periodic reports to the investors of each Fund. Investment advice is provided directly to the Funds and not individually to the limited partners or shareholders of the Funds (the “Investors”). KPS manages the assets of each Fund in accordance with the terms and conditions of each Fund’s Governing Documents, each of which contains certain restrictions on the types of assets in which the applicable Fund may invest. Investors and prospective investors in a Fund should refer to the applicable Governing Documents for complete information on the specific terms, including investment objectives and investment restrictions, applicable to the Fund. There can be no assurance that any of the Funds’ objectives will be achieved.

## Fees and Compensation

KPS or an affiliated entity is entitled to a carried interest and also receives a management fee for providing managerial and administrative services to the Funds. Management fees are generally payable by the Funds quarterly in advance and are pro-rated for any period that is less than a full calendar quarter.

The Funds pay their respective management companies (as described in the *Advisory Business* section above), each of which is primarily owned by or under common control with KPS, aggregate management fees ranging from 1% to 1.75% per annum of committed capital or actively invested capital of each Fund during the life of such Fund. The Funds are also subject to a carried interest of 25%-30% of profits on distributions derived from the disposition of investments or securities (following a preferred return of 8% to the Investors), which is paid to affiliates of KPS. Where the Governing Documents calculate management fees based on the amount of committed capital or actively invested capital, the amount of management fees generally will not be reduced based on reductions in investment value, except where specified by the relevant Governing Documents. As a general matter, management fees will be payable during term extensions unless otherwise agreed with investors.

In connection with the investments of the Funds, various “Transaction Fees” are paid to KPS-affiliated parties by a portfolio company. “Transaction Fees” generally include all advisory fees, break-up fees, commitment fees, director’s fees, termination fees, portfolio company management fees, and similar fees, payments or compensation received by KPS and certain of its affiliates in connection with an investment or potential investment. In addition, portfolio companies pay quarterly monitoring fees (together with “Transaction Fees,” “Deal Fees”) to KPS-affiliated parties pursuant to the terms of a management services agreement. All such Deal Fees are retained in full by the KPS-affiliated parties to whom they are paid, and are partially or fully offset (with the percentage amount of offset varying depending on the specific Fund and the type of fee) against management fees otherwise payable by the applicable Fund. Deal Fees are offset net of any unreimbursed expenses incurred by KPS or its affiliates in connection with unconsummated transactions. At the end of a Fund’s term as defined in the relevant Governing Documents, to the extent that there are no management fees otherwise payable against which to offset Deal Fees, such Deal Fees will be retained in full by the KPS-affiliated parties to whom they are paid without any offsetting credit or refund. “Transaction Fees” are expected to be structured to be paid at the time of an acquisition or disposition and are not based on the exit or sale price of a Fund investment. Accordingly, KPS and its affiliated parties can from time to time receive “Transaction Fees” when a Fund does not ultimately profit from an investment. Monitoring fees may be increased in connection with add-ons to an existing platform investment. KPS does not accelerate monitoring fees.

For the avoidance of doubt, Deal Fees generally do not include (a) any amounts received from co-investors in connection with a co-investment arrangement, (b) any amounts that constitute Fund expenses or (c) any fees and other compensation received by persons who serve as directors or officers of, or in other similar management roles with respect to, portfolio companies of the Fund at the request of KPS or its affiliates and who are not employees of KPS, and consequently such amounts will not reduce the management fees payable by a Fund. In addition, management fees

generally are not reduced by (1) amounts of Deal Fees that are attributable to interests in the Fund held by KPS and its affiliates (which amounts can be retained by KPS and its affiliates) and (2) any Deal Fees received directly or indirectly by KPS and its affiliates with respect to the portion of any capital invested in a portfolio company of a Fund by co-investors or other third parties.

Certain Governing Documents permit KPS to waive or agree to reduce the management fee. Certain waived portions of the management fee are treated by the Governing Documents as a deemed capital contribution by the relevant general partner, which is effectively invested in the relevant Fund on such general partner's behalf, and operates to reduce the amount of capital such general partner would otherwise be required to contribute to the relevant Fund. The limited partners of the Fund would, in such circumstances, be required to make a *pro rata* contribution according to their respective commitments to fund any contribution that would otherwise be required of KPS in connection with any such waiver or reduction as described above and, as a result, the exercise of such waiver has the potential to result in an acceleration (or delay) of investor capital contributions. Waived or reduced management fees are not subject to the management fee offsets described above, and the amount of such waived or reduced management fees has the potential to be significant. Due to waived or reduced management fees by KPS and/or timing of receipt of compensation subject to offsets (as described above), it is possible that management fee offsets will not be fully realized by investors in the relevant Fund, resulting in a net additional benefit to KPS.

Detailed information regarding the fees charged to each Fund is provided in the Fund's Governing Documents. In addition to management fees and the carried interest, the Funds will pay, or reimburse KPS or its affiliated parties for, certain costs, fees, expenses, obligations and liabilities incurred by, or arising out of the operation and activities of the Funds (and its subsidiaries' and intermediate entities') (to the extent not borne by another party, including a portfolio company), including: (i) fees, costs and expenses incurred in connection with the discovery, evaluation, acquisition, holding, management, monitoring, financing, refinancing, structuring, restructuring, operating, taking public or private, valuing, winding up, liquidating, dissolving or disposing of investments (whether or not consummated and whether or not incurred prior to the initial closing), including (A) private placement, investment banking, sales, appraiser, retainer, finder, adviser, consultant (including, without limitation, operating executives and senior advisors), brokerage, underwriting and transfer agent fees, expenses, commissions and discounts, (B) Bloomberg fees, research and software expenses and other expenses incurred in connection with data services providing price feeds, news feeds, securities and company information, company fundamental data and other information services, all attributable to investments and (C) legal, accounting, registration and other similar costs, fees and expenses; (ii) broken deal expenses; (iii) travel (including first-class or business-class commercial air travel and non-commercial air travel at the available charter rate or, for use of aircraft owned or leased by an affiliate of KPS or its employees, at the available charter rate or reasonably comparable hourly equivalent thereof), accommodation and related expenses, including lodging, meals, and entertainment; provided, that such travel and related expenses are related to (A) investments (whether consummated or proposed but unconsummated), including those incurred in connection with the discovery, evaluation, acquisition, holding, management, monitoring, financing, refinancing, structuring, restructuring, operating, taking public or private, valuing, winding up, liquidating, dissolving or disposing thereof, (B) meeting with or reporting to one or more investors or their representatives or (C) the provision of services to and the administration of the Funds; (iv) fees, costs and expenses incurred in connection with the preparation and distribution of Fund reports, including financial statements, tax returns and Schedule K-1s, the

filing of various foreign tax withholding and treaty forms, the representation of the Funds or their limited partners by the “partnership representative” and the “designated individual” and any other administrative, regulatory or other related reporting or filings of the Funds; (v) fees, costs and expenses incurred in connection with reporting to or on behalf of, and other communications and meetings with, or materials prepared for or on behalf of, one or more of the limited partners and the advisory boards of the Funds (including responses to questions and inquiries, fulfillment of requests regarding investments, operations, and compliance of the Funds, and a Fund’s annual meeting (including any specialized equipment and similar costs related thereto)); (vi) any taxes and other governmental charges, fees and duties that may be incurred or payable by the Funds and all expenses incurred in connection with any tax audit, investigation, settlement or review of the Funds; (vii) fees, costs and expenses related to the indemnification obligations, litigation expenses (and damages) incurred in connection with the activities of the Funds and insurance expenses (including premiums) of the general partners, managers and any other protected person of the Funds, including in respect of errors, omissions, fidelity, general partner liability, directors’ and officers’ liability and similar coverage for any protected person acting on behalf of a Fund or its related entities (including such Fund’s *pro rata* share of expenses with respect to policies whose costs and benefits are expected to be shared with other Funds); (viii) fees, costs or expenses related to compliance with applicable laws, rules and regulations, including costs of reporting to regulatory and tax authorities in any jurisdiction in which a Fund, its related entities, any portfolio company or other entity owned directly or indirectly by a Fund invests, is organized or is marketed or otherwise directly or indirectly conducts business related to a Fund or its investments, including the SEC, the Commodity Futures Trading Commission (the “CFTC”), the U.S. National Futures Association, the U.S. Treasury, the Internal Revenue Service (the “IRS”) and other national, state, provincial or local regulatory and tax authorities in any country or territory (for example, the preparation and filing of Form PF and Form CPO-PQR and Form CTA-PR in the United States and other similar regulatory filings, any compliance or filings related to the offering of interests in a Fund in particular jurisdictions (including under the AIFM Directive (as defined herein)), expenses related to compliance with the GDPR (as defined herein) (and any similar data protection laws, regulations and requirements) and FATCA, and expenses related to complying with rules, statutes or regulations similar to the foregoing, whether in effect or hereafter enacted); provided, that, the costs of a manager’s general compliance with the Investment Advisers Act of 1940, as amended (the “Advisers Act”), such as preparation and updating of Form ADV, will be borne by such manager and its affiliates; (ix) fees, costs and expenses incurred in connection with the dissolution, winding up or termination of a Fund and its related entities; (x) management fees and placement fees; (xi) fees, costs and expenses incurred in connection with the formation of any person, including alternative investment vehicles and subsidiaries of a Fund, through or in which investments may be made; (xii) fees, costs and expenses attributable to investor-related services, the administering and complying with side letters, the process of compiling compendiums of side letter provisions and tracking and implementing applicability in accordance with the “most favored nations” provisions contained in the applicable Governing Documents of the Funds and compliance checklists of any Fund; (xiii) fees, costs and expenses incurred in connection with any restructuring or any amendments, modifications, revisions or restatements to, or waivers of, the Governing Documents of a Fund and its related entities, including the preparation, distribution and implementation thereof; (xiv) fees, costs and expenses that are classified as extraordinary expenses under U.S. generally accepted accounting principles; (xv) fees, costs and expenses incurred in connection with any valuation of the assets of the Funds, including costs, fees and expenses of independent appraisal or valuation services or third-party



vendor price quotations; (xvi) fees, costs and expenses incurred in connection with distributions to a Fund's partners; (xvii) out-of-pocket fees, costs and expenses incurred by the members of any advisory board of the Funds in connection with the fulfillment of their duties, including reasonable travel, accommodation and related expenses incurred in connection with attending meetings (including lodging, meals and entertainment, but excluding any out-of-pocket expenses incurred by advisory board members in connection with any meetings held in conjunction with a Fund's annual meeting); (xviii) fees, costs and expenses related to the incurrence and repayment of borrowings and portfolio company guarantees permitted under the Governing Documents of a Fund (together with any interest and other amounts payable thereon and fees and expenses related thereto); (xix) fees, costs and expenses related to defaults by partners of the Funds in the payment of any capital contributions (to the extent not paid by such defaulting partners); (xx) fees, costs and expenses related to any transfer or proposed transfer by a Fund partner (to the extent not paid by the transferor or transferee partner); (xxi) fees, costs and expenses attributable to any activities with respect to protecting the confidential or non-public nature of any Fund-related information; (xxii) fees, costs and expenses of any third-party administrators (including, for the avoidance of doubt, administrators that perform anti-money laundering or "know your customer" diligence in connection with the onboarding and ongoing participation of Investors in the Funds), custodians, depositaries (including, for the avoidance of doubt, any depositary appointed pursuant to the AIFM Directive), any Korean representative, any Japanese representative, any Swiss representative and paying agent (pursuant to the Swiss Collective Investment Schemes Act (as amended)), attorneys, accountants, tax advisors and other advisors and professionals; (xxiii) fees, costs and expenses incurred in implementing or maintaining third-party or proprietary software tools, programs or other technology for the benefit of the Funds, including accounting, tax, reporting and information management software systems and hardware, extranet tools, web portals (including any online reporting website used to distribute Fund reports), the use of any online investor tracking platform maintained by a Fund administrator or other transactions and computer systems used in connection with a Fund and its activities (whether maintained by a Fund's manager or otherwise), including for the purpose of producing, preparing or distributing reports or other communications or administrative functions of a Fund's general partner or manager, and any consultant fees, costs and expenses incurred in connection with the evaluation of the aforementioned tools, programs and other technology; and (xxiv) fees, costs and expenses incurred in connection with organizing, maintaining, operating and liquidating (A) any subsidiary or other intermediate entity used to acquire, hold or dispose of any investment or (B) administrative investment structures, offices and persons formed or utilized by a Fund in various jurisdictions to facilitate such Fund's investment activities (for example, the office and structures of affiliates of certain of the Funds in the Netherlands or other similar offices and structures opened in the future), including to (1) perform accounting, administrative, corporate secretarial support and other functions for non-U.S. holding entities organized by the Funds in the jurisdictions where such investments are located, (2) conduct certain aspects of the investment activities of the Funds, (3) act as service providers to the Funds or (4) otherwise operate and manage the activities of investment structures affiliated with the Funds (including, without limitation, the salary and benefits of any personnel responsible for the maintenance of such structures, offices and persons, any travel and accommodation expenses incurred in connection with such structures, offices and persons, and all other overhead costs, fees and expenses incurred in connection therewith and any tax obligations attributable to or withholding on any fees charged in connection with such structures in order to comply with applicable law).

All fees paid to any placement agent employed in connection with the offering and sale of interests of a Fund (“Placement Fees”) will be charged to such Fund; however, 100% of all Placement Fees will reduce the management fee otherwise payable by a Fund, on an aggregate basis. The general partner of each Fund, in its sole discretion, reserves the right to call capital for expenses (including management fees) or fund such amounts out of disposition proceeds.

A more detailed list of expenses paid by the Funds is set forth in the applicable Governing Documents of the Funds. The fees and expenses borne by a Fund are negotiated with the Investors during such Fund’s fundraising period. Investors should review all fees charged by KPS, its related parties, and others to fully understand the total amount of fees to be paid by the Funds and, indirectly, their respective Investors. Expenses paid by the Funds are allocated among any parallel funds, alternative investment vehicles, other entities that comprise the Funds and co-investment vehicles, that shared in the activities generating such expenses; however, in the event that a co-investment opportunity is not consummated, and prospective co-investors do not agree to bear their share of any broken deal expenses, such expenses will be considered operating expenses of and be borne by the applicable Funds. As a general matter, broken deal expenses are allocated among Fund investors regardless of whether any individual investor negotiated for an elective or automatic contractual right that would have excused them from participating in the investment. To the extent the Fund makes use of a credit facility to invest in a portfolio company or pay related expenses, it generally will not be reimbursed separately by co-investors for use of the facility.

Each Fund also generally will bear the costs of implementing, monitoring and complying with investment guidelines and directives relating to the Fund’s strategy, including in side letters relating thereto, and (where applicable) environmental, social, governance and other standards to which the relevant general partner has committed in making investments on behalf of the Fund. Additionally, subject to the Governing Documents, a Fund typically will bear certain unreimbursed expenses of portfolio companies and intermediate holding vehicles through which the Fund invests.

KPS retains flexibility to structure its compensation from investors and expects in certain circumstances to agree to invoice an investor directly for management fees or other compensation, rather than deducting such amounts from the Investor’s capital account(s).

Additionally, KPS, the Funds or their portfolio companies, from time to time, retain consultants, senior advisors or operating executives to provide assistance with deal sourcing, industry insight or due diligence, offer financial and structuring advice and perform other services for the Funds or their respective portfolio companies (“Industry Consultants”), including services that may be similar in nature to those provided by the KPS investment professionals or other KPS personnel. Such services may be provided to KPS or the Funds on an exclusive basis. The nature of the relationship with each such Industry Consultant and the time devotion requirements of each such Industry Consultant may vary significantly. These arrangements will generally be memorialized in formal written agreements (but may also be informal) and are negotiated individually, depending on the anticipated services to be provided.

A Fund’s share of any retainer fees, success fees, discretionary bonuses (whether or not based on pre-determined milestones), promotes, participation or equity interest in a portfolio company or holding company, incentive equity and stock awards, profit sharing or other fees paid to Industry Consultants (“Industry Consultant Fees”) will be borne by the Fund (whether paid by the Fund

directly, by a portfolio company or by KPS and subsequently reimbursed by the Fund). While such Industry Consultant Fees are believed by KPS to be reasonable and generally at market rates for the relevant services provided, exclusive arrangements or other factors may result in Industry Consultant Fees not always being comparable to costs, fees and expenses charged by other third parties. Compensation in the form of profits or equity interests in a portfolio company or intermediate holding company generally has a dilutive impact on the Fund's investment, and the relevant Fund typically will bear the costs of all Industry Consultant compensation as well as fees, costs and expenses of structuring Industry Consultant arrangements. In addition to Industry Consultant Fees, a Fund will also generally bear its share of any reasonable out of pocket expenses (including, if applicable, travel costs) incurred by Industry Consultants in connection with the provision of their services. Accounting, network, communications, administration and other support benefits, including office space, may be provided by KPS or a Fund to Industry Consultants without charge. To the extent that communications or other equipment or services are provided by a Fund to an Industry Consultant, its cost can be borne by such Fund as a Fund expense. Fees or other payments or benefits received by Industry Consultants in connection with their services, including any amounts paid in connection with particular transactions or investments, will not be considered Deal Fees and consequently will not reduce the management fees paid by the relevant Fund.

Industry Consultants will potentially be granted the right to participate alongside the Fund in one or more investments of the Fund, including, but not limited to, through the applicable portfolio company itself. Such co-investment rights may extend beyond those transactions sourced by the applicable Industry Consultant or for which such Industry Consultant provides advice and will potentially result in the Fund investing less capital than it otherwise would have in such transactions. In addition, the cost of structuring such co-investments is expected to be borne by the Fund as a Fund expense. Moreover, Industry Consultants reserve the right to invest directly in the Fund as limited partners thereof.

Industry Consultants can also serve on the boards of portfolio companies or as employees or consultants in an operations capacity. Any directors' fees, salaries, consultant fees, other cash compensation, stock options or other compensation received by Industry Consultants in such capacities will be borne by the portfolio companies, will not be considered Deal Fees and consequently will not reduce the management fees paid by the relevant Fund.

Services provided by these Industry Consultants generally will include, without limitation, providing services directly to a Fund's portfolio companies, whether as an employee, consultant or service provider of such portfolio company, and will otherwise conform to the description of the role of Industry Consultants above. In addition to the arrangements described more fully in the following paragraph, KPS reserves the right to also transition former KPS employees to become Industry Consultants.

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

As discussed in the Fees and Compensation section of this Brochure, the Funds are subject to a carried interest of 25-30%, which is paid to general partners that are affiliated with KPS. Although the carried interest is generally used to align KPS's interests with those of its Funds' Investors, it also creates an incentive for KPS to make more speculative investments. In addition, the carried interest will potentially incentivize KPS to make different decisions regarding the timing and

manner of the realization of its Funds' portfolio investments than would be the case if the carried interest did not exist. Additionally, to the extent that KPS has Funds with varying carried interest terms and/or KPS personnel are assigned varying percentages of carried interest from the Funds, KPS and such personnel are subject to potential conflicts of interest, to the extent they are involved in identifying investment opportunities as appropriate for Funds from which they are entitled to receive a higher carried interest percentage. KPS seeks to address these conflicts through careful vetting of investment opportunities by its investment professionals and disclosure of investments to Investors by way of capital call notices and quarterly reports. In addition, the Governing Documents of the Funds contain "claw back" provisions applicable in the event of overpayment of the carried interest.

KPS manages Funds with similar strategies, and allocates investment opportunities among such funds based on criteria (such as the size of the contemplated investment) described in such Funds' governing documents as well as its internal policies and procedures regarding investment allocations and decisionmaking. To the extent a conflict is identified, KPS reserves the right to seek to resolve such conflict by seeking the approval of the applicable Funds' advisory boards which are composed of representatives of the Investors of such Funds ("Advisory Boards") for its proposed course of action. In such case, KPS will allocate the opportunity through a methodology approved by the applicable Funds' Advisory Boards.

## **Types of Clients**

KPS and its affiliates provide advisory services (as described in the *Advisory Business* section above) solely to their Fund clients, and references throughout this Brochure to "clients" and to the related duties of KPS and its affiliates to, and practices on behalf of, their clients and/or investors should be construed accordingly. Each of the Funds is a private pooled investment vehicle. Investors in the Funds include a variety of institutional investors (e.g., trusts, public and private employee benefit plans, endowments, foundations, corporations and other types of entities including private funds) and high net worth individuals and from time to time include, directly or indirectly, principals or other employees of KPS and its affiliates and members of their families, Industry Consultants or other service providers retained by KPS, as well as executives of portfolio companies. The Funds are operated such that they qualify as "private equity funds" for purposes of Form PF.

The relevant general partner of a Fund also generally is permitted from time to time to establish Funds that are alternative investment vehicles in order to permit certain investors to participate in one or more particular investment opportunities in a manner desirable for tax, regulatory or other reasons. Alternative investment vehicle sponsors generally have limited discretion to invest the assets of these vehicles independent of limitations or other procedures set forth in the organizational documents of such vehicles and the related Fund.

Investment in the Funds is limited to Investors that meet certain financial sophistication requirements. Investors in the Funds must be (i) "accredited investors" within the meaning of Regulation D under the Securities Act of 1933, as amended, and (ii) "qualified purchasers" within the meaning of the Investment Company Act of 1940, as amended (the "1940 Act"). Certain KPS employees who qualify as "knowledgeable employees" under Rule 3c-5 of the 1940 Act are also

permitted to invest (directly or indirectly) in the Funds. Investors considering an investment in the Funds should consult with their own investment, tax and/or legal consultants prior to investing.

Additional details concerning applicable Investor suitability criteria are set forth in the Governing Documents of each Fund. The minimum investment in the Funds is generally \$10 million, although the general partners of the Funds are permitted to waive or modify the minimum investment in their sole discretion.

In addition, the Funds reserve the right to enter into separate agreements, commonly referred to as “side letters”, with certain investors, to waive certain terms, or allow such investors to invest on different terms than those specifically described in the offering documents. Under certain circumstances, these agreements could create preferences or priorities for such investors with respect to other investors.

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

In formulating investment strategies and investment advice for the Funds, KPS conducts comprehensive due diligence. KPS’s analysis typically focuses on the target company’s business, business model and competitive environment, financial structure and performance, opportunities for value creation, favorable regulation or regulatory events, current and future cash flow projections, as well as synergies with KPS’s investment process. KPS primarily focuses on making controlling equity and equity-related investments in manufacturing and industrial companies across a diverse array of industries, including basic materials, branded consumer, healthcare and luxury products, automotive parts, capital equipment and general manufacturing. KPS reserves the right to also make investments in debt acquired with the aim of establishing a control position, gaining influence in a restructuring process or access to information, as well as in passive debt investments. Debt instruments may include, but will not be limited to, bank debt (e.g., first and second lien debt), bonds and other fixed income instruments. KPS targets investment opportunities involving corporate divestitures and carve-outs, private transactions (e.g., acquisitions from families, entrepreneurs and other financial owners seeking to transition ownership), or restructurings that result in a change of control (whether pursuant to a structure bankruptcy or an out-of-court transaction). KPS’ investment strategy is based on implementing business improvement or turnaround plans and strategies predicated on identifiable and reasonably achievable objectives identified prior to the closing of the acquisition, including, cost reduction, productivity improvements, margin improvement, capital investment and optimal asset utilization, other commercial actions, and, in some situations, the introduction of new management.

The KPS Portfolio Operations Group (“KPS Ops Group”) is organically integrated into KPS and works closely with KPS’s investment professionals and portfolio company management. The KPS Ops Group seeks to drive performance improvement by institutionalizing structured programs for continuous improvement at each portfolio company. All members of the KPS Ops Group are full-time employees of KPS and none of their time is billed to portfolio companies or the Funds. The KPS Ops Group expects to periodically engage third-party consultants to assist with certain portfolio company projects. Time and out-of-pocket expenses relating to the activities of these consultants are billed to the respective portfolio company at cost. More detailed information regarding KPS’s investment strategy and activities is contained in the Governing Documents of each Fund.

Acquiring interests in any Fund involves a number of risks. An investment in a Fund may be deemed a speculative investment and is not intended as a complete investment program. It is designed for sophisticated investors who fully understand and are capable of bearing the risk of an investment in a Fund, and are capable of bearing illiquidity for substantial periods of time. No guarantee or representation can be made that a Fund will meet its investment objectives or that Investors will receive a return of their capital. All investing involves a risk of loss and the investment strategy offered by KPS could lose money over short or even long periods. Prospective and existing Investors are advised to review the Governing Documents of the applicable Fund for additional detail regarding investment, operational and other actual and potential risks applicable to a particular Fund.

Certain material risks presented by KPS's investment strategy are set forth below. This Brochure does not purport to contain a complete disclosure of all risks that may be relevant to a prospective Investor in a Fund. Investing in the Funds involves a risk of loss that an Investor should be prepared to bear. Investments recommended by KPS involve significant risks. There can be no assurance that KPS will meet the investment objectives of a Fund or otherwise be able to carry out its investment strategy successfully.

**Risk Associated with Unspecified Transactions; No Assurance of Investment Return**

Investors will not have an opportunity prior to investing in any Fund to evaluate any of the investments to be made by the Funds or the relevant economic, financial and other information regarding such investments. The Investors will be entirely dependent on the judgment and ability of KPS to choose, make and realize investments, and there is no assurance that KPS will identify a sufficient number of attractive opportunities to meet the Funds' investment objectives or that the Funds will be able to make and realize investments in any portfolio company.

An investment in a Fund requires a long-term commitment, with no certainty of return. The nature of, and risks associated with, a Fund's future investments may differ substantially from those investments undertaken historically by the other Funds. There can be no assurance that a Fund will be able to implement its investment strategy or investment approach, achieve comparable results or that it will be able to avoid losses.

There can be no assurance that a Fund will be able to generate returns for its Investors or that the returns will be commensurate with the risks of investing in the type of companies and transactions described herein. There may be little or no near-term cash flow available to the Investors and there can be no assurance that any Investor will receive any distribution from a Fund.

Even if a Fund's investments are consummated successfully, they are not generally expected to result in a return of capital or realization of gains (if any) to the Investors for a number of years after the investment is made. A Fund's performance over a particular period may not necessarily be indicative of the results that may be expected in future periods. All investments of the Funds involve the risk of loss of capital.

**Suitability of Investments**

An investment in a Fund is not suitable for all investors. An investment is suitable only for sophisticated investors, and an Investor must have the financial ability to understand and willingness to accept the extent of its exposure to the risks and lack of liquidity inherent in an investment in a

Fund. An investment in a Fund requires a long-term commitment, and there can be no assurance that a Fund's investment objectives will be achieved or that a Fund will be able to dispose of investments at prices equal to or greater than the price at which such Fund purchased such investments.

### **Difficulty of Locating Suitable Investments; Competition for Investment Opportunities**

The success of a Fund will depend on the ability of KPS to identify suitable investments, to negotiate and arrange the closing of appropriate transactions and to arrange the timely disposition of such investments, in each case, consistent with such Fund's investment objectives. The activity of identifying, completing and realizing an attractive investment opportunity is highly difficult and involves a high degree of uncertainty.

The availability of investments generally will be subject to prevailing market conditions. In particular, in light of changes in such market conditions, certain types of investments may not be available to a Fund on terms that are as attractive as the terms on which opportunities were available to previous Funds. Investment availability will also depend on perceptions of a Fund's ability to consummate transactions. Accordingly, there can be no assurance that KPS will be able to identify a sufficient number of investment opportunities for such Fund to enable it to invest the full commitment amount in opportunities that satisfy such Fund's investment objectives, or that such investment opportunities will lead to completed investments by such Fund. Even if sufficient investment opportunities are identified, they may be allocated to other Funds. Notwithstanding the foregoing, during the commitment period defined in relevant Governing Documents, the Investors will be required to pay management fees based on the entire amount of their respective commitment, even if the relevant Fund is never fully invested.

In addition, a Fund will compete for the acquisition of investments with many other investors, some of which will have greater resources than such Fund. Such competitors may include other public or private investment funds as well as individuals, financial institutions and other institutional and strategic investors. Such competition may be particularly acute with respect to participation by a Fund in auction proceedings and, specifically, those conducted pursuant to Section 363 of Title 11 of the United States Code, as amended (the "Bankruptcy Code") (*i.e.*, "363 sales"), where a Fund may compete with other prospective bidders to acquire the assets of a distressed company through a bankruptcy court-supervised auction. Further, over the past several years, an ever-increasing number of private investment funds have been formed (and many existing funds have grown in size), and additional funds with similar investment objectives may also be formed in the future by other parties. Some of these competitors may have more relevant experience, greater financial, technical, marketing and other resources, more personnel, higher risk tolerances, different risk assessments, lower return thresholds, lower cost of capital and access to funding sources unavailable to a Fund and a greater ability to achieve synergistic cost savings in respect of an investment than a Fund and KPS. In such an environment, the sourcing and execution of transactions for a Fund, whether on a proprietary basis or otherwise, becomes more challenging. To the extent that a Fund encounters competition for investments, returns to the Investors may decrease, including as a result of higher pricing, foregoing opportunities or negotiating fewer transactional protections in order to remain competitive. Additionally, a Fund may incur bid, due diligence, negotiating, consulting or other costs on investments that may not be successful. As a result, such Fund may not recover all of such costs, which would adversely affect returns. These competitive pressures could impair a Fund's business, financial condition and results of operations. Moreover, it is possible that

competition for appropriate investment opportunities may increase, thus reducing the number of opportunities available to a Fund and adversely affecting the terms upon and expense at which portfolio investments can be made.

### **Diversification**

Diversification is not an objective of a Fund and KPS is not under any obligation to diversify a Fund's investments and may otherwise allocate capital among investments as it determines in its sole discretion. Accordingly, a Fund's portfolio may include a small number of large positions and, as a consequence, the aggregate return of such Fund may be substantially adversely affected by the unfavorable performance of even a single investment. In addition, the Investors have no assurance as to the degree of diversification of a Fund's investments, either by concentration, geographic region or sector. To the extent a Fund concentrates investments in a particular issuer, industry or geographic region, its investments will become more susceptible to fluctuations in value resulting from adverse economic and/or business conditions with respect thereto. Certain geographic regions and/or industries may be more adversely affected by economic pressures when compared to other geographic regions and/or industries. Moreover, the exposure of a Fund is expected to be highly concentrated in the manufacturing industry and the aggregate return of such Fund may be substantially adversely affected by the unfavorable performance of the overall relative performance of the manufacturing industry. Such concentration may subject a Fund to greater volatility than a more diversified portfolio of investments. Therefore, while this portfolio concentration may enhance total returns to the Investors, if any large position has a material loss, then returns to the Investors may be lower than if they had invested in a well-diversified portfolio. Moreover, because it is not reasonable to expect all of a Fund's investments to perform well or even return capital, for such Fund to achieve above-average returns, one or a few of its investments must perform very well. There are no assurances that this will be the case. In addition, if a Fund co-invests with other private equity funds, an Investor invested in such other fund(s) may have exposure to a portfolio company through more than one fund.

### **Dependence on Key Personnel**

KPS will have complete discretion in directing the investment of a Fund's assets. The interests are passive investments and the Investors will have no opportunity to control the day-to-day operations of a Fund, including investment and disposition decisions and decisions regarding the selection of service providers and the operation of the portfolio companies. Subjective decisions made by KPS may cause a Fund to incur losses or to miss profit opportunities on which it would otherwise have capitalized. In order to safeguard their limited liability for the liabilities and obligations of a Fund, the Investors must rely entirely on KPS to conduct and manage the affairs of such Fund. The Investors will have no direct rights against third parties engaged by KPS in respect of a Fund. In addition, to the extent that an Investor or its related persons are not represented by a member of the Advisory Board, such Investor will have no influence over matters submitted to the Advisory Board for review or approval.

The success of a Fund will be highly dependent on the financial and managerial expertise of the KPS Partners and other KPS employees and advisors. KPS and the Funds will be relying extensively on the experience, relationships and expertise of these persons. There is ever increasing competition among alternative asset firms, financial institutions, private equity firms, investment managers and other industry participants for hiring and retaining qualified investment professionals, and there can be no assurance that such professionals will continue to be associated with KPS or its



affiliates throughout the life of the Funds. The loss of one or more of the KPS Partners could have a material adverse effect on the performance of the Funds. The interests of these professionals in the general partners should tend to discourage them from withdrawing from participation in the Funds' investment activities. However, there can be no assurance that the KPS Partners will continue to be associated with the general partners or their affiliates throughout the life of the Funds, as the KPS Partners are under no contractual obligation to remain with the general partners for all or any portion of the terms of the Funds, nor can there be any assurance that KPS will be able to attract and retain replacements or additional persons when needed. In addition, in the event that the KPS Partners cannot agree on decisions affecting the Funds, the investment results of the Funds may be adversely affected.

Furthermore, although the KPS Partners will devote substantially all of their business time and attention to the activities of KPS and the Funds, the KPS Partners are only required to devote such time as they deem reasonably necessary to conduct the business affairs of a Fund in an appropriate manner. The KPS Partners will continue to manage the public and private securities portfolios and investments of the other Funds (as well as their personal investments) and conflicts of interest may arise in allocating management time, services or functions among the Funds.

#### **Possibility of Fraud or Other Misconduct of Employees and Service Providers**

Misconduct by employees of KPS and its affiliates, service providers to such persons or a Fund and/or their respective affiliates could cause significant losses to such Fund. Misconduct may include, among other things, (i) entering into transactions without authorization, (ii) the failure to comply with operational and risk procedures, (iii) misrepresentations as to investments being considered by a Fund, (iv) the improper use or disclosure of confidential or material non-public information, which could result in litigation or serious financial harm (including limiting a Fund's business prospects or future marketing activities), (v) non-compliance with applicable laws or regulations and (vi) the concealment of any of the foregoing. Such activities may result in reputational damage, litigation, business disruption and/or financial losses to a Fund. KPS has controls and procedures through which it seeks to minimize the risk of such misconduct occurring. However, no assurances can be given that KPS will be able to identify or prevent such misconduct.

#### **Reliance on Portfolio Company Management**

The day-to-day operations of a portfolio company will be the responsibility of such company's management team. Although KPS will be responsible for monitoring the performance of portfolio companies and generally seeks to invest in companies operated by capable management that may be existing or installed by KPS, there can be no assurance that an existing management team, or any successor, will be able to successfully operate a portfolio company in accordance with KPS's strategy for such company.

#### **Risks in Effecting Operating Improvements**

The success of a Fund's investment strategy will depend, in part, on the ability of KPS to provide institutional management experience and financial insights to portfolio company management, restructure, and effect improvements in the operations of a portfolio company. The activity of identifying and implementing restructuring programs and operating improvements at portfolio companies entails a high degree of uncertainty. There can be no assurance that a Fund will be able to successfully identify and implement such restructuring programs and improvements or that such

insights and experience will be utilized and implemented by portfolio companies and, even if implemented, that they will result in operating efficiencies and increased revenues.

### **Temporary Investments**

In light of the need to be able to deploy capital quickly to capitalize on potential investment opportunities or to establish reserves for anticipated debts, liabilities or obligations, including liquidity needs, cash may be held by a Fund in temporary investments treated as cash equivalents, including money market investments, pending deployment into investments, the amount of which may at times be significant. While the duration of any such holding period is expected to be relatively short, in the event a Fund is unable to find suitable investments, such temporary investments may be held for longer periods, which would be dilutive to overall investment returns. It is not anticipated that any such reserves held in temporary investments will generate significant returns and/or interest, and the Investors should understand that such low returns and/or interest payments on the temporarily invested cash may adversely affect the overall returns of a Fund.

### **Drawdowns of Capital**

Pursuant to the Governing Documents, the relevant general partner may draw down on the Investors' commitment upon at least 10 calendar days' prior notice. Capital calls will be issued by the relevant general partner from time to time at the discretion of such general partner, based upon such general partner's assessment of the needs and opportunities of the relevant Fund. As a result, the Investors must at all times during the term of a Fund maintain sufficient liquidity to meet such capital calls. Except as specifically set forth in the Governing Documents, each Investor's obligation to satisfy capital calls will be unconditional. An Investor's obligation to satisfy capital calls will not in any manner be contingent upon the performance or prospects of a Fund or upon any assessment thereof provided by the relevant general partner. Capital calls may not provide all of the information an Investor desires in a particular circumstance, and such information is not a condition precedent for an Investor to meet its funding obligation. Additionally, and notwithstanding the foregoing, the relevant general partner will not be obligated to call 100% of a Fund's committed capital during such Fund's term. The fees, costs and expenses incurred by an Investor in fulfilling a capital call (whether bank fees, wire fees, value-added tax or other applicable charge imposed on an Investor) will be borne solely by such Investor and will be in addition to the amounts required by capital calls (and will not be part of or otherwise reduce its committed capital).

### **Defaults by Investors**

If an Investor fails to fund its committed capital when due, a Fund's ability to complete its investment program or otherwise to continue operations may be substantially impaired and such Fund may be subject to significant penalties, which could materially and adversely affect the returns of the Investors (including non-defaulting Investors). A default by a substantial number of Investors or by one or more Investors who represents a substantial portion of the committed capital would limit opportunities for investment diversification and likely would reduce returns to such Fund. The consequences of defaulting on a capital call are material and adverse to the defaulting Investor. If an Investor fails to contribute any portion of its committed capital upon a call by the relevant general partner, such Investor will be subject to a number of remedies available to the general partner as provided in the Governing Documents, including a 50% reduction of its capital account, the sale of its interest, loss of the right to receive distributions and to vote, as well as liability for all costs, expenses and/or damages resulting from its failure to contribute such capital. The defaulting Investor could lose its entire investment in such Fund and remains liable for amounts due in respect

of its committed capital, as well as for interest on such amounts at the maximum rate permitted by law.

### **Mandatory Withdrawals**

An Investor may be compulsorily redeemed from a Fund if the relevant general partner determines that the continued participation of such Investor would be reasonably likely to give rise to a material adverse legal, regulatory, accounting, tax, political or national security consequence to such Fund, any of its Investors, any portfolio company or KPS, and upon any such compulsory redemption, such Investor may receive in lieu of cash an in-kind distribution or a promissory note that will mature on the date of the final distribution by such Fund.

### **Illiquidity of Investor Interests; Restrictions on Transfer**

An interest in a Fund will generally be an illiquid investment. The interests will be issued in reliance upon certain exemptions from registration or qualification under applicable U.S. federal and state securities laws and may not be transferred unless registered under applicable U.S. federal and state securities laws or unless an exemption from such laws is available. No Fund is expected, nor has any obligation, to register the interests under any such laws. There will be no public market for the interests, and none is expected to develop. In addition, Investors will not be entitled to withdraw their capital contributions, and the interests may not, directly or indirectly, be assigned or transferred (including through any transaction that is treated as a transfer solely for U.S. federal income tax purposes) without the written consent of the relevant general partner, which consent may be granted or withheld in its sole discretion. An Investor desiring to transfer its interests will generally be required to reimburse the relevant Fund's expenses of such transfer which can, in certain circumstances, be substantial. Voluntary withdrawals prior to a Fund's termination will generally not be permitted except in very limited circumstances as set forth in the Governing Documents. Accordingly, the interests constitute illiquid investments and should only be purchased by persons that are able to bear the risk of their investment for an indefinite period of time.

### **Limitations on Limited Liability of Investors**

Generally, the Funds are organized as limited partnerships. A limited partner of a limited partnership will generally not be liable for the obligations of the limited partnership except in respect of the amount of property the limited partner contributes or agrees to contribute to the capital of the limited partnership. However, pursuant to relevant laws under certain jurisdictions, a limited partner may become liable as a general partner if, in addition to exercising the limited partner's rights and powers as a limited partner, the limited partner takes part in the control of the business of the limited partnership.

There is a risk that, in certain jurisdictions, the limited partners may not be afforded limited liability to the extent that principles of conflicts of law recognizing the limitation of liability of limited partners have not been authoritatively established with respect to limited partnerships formed under the laws of one jurisdiction but which carry on business in another jurisdiction.

### **Standard of Care and Indemnification**

The Governing Documents contain provisions that, subject to applicable law, reduce or modify the duties that certain protected persons defined in the relevant Governing Documents would otherwise owe to the Funds and the Investors. The Funds generally will exculpate and indemnify each such protected person for any loss, damage or expense incurred by such protected person on behalf of

the Funds or in furtherance of the interests of the Investors or otherwise arising out of or in connection with the Funds or the business of the Funds, except for losses arising from such protected person's own fraud, bad faith, willful misconduct, gross negligence or intentional and material breach of the Governing Documents. The Funds' ability and obligation to indemnify protected persons in respect of any liability arising out of activities performed in connection with a portfolio company prior to the disposition of the related investment is not affected by whether or not the existence of such liability was known at the time of the disposition. The relevant general partners may have the Funds purchase, at the Funds' expense, insurance to cover any protected person against liability covered by the foregoing indemnification and to otherwise cover liabilities for any breach or alleged breach by a protected person of its duties. The application of the foregoing standards may result in the Investors having a more limited right of action in certain cases than they would in the absence of such standards.

### **Capital Calls and Use of Subscription Lines and Asset-Backed Facilities; Recourse to Fund Assets**

A Fund generally is permitted to, directly or indirectly through one or more subsidiary vehicles on behalf of such Fund, enter into credit facilities or other borrowing arrangements pursuant to which the investments or other assets of such Fund, including committed capital, may be charged, pledged or assigned as collateral security for (a) amounts borrowed by such Fund or a subsidiary and/or (b) guarantees by such Fund. In connection with the above, the relevant general partner may assign or otherwise transfer (i) the right to issue capital call notices to cause capital contributions to be paid to such Fund, (ii) any account of such Fund into which capital contributions are deposited, (iii) the right to enforce the rights of such Fund and the relevant general partner under the Governing Documents, including the rights and remedies with respect to defaulting Investors and (iv) any other assets of such Fund to a lender. The Investors will not be personally liable for a Fund's obligations under any borrowing arrangements. However, the inability of a Fund to repay borrowings under a credit facility secured by the committed capital of such Fund could enable a lender to take action against any Investor to the extent of its committed capital in such Fund and, if an Investor's committed capital is insufficient to repay such Investor's pro rata share of such borrowings, such Investor may be required to return amounts distributed to it to fund such borrowings, subject to certain limitations set forth in the Governing Documents.

Any Fund credit facility could provide for joint and several liability with respect to two or more parallel partnerships defined in the relevant Governing Documents, provided that to the extent that one such parallel partnership pays any such amounts on behalf of the other parallel partnership(s), the parallel partnership whose borrowing was repaid will, to the fullest extent permitted by applicable law, be required to indemnify and reimburse the other parallel partnerships.

Capital calls, including those used to pay interest and principal on subscription lines, asset-backed facilities and other indebtedness of a Fund, have the potential to be "batched" together into larger, less frequent capital calls, with such Fund's interim capital needs being satisfied by such Fund borrowing money from such credit facilities. The interest expense and other costs associated with such borrowings will be Fund expenses and, accordingly, will decrease net returns of the Fund.

In addition, the use of a subscription-based credit facility could potentially present conflicts of interest because the interest rate on such borrowings are typically less than the rate of the preferred return and such preferred return does not accrue on such borrowings but only accrues on capital

contributions when made. As a result, use of such interim leverage arrangements with respect to investments may reduce or eliminate the preferred return received by the Investors and accelerate or increase distributions of carried interest to the relevant general partner, providing such general partner with an economic incentive to fund investments through longer-term borrowings in lieu of drawing down committed capital. As a general matter, use of borrowings in lieu of drawing down committed capital amplifies IRRs (either negative or positive) to the Investors. Subject to the limitations in the Governing Documents, the use of a subscription-based credit facility by a Fund is within the relevant general partner's discretion.

More generally, a Fund's assets, including all investments and any capital held by such Fund, are available to satisfy all liabilities and other obligations of such Fund, including any indebtedness incurred or guaranteed by such Fund. If a Fund or a portfolio company defaults on secured indebtedness, for example, the lender may foreclose and such Fund could lose its entire investment in the security for such loan. If a Fund itself becomes subject to a liability, parties seeking to have the liability satisfied may have recourse to such Fund's assets generally and will not be limited to any particular asset, such as the investment giving rise to the liability. In addition, there can be no guarantee that (1) debt facilities will be available at commercially attractive rates throughout the term of a Fund or when due for refinancing, and accordingly, such Fund or the applicable portfolio company may be exposed to less favorable terms or rates upon a refinancing or (2) any facilities negotiated will be fully utilized. Tax-exempt Investors should note that the use of leverage by a Fund may result in certain unwanted tax consequences.

### **Interim Financing**

From time to time, a Fund may provide interim financing to facilitate an investment. Interim financing may take the form of equity or debt investments in, or bank-like loans to, the portfolio company or such other structures as the relevant general partner may determine appropriate under the circumstances. There can be no assurance that a Fund will be able to refinance or repay any interim financing within any period of time specified in the relevant Governing Document following the closing of such interim financing or that such refinancing or repayment will take place on terms and conditions that will be preferable for a Fund or that expenses incurred in connection therewith will not be substantial. Any interim financing not refinanced or otherwise repaid within such period of time would typically be convertible into a more permanent, long-term security; however, for reasons not always in a Fund's control, such long-term securities may not be issued and such bridge loans may remain outstanding. In such event, the interest rate on such loans may not adequately reflect the risk associated with the unsecured position taken by a Fund. Any such interim financing not refinanced or otherwise repaid within such period of time will be treated as a permanent investment in the portfolio company made on the date of the initial interim financing (regardless of the type of securities held by the relevant Fund at the time of conversion), and will not result in a violation of the investment restrictions applicable to such Fund. In addition, a Fund will not be required to dispose of any portion of, or otherwise reduce, such interim financing and such Fund will consequently hold a greater concentration and have more exposure in the related investment than initially was intended, which could make such Fund more susceptible to fluctuations in value resulting from adverse economic and/or business conditions with respect thereto.

### **Reinvestment**

A Fund may retain or recall for reinvestment the invested capital portion of any proceeds received by such Fund from the sale, refinancing, or recapitalization of any investment (including, but not

limited to, any interim financing) within certain period of time specified in the relevant Governing Document after the investment was originally made. Additionally, at the election of the relevant general partner, any amounts drawn down from the committed capital to pay organizational expenses and Fund expenses (including the management fee), may, to the extent the Investors receive subsequent distributions, be added to the committed capital of the Investors and be subject to recall. Accordingly, during the term of a Fund, an Investor may be required to make capital contributions in excess of its committed capital and to the extent such recalled or retained amounts are reinvested by such Fund, an Investor will remain subject to investment and other risks associated with such investments. As a general matter, recycling and reinvestment will have the effect of amplifying a Fund's IRR, either negative or positive, depending on the performance of investments.

### **Follow-On investments**

A core component of certain Funds' investment strategy is to buy and build businesses, which requires significant capital. As a result, a Fund will likely be called upon to provide follow-on funding for one or several of its portfolio companies. In addition, a Fund may generally have the opportunity to increase its investment in such portfolio companies. Participating in such follow-on investments could be crucial for such Fund to execute on its value creation plans in respect of its portfolio companies. To that end, the relevant general partner has reserved the ability to continue making follow-on investments following the end of the commitment period up to an amount not to exceed the percentage specified in the relevant Governing Document of the aggregate committed capital.

Notwithstanding the foregoing, there can be no assurance that a Fund will wish to make follow-on investments or that a Fund will have sufficient funds to do so. Any decision by a Fund not to make follow-on investments or its inability to make them may have a substantial negative impact on a portfolio company in need of such an investment or may diminish such Fund's ability to influence the portfolio company's future development. There can be no assurance that the relevant general partner will be able to predict accurately how much capital may need to be reserved by the relevant Fund for participation in follow-on investments. If more capital is reserved than is necessary, then the relevant Fund may receive a lower allocation of other investment opportunities or may not fully draw its original committed capital. If less capital is reserved than is necessary, then the relevant Fund may not be able to fully protect or enhance its existing investments. If a Fund does not have sufficient capital to participate in all (or a portion) of a follow-on investment opportunity, a successor Fund or another KPS Fund may participate in such follow-on opportunity in lieu of or alongside such Fund. Moreover, to the extent that a Fund does not make a needed follow-on investment, the applicable portfolio company may seek additional capital from other investors. Any such arrangements with other investors could rank senior to, and/or cause the dilution of, the investment of the Fund.

### **Third-Party Involvement**

A Fund may co-invest with third parties through funds, joint ventures or other entities. Such investments may involve risks not present in investments where a third party is not involved, including the possibility that a co-venturer or partner of such Fund may at any time have other business interests and investments other than the joint venture with such Fund, or may have economic or business goals different from those of such Fund. In addition, a Fund may be liable for actions of its co-venturers or partners. A Fund's ability to exercise control or significant influence over management in these cooperative efforts will depend upon the nature of the joint

venture arrangement. In addition, such arrangements are likely to involve restrictions on the resale of a Fund's interest in the portfolio company.

### **Expenses**

Operating a private investment fund involves significant costs, both in respect of its investment activities and administration of the same. There is no cap on Fund expenses and, as a result, such expenses may be substantial. While such amounts can generally be recycled, these expenses will decrease Investor's returns, including in respect of successful investments. In addition, the participation of co-investors may increase the amount of expenses borne by a Fund as such co-investors may not bear certain costs and expenses associated with potential investments, including broken deal expenses.

### **Changes in Investment Focus**

KPS has broad discretionary power to decide what investments a Fund will make and the strategies it will use to implement its investment objectives. While the relevant Governing Documents contain a description of the types of investments that the Funds have historically made and information about KPS' expectations with respect to the Funds, a Fund is not restricted in terms of the percentage of its capital that can be invested in a particular industry and is only generally restricted by the limitations set forth in the relevant Governing Document. A Fund may employ investment techniques and strategies and/or structure investments with instruments that KPS believes will help achieve such Fund's investment objectives. Many factors may contribute to changes in emphasis in the construction of the portfolio, including changes in market or economic conditions or regulation as they affect various industries and changes in the political or social situations in particular countries. There can be no assurance that the investment portfolio of a Fund will resemble the portfolio of any prior Fund.

### **Distributions**

There can be no assurance that the operation of a Fund will be profitable, that such Fund will be able to avoid losses or that cash from its investments will be available for distribution to the Investors. A Fund will have no source of funds from which to pay distributions to the Investors other than income and gain received on its investments and the return of capital. In addition, while a Fund intends to make distributions in cash, it is possible that certain distributions may be made in kind and could consist of securities for which there is no readily available public market and with respect to which there are substantial transfer restrictions or of securities of entities unable to perform under contractual obligations.

If distributions are made of property other than cash, the amount of any such distribution will be accounted for at the fair market value of such property in accordance with the Governing Documents. Specifically, upon termination of a Fund, certain portfolio investments of such Fund may be distributed in kind if the general partner determines that liquidation of any such portfolio investment might cause substantial diminution of the value of such portfolio investment. Widespread holding of portfolio investments, particularly of private illiquid securities, may entail a significant administrative burden. In addition, the direct holding of certain portfolio investments may subject the holder to suit or taxes in states in which such investments are located.

### **Side Letters**

A general partner (on its own behalf and on behalf of a Fund) may from time to time enter into side letters with one or more Investors whereby such Investors may be granted additional or different rights than the Investors generally have pursuant to the Governing Documents. Examples of such rights may include the right to receive reports from a Fund on a more frequent basis or to receive reports that include information not provided to other Investors, the right to pay reduced management fees, the right to receive co-investment opportunities and such other rights as may be negotiated between the relevant general partner, on the one hand, and such Investors, on the other hand. As a result of such side letters, certain Investors may receive additional benefits that other Investors will not receive. Any rights or terms so established in a side letter with an Investor will govern solely with respect to such Investor (but not any of such Investor's assignees or transferees unless so specified in such agreement) and will not require the approval of any other Investor notwithstanding any other provision of the Governing Documents. For the avoidance of doubt, matters arising under any side letter are considered matters contemplated in the relevant Governing Document and the limitation on liability provisions therein shall apply equally to any side letter. The relevant general partner will not be required to notify all of the other Investors of any such side letters or any of the rights or terms or provisions thereof. In addition, the relevant general partner will not be required to offer such additional or different rights or terms to any or all of the other Investors. The relevant general partner may enter into such side letters with any party as such general partner may determine in its sole and absolute discretion at any time. The other Investors will have no recourse against the relevant Fund, such general partner, KPS or any of their respective affiliates in the event that certain Investors receive additional or different rights or terms as a result of such side letters. To the extent that compliance with any of the provisions of any such side letter would cause a Fund, the relevant general partner, KPS or any of their respective affiliates to violate their respective fiduciary obligations to other clients or to violate any applicable laws, such Fund, the relevant general partner or KPS, as applicable, may not, or may be unable to, comply with any such provision.

### **Equity Investments**

A substantial portion of the Funds' investments will be in equity or equity-related investments which by their nature involve business, financial, market and/or legal risks. While such investments offer the opportunity for significant capital gains, they generally represent the most junior position within a portfolio company's capital structure and are therefore subject to the greatest risk of loss. The Investors must be prepared to bear such capital losses that may result from investments. There can be no assurance that a Fund will be adequately compensated for the risks taken. In addition, there can be no assurance that KPS will correctly evaluate the nature and magnitude of the various factors that could affect the value of a return on a Fund's investments. Prices and market movements of a Fund's investments may be volatile, and a variety of other factors that are inherently difficult to predict, such as domestic or international economic and political developments, may significantly affect the results of such Fund's activities and the value of Fund investments. As a result, a Fund's performance over a particular period may not necessarily be indicative of the results in future periods.

### **Investments in Distressed Companies**

A Fund will likely invest in companies that are experiencing significant financial or business distress, including companies involved in bankruptcy or other reorganization and liquidation proceedings. Such companies are typically facing liquidity challenges due to debt maturities, covenant violations, cyclical challenges or imminent bankruptcy, or they need financing in order to



exit bankruptcy. Such investments may be considered speculative and subject to a high degree of risk and the ability of the relevant portfolio companies to pay their debts on schedule could be adversely affected by interest rate movements, changes in the general economic climate or the economic factors affecting a particular industry, or specific developments within such companies. Investments in companies operating in workout or bankruptcy modes also present additional legal risks, including fraudulent conveyance, voidable preference and equitable subordination risks. The level of analytical sophistication, both financial and legal, necessary for successful investment in companies experiencing significant business and financial difficulties is unusually high. There is no assurance that KPS will correctly evaluate the prospects for a successful reorganization or similar action. In addition, although investments in distressed companies may result in significant returns to a Fund, they involve a substantial degree of risk and may not show any return for a considerable period of time, if at all. Given the nature of such companies, it is possible that one or more investments of a Fund may fail to yield any returns. Such investments could, in certain circumstances, subject such Fund to certain additional potential liabilities that may exceed the value of such Fund's original investments therein.

### **Control Position Risk; Board Participation**

Generally, a Fund intends to make investments that will allow it to acquire control or exercise influence over management and the strategic direction of a portfolio investment as described in the relevant offering documents. The exercise of control over a company imposes additional risks of liability for environmental damage, product defects, pension liabilities, failure to supervise management and other types of liability in which the limited liability characteristic of business operations may be ignored. The exercise of control over a portfolio company could expose the assets of a Fund to claims by such portfolio company, its security holders and its creditors. While KPS intends to manage the Funds to mitigate exposure to these risks, the possibility of successful claims cannot be precluded.

In addition, a Fund may designate directors (and non-executive chairpersons) to serve on the boards of directors of portfolio companies. Although such board positions in certain circumstances may be important to a Fund's investment strategy and may enhance KPS's ability to manage investments, they may also have the effect of impairing the Fund's ability to sell the related securities when, and upon the terms, it may otherwise desire and may subject KPS and the Fund to claims they would not otherwise be subject to as an Investor, including claims of breach of duty of loyalty, securities claims and other director-related claims. In general, a Fund will indemnify the relevant general partner and KPS, as well as any persons holding such board positions at the request of the Fund, the relevant general partner or KPS, from such claims.

### **Contingent Liabilities**

Most of the Funds' investments will involve private securities. In connection with an investment in private securities, a Fund may assume, or acquire, a portfolio company subject to contingent liabilities. These liabilities may be material and may include liabilities associated with pending litigation, regulatory investigations or environmental actions, among other things. To the extent these liabilities are realized, they may materially and adversely affect the value of a portfolio company. In addition, if a Fund has assumed or guaranteed these liabilities, the obligation would be payable from the assets of such Fund, including committed capital. In connection with the disposition of an investment, a Fund 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

any business, or be responsible for the contents of disclosure documents under applicable securities laws. A Fund may also be required to indemnify the purchasers or underwriters of an investment with respect to certain matters, including the accuracy of any such representations or disclosure documents or with respect to certain potential liabilities or other obligations. These arrangements may result in the incurrence of accrued expenses, liabilities or contingencies, which shall be borne by such Fund and for which the relevant general partner may cause the Fund to establish reserves or escrow accounts. In that regard, distributions, including final distributions, to the Investors will be subject to any such reserves or holdbacks and the Investors may be required to return amounts distributed to them to fund the Fund's indemnification obligations or other Fund obligations arising out of any legal proceeding against the Fund, subject to certain limitations set forth in the Governing Documents. Furthermore, each Investor that receives a distribution in error or in violation of applicable law will, under certain circumstances, be obligated to recontribute such distribution to the relevant Fund.

### **Debt Investments in Portfolio Companies**

A Fund may make investments in debt acquired with the aim of allowing the Fund to establish a control position, gain influence in a restructuring process or access information. In addition, a Fund may also make passive debt investments. Debt instruments may include, but will not be limited to, bank debt (*e.g.*, first- and second-lien debt), bonds and other fixed income instruments. Such debt may be unsecured and structurally or contractually subordinated to substantial amounts of senior indebtedness, all or a significant portion of which may be secured. Moreover, such debt investments may not be protected by financial covenants or limitations upon additional indebtedness and there is no minimum credit rating for such debt investments. Other factors may materially and adversely affect the market price and yield of such debt investments, including, investor demand, changes in the financial condition of the applicable issuer, government fiscal policy and domestic or worldwide economic conditions. Debt investments involve different and additional risks than investments in equity, including credit risk, interest rate risk, subordination risk and other risks. Moreover, different types of debt instruments involve different types of risk. For example, investments in bank debt involve certain unique risks, including, without limitation: (i) the possible invalidation of an investment transaction as a fraudulent conveyance under the applicable creditors' rights laws; (ii) so-called lender liability claims by the issuer of the obligations; (iii) environmental and/or other liabilities that may arise with respect to collateral securing the obligations; (iv) adverse consequences resulting from participating in such instruments with other institutions with lower credit quality; and (v) limitations on the ability of a Fund to directly enforce its rights with respect to bank participations.

Certain debt instruments that a Fund may invest in may be or become non-performing and possibly in default. Furthermore, the obligor or relevant guarantor may also be in or enter bankruptcy or liquidation. There can be no assurance as to the amount and timing of payments, if any, with respect to any such debt instruments. Further, loans may become non-performing for a variety of reasons and borrowers on loans constituting a Fund's assets may seek the protection afforded by bankruptcy, insolvency and other debtor relief laws. Upon a bankruptcy filing in a U.S. Bankruptcy Court by an issuer of debt, the Bankruptcy Code imposes an automatic stay on payments of its pre-petition debt. Other protections in such proceedings may include forgiveness of debt, the ability to create super-priority liens in favor of certain creditors of the debtor and certain well-defined claims procedures. Non-performing debt obligations may require substantial workout negotiations, restructuring or bankruptcy filings that may entail a substantial reduction in the interest rate, deferral

of payments and/or a substantial write-down of the principal of a loan or conversion of some or all of the debt to equity. Insolvency laws may, in certain jurisdictions, result in a restructuring of the debt without the relevant Fund's consent under the "cramdown" provisions of applicable insolvency laws and may also result in a discharge of all or part of the debt without payment to the Fund. If an issuer were to file for Chapter 11 reorganization, the Bankruptcy Code authorizes the issuer to restructure the terms of repayment of a class of debt even if the class fails to accept the restructuring as long as the restructured terms are "fair and equitable" to the class and certain other conditions are met.

### **Investments in Less Established Companies**

A Fund may invest a portion of its assets in the securities of less established companies, or early stage companies. A Fund may create new companies by acquiring and combining various non-core assets through complex corporate carve-out transactions. Investments in such companies may involve greater risks than those generally associated with investments in more established companies. For instance, less established companies tend to have smaller capitalizations and fewer resources and, therefore, are often more vulnerable to financial failure. Such companies also may have shorter operating histories on which to judge future performance and in many cases, if operating, will have negative cash flow. In the case of start-up enterprises, such companies may not have significant or any operating revenues. In addition, less mature companies could be more susceptible to irregular accounting or other fraudulent practices. Although KPS believes it is skilled in recognizing potential value where other investors do not, KPS may not be able to successfully implement its value creation plans with respect to all portfolio companies. This risk may be maximized with respect to newly formed and other less established companies. Furthermore, to the extent there is any public market for the securities held by a Fund, securities of less established companies may be subject to more abrupt and erratic market price movements than those of larger, more established companies.

Some of the portfolio investments expected to be made by a Fund should be considered highly speculative and may result in the loss of such Fund's entire investment therein. There can be no assurance that any such losses will be offset by gains (if any) realized on a Fund's other investments.

### **Investments in Public Companies**

A Fund may invest in public companies (subject to the restrictions in the relevant Governing Documents) or take private portfolio companies public. Investments in public companies may subject the relevant Fund to risks that differ in type or degree from those involved with investments in privately held companies. Such risks include movements in the stock market and trends in the overall economy, greater volatility in the valuation of such companies, increased obligations to disclose information regarding such companies, limitations on the ability of such Fund to dispose of such securities at certain times (including due to the possession by such Fund of material non-public information), increased likelihood of shareholder litigation against such companies' board members, which may include KPS personnel, regulatory action by the SEC and increased costs associated with each of the aforementioned risks. In addition, it is not expected that a Fund will be able to negotiate additional covenants or other contractual rights that it may otherwise be able to obtain in making privately negotiated investments. Moreover, a Fund may not have the same access to information in connection with investments in public companies, either when negotiating a potential investment or after making an investment, as compared to privately negotiated investments. An investment may be sold by a Fund to a public company where the consideration

received is a combination of cash and stock of the public company, which may, depending on the securities laws of the relevant jurisdiction, be subject to lock-up periods.

### **Minority Investments**

A Fund may accumulate minority positions in the outstanding voting stock, or securities convertible into the voting stock, of potential portfolio companies. Minority position investments means that a Fund may not have the right to exert significant influence and would be significantly reliant on the existing management teams and boards of directors of such companies (which may include representatives of other investors with whom such Fund is not affiliated and whose interests may conflict with the interests of such Fund). While KPS will seek to achieve such accumulation through open market purchases, registered tender offers, negotiated transactions, or private placements, a Fund may be unable to accumulate a sufficiently large position in a target company to execute its strategy. In such circumstances, a Fund may dispose of its position in the target company within a short time of acquiring it and there can be no assurance that the price at which such Fund can sell such stock will not have declined since the time of acquisition. This may be exacerbated by the fact that stock of the companies that a Fund may target may be thinly traded and that such Fund's position may nevertheless have been substantial and its disposal may depress the market price for such stock.

### **Middle Market Companies**

A Fund may invest in middle market companies. Although investments in middle market companies may present greater opportunities for growth, such investments may also entail larger risks than are customarily associated with investments in larger companies. Middle market companies may have relatively limited product lines, markets, and financial and other resources. As a result, such companies may be more vulnerable to general economic trends and to specific changes in markets and technology. In addition, future growth may be dependent on additional financing, which may not be available on acceptable terms when required. Further, there is ordinarily a more limited marketplace for the sale of interests in smaller, private companies, which may make realizations of gains more difficult. In addition, the relative illiquidity of private equity investments generally, and the somewhat greater illiquidity of private investments in middle market companies, could make it difficult for a Fund to react quickly to negative economic or political developments.

### **Technological Innovations**

Current trends in the market generally have been toward disrupting a traditional approach to an industry with technological innovation, and multiple young companies have been successful where this trend toward disruption in markets and market practices has been critical to their success. In this period of rapid technological and commercial innovation, new businesses and approaches may be created that will compete with a Fund and/or its investments or alter the market practices a Fund's strategy has been designed to function within and depend on for investment return. Any of these new approaches could damage a Fund's investments, significantly disrupt the market in which it operates and subject it to increased competition, which could materially and adversely affect its business, financial condition and results of investments.

In addition, technological innovations and changes serve an important role in the type of manufacturing companies such as those in which a Fund intends to invest. In particular, technological innovations, including advances in process technology and introductions and

enhancements of manufacturing equipment, are key for manufacturing companies to maximize product quality and reduce production costs and, consequently, to protect their competitive positioning. A portfolio company's future growth and financial performance will depend in part upon such portfolio company's ability to develop, market and integrate new services and to accommodate the latest technological advances and customer preferences. The failure of a portfolio company to develop (if applicable) or implement new technology will result in such portfolio company not remaining competitive in its field and such portfolio company's revenues decreasing over time.

### **Environmental Hazards**

Some of the Funds' portfolio companies may generate, emit, store, transport and arrange for disposal of hazardous materials as a consequence of their operations, and therefore could be subject to numerous and extensive environmental, health and safety laws and regulations in respect of their operations. These include laws and regulations with respect to the airborne emission of hazardous materials, the discharge of hazardous materials to receiving water bodies, and the use, management, treatment, storage and disposal of such materials. Compliance with these laws and regulations and the procurement of necessary operating permits and licenses can be costly, and failures to comply can result in material monetary civil and criminal sanctions. Businesses with material air emissions may also face increasing regulation, and increasingly strict emission standards, as a result of programs in the United States and elsewhere to reduce carbon and other greenhouse gas emissions. In addition, under environmental laws enacted by the United States and various states, owners of real property may be liable for the clean-up, removal and remediation of hazardous substances even where the owner was not responsible for placing the hazardous substances on the property or where the property was contaminated prior to the time the owner took title, regardless of whether the owner knew of the presence of such hazardous substances. Such laws may impose joint and several liability, which could result in the Funds being obligated to pay for greater than its share, or even all, of the liabilities involved. The costs of clean-up, removal and remediation of hazardous substances and wastes can be extremely expensive and, in some cases, can exceed the value of a property. If any property acquired by the Funds through foreclosure or otherwise subsequently were found to have an environmental problem, such acquiring entity could incur substantial costs and suffer a complete loss of its investment in such property, as well as of other assets. The presence of such substances, or the failure to properly remediate contamination from such substances, may adversely affect the owner's ability to sell, lease or otherwise realize income from the real estate or to borrow funds using such property as collateral, which could have an adverse effect on the Funds' return from such investment. In addition, some environmental laws and regulations create a lien on contaminated property in favor of governments or government agencies for costs they may incur in connection with the contamination and in some cases impose liability on successors and affiliates.

It may be impractical or impossible to fully insure against such events and, should such an event occur, the Funds could incur substantial costs and suffer a complete loss of its investment in such property. In addition, the Funds' operating costs and performance may be adversely affected by compliance obligations under environmental protection laws and regulations relating to investments of the Funds, including additional compliance obligations arising from any change to such laws and regulations. Such changes may impose additional expenses or liabilities, result in limitations in the manner in which the portfolio companies conduct their business or operate their industrial facilities or otherwise adversely affect the portfolio companies. Laws and regulations may also restrict development of, and use of, property.

The ongoing presence of environmental contamination, pollutants or other hazardous materials on or emanating from a property (whether known at the time of acquisition or not) could also result in personal injury (and associated liability) to persons on or in the vicinity of the property and persons removing such materials, future or continuing property damage (which may adversely affect property value) or claims by third parties, including as a result of exposure to or damage from such materials through the spread of contaminants.

Further, even in cases where a Fund is indemnified by the seller with respect to an investment against liabilities arising out of violations of environmental laws and regulations, there can be no assurance as to the financial viability of the seller to satisfy such indemnities or the ability of such Fund to achieve enforcement of such indemnities.

When compared to the United States, the historical lack or inadequacy of environmental regulation in certain non-U.S. countries has led to widespread pollution of air, ground and water resources. The legislative framework for environmental liability in these countries has not been fully established or implemented. The extent of the responsibility, if any, for the costs of abating environmental hazards may be unclear when a Fund is considering an investment.

### **Investments in Portfolio Companies in Regulated Industries**

Certain industries are heavily regulated. A Fund may invest in portfolio companies operating in industries that are subject to greater amounts of regulation than other industries generally. Investments in portfolio companies that are subject to a high level of governmental regulation pose additional risks relative to investments in other companies. Changes in applicable laws or regulations, or in the interpretations of these laws and regulations, could result in increased compliance costs or the need for additional capital expenditures. If a portfolio company fails to comply with these requirements, it could also be subject to civil or criminal liability and the imposition of fines. In addition, a Fund or its portfolio companies may require the consent or approval of applicable regulatory authorities in order to acquire or hold particular assets. If a Fund or any of its portfolio companies is unable to obtain required consent or approval, such Fund or such portfolio company may be unable to enter into transactions or to structure transactions in ways that are optimal for such Fund. A Fund may invest in portfolio companies it believes have obtained all material U.S. federal, state, local or non-U.S. approvals and permits required as of the date thereof to acquire and operate its facilities. However, such approvals and permits may be subject to conditions and there is no assurance that portfolio companies will be successful in meeting such conditions. A failure to satisfy such conditions could prevent the operation of certain facilities or result in additional costs to the portfolio companies, which may adversely affect the Fund's investment results. There can be no assurance that any portfolio company will be able to: (i) obtain all required regulatory approvals and permits; (ii) obtain any necessary modifications to existing regulatory approvals and permits; or (iii) renew and otherwise maintain required regulatory approvals and permits. Delay in obtaining or failure to obtain and maintain in full force and effect any regulatory approvals and permits (or amendments thereto), or delay or failure to satisfy any regulatory conditions or other applicable requirements (which may change over time), could prevent operation of a facility or sales of such facility to third parties or could result in additional costs to a portfolio company and adversely affect a Fund's investment results.

A portfolio company also could be materially and adversely affected as a result of statutory or regulatory changes or judicial or administrative interpretations of existing laws and regulations that

impose more comprehensive or stringent requirements on such company. Governments have considerable discretion in implementing regulations that could impact a portfolio company's business, and governments may be influenced by political considerations and may make decisions that adversely affect a portfolio company's business.

### **Cost of Labor; Workforce Retention**

The business operations of certain Funds' intended portfolio companies are labor intensive and the availability of labor can vary depending on market conditions. If sufficient labor is not available in the future or the cost of labor rises, the relevant Fund's portfolio companies may be unable to meet customer demand or operating costs may increase, materially affecting such portfolio companies' financial performance. No assurances can be made that portfolio companies will be successful in hiring or retaining members of a skilled and experienced technical workforce. The competition for skilled individuals is intense. The loss of the services of a number of a portfolio company's workforce, or failure to attract new employees, could adversely affect a portfolio company's ability to remain competitive in the manufacturing industry.

### **Risks Associated with Unionized Workforce**

Portfolio companies in manufacturing industries that are the focus of the Funds are likely to have a unionized workforce or employees who are covered by a collective bargaining agreement, which could subject any such portfolio company's activities and labor relations matters to complex laws and regulations relating thereto. Moreover, a portfolio company's operations and profitability could suffer if it experiences labor relations problems. Upon the expiration of any such portfolio company's collective bargaining agreements, it may be unable to negotiate new collective bargaining agreements on terms favorable to it, and its business operations at one or more of its facilities may be interrupted as a result of labor disputes or difficulties and delays in the process of renegotiating its collective bargaining agreements. A work stoppage at one or more of any such portfolio company's facilities could have a materially adverse effect on its business, results of operations and financial condition. Any such problems additionally may bring scrutiny and attention to a Fund itself, which could adversely affect the Fund's ability to implement its investment objectives.

### **Use and Availability of Leverage; Recent Changes in Credit Markets**

A Fund's investments could involve leveraged acquisitions which, by their nature, require companies to undertake a high ratio of fixed charges to available income. Such investments are inherently more sensitive to declines in revenues and to increases in expenses and interest rates. Utilization of leverage is a speculative investment technique and involves risks to investors. While leverage presents opportunities for increasing a Fund's total return, it has the potential to increase losses as well. Accordingly, any event that adversely affects the value of an investment by a Fund would be magnified to the extent leverage is used. The cumulative effect of the use of leverage by a Fund in a market that moves adversely to the Fund's investments could result in a loss to the Fund that would be greater than if leverage had not been used, including loss of the entire investment and also the possibility of loss exceeding the original amount of a particular investment. The leverage provided to a Fund will result in interest expense and other costs incurred in connection with such leverage, which may not be covered by the net interest income, dividends and appreciation of the securities purchased. Although KPS will seek to use financial leverage in a manner that it believes to be appropriate, the leveraged capital structure of such portfolio companies will significantly increase their exposure to adverse economic factors, such as rising interest rates, downturns in the

economy or deterioration in the condition of such portfolio companies or their respective industries, each of which may impair such portfolio company's ability to finance its future operations and capital needs and may result in the imposition of restrictive financial and operating covenants. If a portfolio company cannot generate adequate cash flow to meet debt obligations, for example, a Fund has the potential to suffer a partial or total loss of capital invested in the portfolio company. To the extent that a Fund engages in any leveraging, it will be subject to the risks normally associated with debt financing, including those relating to the ability to refinance and the insufficiency of cash flow to meet principal and interest payments, which could significantly reduce or even eliminate the value of the Fund's investment. Leveraging the capital structure will mean that third parties, such as banks, may be entitled to the cash flow generated by such investments prior to the relevant Fund receiving a return. Also, if an asset of a Fund is mortgaged or otherwise used as collateral to secure payment of indebtedness and such payments are not made, the asset could be foreclosed upon by the lender or otherwise transferred to the lender.

In addition, uncertainty in the global financial system could lead to an overall weakening of global economies, which could adversely affect the financial resources of a Fund and a Fund's portfolio companies. Favorable borrowing conditions in the debt markets, which historically have been cyclical, may have benefited certain of KPS' previous investments and may have enabled KPS to make substantial distributions from the portfolio companies of prior Funds. However, during the prior economic downturn, there were periods of deterioration of the global credit markets (including U.S. credit markets), the failures of certain financial services companies and a significant rise in market perception of counterparty default risk, which significantly reduced Investor demand and liquidity for investment grade, high yield and senior bank debt and caused some investment banks and other lenders to be unwilling (or significantly less willing) to finance new investments or to offer committed financing for investments on terms less favorable than terms offered in the past, making it significantly more difficult for sponsors to obtain favorable financing. There remain elevated levels of uncertainty in the global financial markets today and there can be no certainty that recurring periods of limited financing availability (or an increase in the interest cost) for leveraged transactions could persist or return, and should such conditions arise, they could impair, potentially materially, the relevant Fund's or a portfolio company's ability to consummate transactions or could cause the Fund or a portfolio company to enter into certain leveraged transactions on less attractive terms. As such, there can be no guarantee that debt facilities will be available at commercially attractive rates throughout the term of a Fund or when due for refinancing. If a Fund is unable to obtain financing, this may have a material adverse effect on the Fund's ability to achieve its investment objectives and the return of invested capital. In addition, if one or more of a Fund's portfolio companies are unable to obtain favorable financing terms for their investments, refinance their indebtedness or maintain a desired or optimal amount of financial leverage, the Fund may hold a larger than expected equity investment in such portfolio companies and may realize lower than expected returns from such portfolio companies that would adversely affect the Fund's ability to generate attractive investment returns for the Investors. Any failure by lenders to provide previously committed financing could also expose the relevant Fund to potential claims by sellers of businesses which the Fund may have been contracted to purchase.

### **Additional Capital**

A Fund's portfolio companies should be expected to require additional financing to satisfy their working capital requirements, capital expenditure and acquisition strategies. The amount of additional financing needed will depend upon the maturity and objectives of the particular portfolio



company. Each round of financing (whether from a Fund or other investors) is typically intended to provide a portfolio company with enough capital to reach the next major valuation milestone. If the funds provided are not sufficient, such portfolio company may have to raise additional capital at a price unfavorable to existing investors, including the relevant Fund. In addition, a Fund may make additional debt and equity investments or exercise warrants, options or convert convertible securities that were acquired in the initial investment in such portfolio company in order to preserve the Fund's proportionate ownership when a subsequent financing is planned or to protect the Fund's investment when such portfolio company's performance does not meet expectations. The availability of capital is generally a function of capital market conditions that are beyond the control of a Fund or any portfolio company. There can also be no assurance that the portfolio companies will be able to predict accurately the future capital requirements necessary for success or that additional funds will be available from any source.

### **Lack of Liquidity of Investments**

The investments to be made by a Fund will generally be illiquid. This may have the effect of limiting the availability of investments for purchase by a Fund and may also limit the ability of a Fund to sell such investments at their perceived fair market value prior to termination of the Fund or in response to changes in the economy or the financial markets. Any return of capital or realization of gains will generally require a disposition of some or all of an investment. A Fund's ability to dispose of investments may be limited for several reasons and KPS is unable to predict with confidence what the exit strategy will ultimately be for any given investment, or that one will definitely be available. Illiquidity may result from the absence of an established market for investments, as well as legal, contractual or other restrictions on their resale by a Fund. Dispositions of investments may be subject to contractual and other limitations on transfer or other restrictions that would interfere with subsequent sales of such investments or adversely affect the terms that could be obtained upon any disposition thereof. Investments in publicly traded companies (including portfolio companies that have made initial public offerings) may also be subject to legal or contractual restrictions on resale, including the possibility that KPS will be in possession of material non-public information about the company. Due to securities regulations governing certain publicly traded equity securities, a Fund's ability to sell investments in publicly traded companies could also be diminished with respect to investments that represent a significant portion of the issuer's securities (particularly if the Fund has designated one or more directors of the issuer). In addition, the ability to exit an investment through the public markets will depend upon favorable market conditions, including receptiveness to initial or secondary public offerings for the portfolio companies in which a Fund invests and an active mergers and acquisitions (or recapitalizations and reorganizations) market. Public offering, merger and acquisition and recapitalization and reorganization opportunities may be limited or non-existent for extended periods of time, whether due to economic, regulatory or other factors. In view of these limitations on liquidity, which are illustrative only and not exhaustive, a Fund will generally not be able to realize on an investment in a privately-held entity until the sale of such entity. In some instances, the sale of investments held by a Fund may require lengthy negotiations. There can be no assurance that a Fund will be able to dispose of its investments at the price and at the time it wishes to do so. Furthermore, such illiquidity may continue even if the underlying entities obtain listings on securities exchanges. There can be no assurance as to the timing and amount of distributions from a Fund during the Fund's liquidation period and any distribution that would require either an in-kind distribution or a forced sale of illiquid assets at a price deemed unattractive by the relevant general partner may occur after the expiration of the Fund's liquidation period. The potential exists for investments that cannot be

liquidated within the term of a Fund will be distributed in kind to the Investors. The securities so distributed may not be readily marketable. The possibility of partial or total loss of capital will exist, and prospective Investors should not invest unless they can readily bear the consequences of such loss.

### **Over-Commitment**

In order to facilitate the acquisition of a portfolio company, a Fund may make (or commit to make) an investment in such company with a view to selling a portion of such investment to co-investors or other persons. In such event, the Fund will bear the risk that any or all of the excess portion of such investment may not be sold or may only be sold on unattractive terms and that, as a consequence, the Fund may bear the entire portion of any broken deal expenses related to such investment, hold a larger than expected investment in such portfolio company or may realize lower than expected returns from such investment. In addition, in the event of any such sell down, the interest borne by co-investors or such other persons (if any) may not be adequate to compensate the Fund for a potential increase in the value of the investment sold. Neither the relevant general partner, KPS nor any of their respective affiliates will be deemed to have violated any duty or other obligation to the Fund or any Investor by engaging in such investment and sell-down activities.

### **Expedited Transaction**

Investment analyses and decisions by KPS may be undertaken on an expedited basis in order for a Fund to take advantage of available investment opportunities. In such cases, the information available to KPS at the time of an investment decision may be limited and KPS may not have access to the detailed information necessary for a full evaluation of the investment opportunity. The financial information available to KPS may not be accurate or provided based upon accepted accounting standards, or may be pro forma to reflect certain other events. In addition, KPS may rely upon independent consultants or advisors in connection with the evaluation of proposed investments. There can be no assurance that these consultants or advisors will accurately evaluate such investments. Further, a Fund may conduct its due diligence activities in a very brief period and may assume the risks of obtaining certain consents or waivers under contractual obligations. While KPS expects to negotiate purchase price adjustments, termination rights and other protections, such rights may not be available or, if available, KPS may elect not to exercise them.

### **Financial Fraud**

Instances of fraud and other deceptive practices committed by senior management team members or owners of portfolio companies in which a Fund invests may undermine KPS's due diligence efforts with respect to such companies and, if such fraud is discovered, materially and negatively affect the valuation of the Fund's investments. In addition, when discovered, financial fraud may contribute to overall market volatility that can negatively impact a Fund's investment program. In the event of fraud by any portfolio company in which a Fund invests, the Fund may suffer a partial or total loss of its capital investment in that company.

### **Currency and Market Risks**

Investors' capital accounts will be denominated in U.S. dollars and distributions generally will be made in U.S. dollars. However, KPS anticipates that some of the Funds' investments could be made in countries other than the United States, and consequently the Funds are expected to make certain investments denominated in currencies other than the U.S. dollar. Changes in the rates of exchange between the U.S. dollar and other currencies will have an effect, which could be adverse, on the

performance of a Fund, amounts available for distribution by a Fund and the value of investments distributed by a Fund. Additionally, a particular non-U.S. country may impose exchange controls, devalue its currency or take other measures relating to its currency which could adversely affect a Fund. Finally, a Fund will incur costs in connection with conversions between various currencies. Although the relevant general partner has the ability to cause a Fund to hedge currency risk associated with a portion of the investments in the portfolio denominated in currencies other than the U.S. dollar, it does not expect to do so on a regular basis, and if it chooses to do so (for example, if a Fund develops an undesirable concentration in an individual currency), it may not be able to put a hedge in place on commercially reasonable terms given the credit terms offered by the Fund's counterparties or the volatility of the currency. There can be no guarantee that instruments suitable for hedging market shifts will be available at the time when a Fund wishes to use them or that any hedge would reduce applicable risks. More specifically, if a Fund hedges currency risk, it does not expect that the full risk of currency fluctuations can be eliminated due to the complexity of the investment characteristics of the portfolio and limitations in the non-U.S. currency market. A Fund will conduct its non-U.S. currency exchange transactions in anticipation of funding investment commitments or receiving proceeds upon dispositions. In addition, to hedge against adverse stock market shifts, a Fund may purchase put and call options on stocks and write covered call options on stocks.

### **Foreign Exchange Transactions**

A Fund may engage in off-exchange foreign currency trading. Such trading is not conducted in the interbank market. If a Fund deposits such funds with a counterparty and that counterparty becomes insolvent, the Fund's claim for amounts deposited or profits earned on transactions with the counterparty may not be treated as a commodity customer claim for purposes of Subchapter IV of Chapter 7 of the Bankruptcy Code and the regulations thereunder. A Fund may be a general creditor and its claim may be paid, along with the claims of other general creditors, from any funds still available after priority claims are paid. Even funds that the counterparty keeps separate from its own funds may not be safe from the claims of priority and other general creditors.

### **Hedging Policies / Risks**

A Fund is authorized, but is not required to, hedge some or all of its portfolio exposure to currency exchange rate, interest rate or commodity price fluctuations. While these transactions may reduce certain risks, the transactions themselves entail certain other risks, including counterparty credit risk. Hedging against a decline in currency exchange rate, interest rate or commodity price fluctuations does not eliminate fluctuations in the values of related portfolio positions or prevent losses if the values of such positions decline, but establishes other positions designed to gain from those same developments, thus seeking to moderate the decline in the portfolio position's value. Such hedging transactions also limit the opportunity for gain if relevant currency exchange rates, interest rates or commodity prices should increase. In the event of an imperfect correlation between hedging transactions and related portfolio positions, the desired protection may not be obtained, and a Fund may be exposed to risk of loss. In addition, it is not possible to hedge fully or perfectly against all foreign exchange, interest rate or commodity price risk, and hedging entails its own costs. The relevant general partner may determine in its sole discretion not to hedge against certain foreign exchange risk, interest rate or commodity price risks.

**Counterparty Risk**

KPS has established relationships and may establish additional relationships in the future to obtain financing, derivative intermediation and prime brokerage services that permit a Fund to transact in any variety of markets or asset classes over time, including for hedging purposes; however, there can be no assurance that KPS will be able to maintain such relationships. An inability to maintain or establish such relationships would limit a Fund's activities and could create losses. However, the existence of such relationships, particularly in respect of derivative transactions for hedging purposes, give rise to additional risks for a Fund.

Where a Fund enters into derivatives contracts, the Fund is subject to the risk that a counterparty will not perform its obligations under such contracts, either because of a dispute over the terms of the contract (whether or not bona fide) or because of a credit or liquidity problem, thus causing the Fund to suffer a loss. Such "counterparty risk" may be accentuated by the fact that the Fund may concentrate its transactions with a single or small group of counterparties. In addition, in the case of a default, a Fund could become subject to adverse market movements while replacement transactions are executed. A Fund is not restricted from dealing with any particular counterparty or from concentrating any or all of its transactions with one counterparty. The ability of a Fund to transact business with any one or number of counterparties, the possible lack of a meaningful and independent evaluation of such counterparties' financial capabilities, and the absence of a regulated market to facilitate settlement may increase the potential for losses by the Fund.

**Investments Longer than Term**

A Fund may hold investments which may not be advantageously disposed of prior to the expiration of the Fund's term. Although KPS expects that investments will be either disposed of prior to dissolution or suitable for in-kind distribution at dissolution, a Fund may have to sell, distribute or otherwise dispose of investments at a disadvantageous time as a result of dissolution.

**Investments Subject to Bankruptcy Laws**

Private distressed investment opportunities can occur in companies that have filed for, or plan to file for, reorganization under the Bankruptcy Code. Sourcing, diligence, structuring and governance of private distressed investments require consideration of factors that are often not present in standard private equity investing. If KPS's evaluation of the anticipated outcome of an investment situation should prove incorrect, the relevant Fund could experience losses. Successful distressed investing requires a specialized skill set that includes: (i) the capacity to accurately value a company's assets and analyze its capital structure; (ii) a sophisticated knowledge of the complex legal environment in which such investing occurs, particularly bankruptcy, securities, corporate and indenture law; (iii) the experience necessary to determine accurately the financial interests and legal rights of the debtor and each of its creditor constituencies; and (iv) refined negotiating skills. A wide variety of considerations makes any evaluation of the outcome of an investment in a financially distressed company uncertain. These considerations include the possibility of litigation between the participants in a reorganization or liquidation proceeding or a requirement to obtain consents from governmental authorities or others, as well as numerous other factors. In addition, KPS may not have access to reliable and timely information concerning material developments affecting a company. The uncertainties inherent in evaluating such investments may be increased by legal and practical considerations that limit the access of KPS to reliable and timely information concerning material developments affecting an investment, or which cause lengthy delays in the completion of

a reorganization or liquidation proceeding. Competition from other investors may also render it inadvisable for KPS to pursue intended results or promptly effect transactions.

Troubled company and other asset-based investments require active monitoring and will, at times, require participation in business strategy or reorganization proceedings by KPS. To the extent that KPS becomes involved in such proceedings, the relevant Fund may have a more active participation in the affairs of the issuer. Involvement by KPS in a company's reorganization proceedings could also result in the imposition of restrictions limiting the relevant Fund's ability to liquidate its position in the securities of the company.

In addition, investments subject to Chapter 11 proceedings could, in certain circumstances, subject the relevant Fund to certain additional potential liabilities that may exceed the value of the Fund's original investment therein. For example, under certain circumstances, a lender who has inappropriately exercised control of the management and policies of a debtor may have their claims subordinated or disallowed or may be found liable for damages suffered by parties as a result of such actions. Furthermore, investments in restructurings may be adversely affected by statutes related to, among other things, voidable preferences, lender liability and the bankruptcy court's discretionary power to disallow, subordinate or disenfranchise particular claims or re-characterize investments made in the form of debt as equity contributions. Such investments could also be subject to federal bankruptcy law and state fraudulent conveyance laws, which may vary from state to state, if the securities relating to such investments were issued with the intent of hindering, delaying or defrauding creditors or, in certain circumstances, if the issuer receives less than reasonably equivalent value or fair consideration in return for issuing such securities. If such investments constitute debt and such debt is used for a buyout of shareholders, this risk is greater than if the debt proceeds are used for day-to-day operations or organic growth. Under certain circumstances, payments to the relevant Fund and distributions by the Fund to the Investors may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance, a preferential payment or similar transaction under applicable bankruptcy and insolvency laws. Such debt may also be disallowed or subordinated to the claims of other creditors if the Fund is found to have engaged in other inequitable conduct resulting in harm to other parties. A Fund's investment may be treated as equity if it is deemed to be a contribution to capital or if the Fund attempts to control the outcome of the business affairs of a company prior to its filing under the applicable bankruptcy laws. While a Fund will attempt to avoid taking the types of action that would lead to such liability, there can be no assurance that such claims will not be asserted or that a Fund will be able to defend against them successfully.

### **Nature of Bankruptcy Proceedings**

There are a number of significant risks when investing in companies involved in Chapter 11 bankruptcy proceedings, including the following: First, many events in a Chapter 11 proceeding are the product of contested matters and adversarial proceedings that are beyond the control of the equity holders. Second, a Chapter 11 filing may have adverse and permanent effects on a company. For instance, the company may lose its market position and key employees and otherwise become incapable of restoring itself as a viable entity. Further, if the proceeding is converted to a liquidation, the liquidation value of the company may not equal the liquidation value that was believed to exist at the time of the investment. Third, the duration of a Chapter 11 proceeding is difficult to predict. Both an equity-holder's and a creditor's return on investment can be adversely impacted by delays while the plan of reorganization is being negotiated, voted on by the creditors

and confirmed by the bankruptcy court, until it ultimately becomes effective. Fourth, the administrative costs in connection with a Chapter 11 proceeding are frequently high and may be paid out of the debtor's estate prior to any return to creditors. For example, if a proceeding involves protracted or difficult litigation, or turns into a liquidation, substantial assets may be devoted to administrative costs. Fifth, bankruptcy law permits the classification of "substantially similar" claims in determining the classification of claims in a reorganization. Because the standard for classification is vague, there exists the risk that a Fund's influence with respect to the class of securities or other obligations it owns can be lost by increases in the number and amount of claims in that class or by different classification and treatment. Sixth, in the early stages of the Chapter 11 proceeding, it is often difficult to estimate the extent of, or even to identify, any contingent claims that may be made. Seventh, certain claims, such as claims for taxes, wages, employee, and worker pensions and certain trade claims, may have priority by law over the claims of certain creditors and all creditors have priority over the claims of equity-holders.

There is a possibility that a Fund may incur substantial or total losses on its investments and, in certain circumstances, subject the Fund to certain additional potential liabilities that may exceed the value of the Fund's original investment. For example, under certain circumstances, payments to a Fund and distributions to the Investors may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance, preferential payment or similar transaction under applicable bankruptcy and insolvency laws. In addition, the bankruptcy laws and regimes of certain jurisdictions outside the United States may be untested, subject to manipulation or change and not provide a proven venue to resolve a company's bankruptcy estate.

### **Litigation**

A Fund's investment activities may include activities that will subject it to the risks of becoming involved in litigation by third parties, a risk that is exacerbated by the fact that a Fund is expected to exercise control over portfolio companies (including as a result of governance rights). In addition, reorganizations can be contentious and adversarial. It is by no means unusual for participants in a reorganization to use the threat of, as well as actual, litigation as a negotiating technique. KPS anticipates that during the term of a Fund, the general partner, KPS and one or more of their respective affiliates may be named as defendants in civil proceedings. Furthermore, the adoption of new or enhancement of existing laws and regulations may increase the risk of litigation still. Any such litigation would likely have a negative financial impact on the relevant Fund. For instance, the expense of defending against claims by third parties and paying any amounts pursuant to settlements or judgments would generally be borne by the relevant Fund and would reduce the Fund's net assets and could require the Investors to return distributed capital and earnings to the Fund. The protected persons will be indemnified by the relevant Fund in connection with such litigation, subject to certain conditions set forth in the Governing Documents.

### **Investments outside the United States, Canada and Europe**

Although, generally, the Funds intend to invest primarily in companies domiciled or headquartered in the United States, Canada and Europe, a Fund may from time to time invest in securities of companies domiciled, headquartered or with significant operations elsewhere. Investing outside the United States, Canada and Europe may involve greater risks than investing within some jurisdictions. In particular, the value of a Fund's investments in foreign securities may be significantly affected by changes in currency exchange rates, which may be volatile. Although the relevant general partner may attempt to hedge against foreign currency exchange rate risks, there

can be no assurance that the general partner will be able to do so successfully or cost-effectively and the general partner may decide not to hedge against such risks or to do so only incompletely.

### **Difficulty of Bringing Suit or Foreclosure in Non-U.S. Countries**

Because the effectiveness of the judicial systems in the countries in which a Fund may invest varies, the Fund (or any portfolio company) may have difficulty in foreclosing or successfully pursuing claims in the courts of such countries, as compared to the United States or other countries. Further, to the extent a Fund or a portfolio company may obtain a judgment but is required to seek its enforcement in the courts of one of the countries in which the Fund invests, there can be no assurance that such courts will enforce such judgment. The laws of many nations often lack the sophistication and consistency found in the United States with respect to foreclosure, bankruptcy, corporate reorganization and creditors' rights.

### **Investments in Emerging Markets**

A Fund will be permitted to make investments in emerging markets such as China, India, Brazil and countries located in emerging Europe. In addition to the risks described under "investments Outside the United States, Canada and Europe" above, investing in emerging markets involves risks and special considerations not typically associated with investing in more established economies or markets including, among other things: (i) higher dependence on exports and the corresponding importance of international trade; (ii) greater risk of inflation; (iii) inability to exchange local currencies for United States dollars; (iv) increased likelihood of governmental involvement in and control over the economy; (v) governmental decisions to cease support of economic reform programs or to impose centrally planned economies; (vi) less developed compliance culture; (vii) risks associated with differing cultural expectations and norms regarding business practices; (viii) longer settlement periods for transactions and less reliable clearance and custody arrangements; (ix) less developed, reliable or independent judiciary systems for the enforcement of contracts or claims; (x) greater regulatory uncertainty; (xi) maintenance of the Fund's investments with non-U.S. brokers and securities depositories; and (xii) threats or incidents of corruption or fraud, all of which may adversely affect the return on the Fund's investments.

Repatriation of investment income, assets and the proceeds of sales by investors foreign to such markets, such as a Fund, may require governmental registration and/or approval in some emerging markets. A Fund could be adversely affected by delays in or a refusal to grant any required governmental registration or approval for such repatriation or by withholding taxes imposed by emerging market countries on interest or dividends paid on financial instruments held by the Fund or gains from the disposition of such financial instruments.

In emerging markets, there is often less government supervision and regulation of business and industry practices, stock exchanges, over-the-counter markets, brokers, dealers, counterparties and issuers than in other more established markets. Any regulatory supervision that is in place may be subject to manipulation or control. Some emerging market countries do not have mature legal systems comparable to those of more developed countries. Moreover, the process of legal and regulatory reform may not be proceeding at the same pace as market developments, which could result in investment risk. Legislation to safeguard the rights of private ownership may not yet be in place in certain areas, and there may be the risk of conflict among local, regional and national requirements or authorities. In certain cases, the laws and regulations governing investments in securities may not exist or may be subject to inconsistent or arbitrary application or interpretation.

Both the independence of judicial systems and their immunity from economic, political or nationalistic influences remain largely untested in many countries. A Fund may also encounter difficulties in pursuing legal remedies or in obtaining and enforcing judgments in non-U.S. courts.

### **Natural Disasters and Catastrophic Losses**

Certain regions in which a Fund invests are susceptible to natural disasters and disease outbreaks that could have a severe impact on the value of, and even destroy, assets in those regions. Health or other government regulations adopted in response to natural calamities may require temporary closure of corporate and governmental offices upon a disaster, which would severely disrupt the relevant Fund's operations in the affected areas.

Certain losses of a catastrophic nature, such as wars, earthquakes, typhoons, terrorist attacks, epidemics or other similar events, may be either uninsurable or insurable at such high rates that to maintain such coverage would cause an adverse impact on the related investments. If a major uninsured loss occurs, the relevant Fund could lose both invested capital in and anticipated profits from the affected investments.

### **Outbreaks of Infectious or Contagious Diseases**

Pandemics and other widespread public health emergencies, including outbreaks of infectious diseases such as SARS, H1N1/09 flu, avian flu, ebola and the current outbreak of COVID-19 (as defined below), have and are resulting in market disruption, and future such emergencies have the potential to materially and adversely impact economic production and activity in ways that are impossible to predict, all of which may result in significant losses to the Funds.

Currently, there is an ongoing outbreak of a novel and highly contagious form of coronavirus ("COVID-19"), which the World Health Organization formally declared in March 2020 to constitute a global "pandemic." This outbreak has caused a worldwide public health emergency, straining healthcare resources and resulting in extensive and growing numbers of infections, hospitalizations and deaths. In an effort to contain COVID-19, national, regional and local governments, as well as private businesses and other organizations, have taken severely restrictive measures, including instituting local and regional quarantines, restricting travel (including closing certain international borders), prohibiting public activity (including "stay-at-home" and similar orders), and ordering the closure of large numbers of offices, businesses, schools, and other public venues. In many jurisdictions, restrictive measures have been re-imposed to address subsequent waves of infection. As a result, COVID-19 has significantly diminished global economic production and activity of all kinds and has contributed to both volatility and a severe decline in all financial markets. Among other things, these unprecedented developments have resulted in material reductions in demand across most categories of consumers and businesses, dislocation (or in some cases a complete halt) in the credit and capital markets, labor force and operational disruptions, slowing or complete idling of certain supply chains and manufacturing activity, steep increases in unemployment levels in the United States and several other countries, and strain and uncertainty for businesses and households, with a particularly acute impact on industries dependent on travel and public accessibility, such as transportation, hospitality, tourism, retail, sports and entertainment.

The ultimate impact of COVID-19 — and any resulting decline in economic and commercial activity — on global economic conditions, and on the operations, financial condition and performance of any particular industry or business, is impossible to predict, although ongoing and



potential additional materially adverse effects, including a further global or regional economic downturn (including a recession) of indeterminate duration and severity, are possible. The extent of COVID-19's impact will depend on many factors, including the ultimate duration and scope of the public health emergency and the restrictive countermeasures being undertaken, as well as the effectiveness of other governmental, legislative and financial and monetary policy interventions (including the effectiveness of vaccines and the implementation of vaccination programs) designed to mitigate the crisis and address its negative externalities, all of which are evolving rapidly and may have unpredictable results. Even if and as the spread of the COVID-19 virus itself is substantially contained and economies are able to "re-open," it will be difficult to assess what the longer-term impacts of an extended period of unprecedented economic dislocation and disruption will be on future macro- and micro-economic developments, the health of certain industries and businesses, and commercial and consumer behavior.

The ongoing COVID-19 crisis and any other public health emergency could have a significant adverse impact and result in significant losses to the Funds. The extent of the impact on the Funds' and their portfolio companies' operational and financial performance will depend on many factors, all of which are highly uncertain and cannot be predicted, and this impact may include significant reductions in revenue and growth, unexpected operational losses and liabilities, impairments to credit quality and reductions in the availability of capital. These same factors may limit the ability of the Funds to source, diligence and execute new investments and to manage, finance and exit investments in the future, and governmental mitigation actions may constrain or alter existing financial, legal and regulatory frameworks in ways that are adverse to the investment strategy the Funds intend to pursue, all of which could adversely affect the Funds' ability to fulfill their investment objectives. They may also impair the ability of portfolio companies or their counterparties to perform their respective obligations under debt instruments and other commercial agreements (including their ability to pay obligations as they become due), potentially leading to defaults with uncertain consequences. In addition, the operations of the Funds, their portfolio companies, the general partner and KPS may be significantly impacted, or even temporarily or permanently halted, as a result of government quarantine measures, restrictions on travel and movement, remote-working requirements and other factors related to a public health emergency, including its potential adverse impact on the health of any such entity's personnel. These measures may also hinder such entities' ability to conduct their affairs and activities as they normally would, including by impairing usual communication channels and methods, hampering the performance of administrative functions such as processing payments and invoices, and diminishing their ability to make accurate and timely projections of financial performance.

### **"Widening" Risk**

For reasons not necessarily attributable to any of the risks enumerated herein (*e.g.*, supply/demand imbalances or other market forces), the prices of the assets in which a Fund invests may decline substantially. In particular, purchasing assets at what may appear to be "undervalued" levels is no guarantee that these assets will not be at even more "undervalued" levels at a time of valuation or at the time of sale. It may not be possible to predict, or to hedge against, such "spread widening" risk.

### **General Economic Conditions and Recent Events**

Many factors affect the appeal and availability of investments in the companies that are the focus of a Fund. While KPS expects that the current environment will yield attractive investment

opportunities for the Funds, the investments made by the Funds are expected to be sensitive to the performance of the overall economy. For example, the success of a Fund's activities could be materially adversely affected by market conditions such as interest rates, availability of credit, credit defaults, inflation rates, economic uncertainty, changes in laws (including laws relating to taxation of such Fund's investments), trade barriers and currency exchange controls, and national and international political, environmental and socioeconomic circumstances (including wars, terrorist acts or security operations) in respect of the countries in which such Fund may invest, as well as by numerous other factors outside the control of KPS and the relevant general partner. These factors may affect the level and volatility of securities prices and the liquidity of a Fund's investments, which could impair such Fund's profitability or result in losses. In addition, general fluctuations in the market prices of securities and interest rates may affect a Fund's investment opportunities and the value of the Fund's investments. Moreover, a negative impact on economic fundamentals and consumer and business confidence would likely increase market volatility and reduce liquidity, both of which would adversely affect the access to capital, ability to utilize leverage or overall performance of a Fund or one or more of its portfolio companies.

KPS' financial condition may be adversely affected by a significant general economic downturn and it may be subject to legal, regulatory, reputational and other unforeseen risks that could have a material adverse effect on KPS' business and operations and thereby could impact the Funds. Moreover, a recession, slowdown and/or sustained downturn in the U.S. or global economy (or any particular segment thereof) or weakening of credit markets may adversely affect a Fund's profitability, impede the ability of a Fund's portfolio companies to perform under or refinance their existing obligations, and impair a Fund's ability to effectively exit investments on favorable terms.

World financial markets continue to experience extraordinary market conditions, including, among other things, bank failures, extreme losses and volatility in securities markets and the failure of credit markets to function. In reaction to these events, regulators and monetary authorities in the United States and several other countries undertook unprecedented regulatory and monetary actions, and regulators in the United States and abroad continue to consider and implement measures to stabilize U.S. and global financial markets. However, despite these efforts, U.S. and global financial markets remain volatile.

A Fund may be adversely affected by the foregoing events, or by similar or other events in the future. In the longer term, there may be significant new regulations and other governmental intervention that could limit a Fund's activities, investment opportunities and impede a Fund's ability to achieve its investment objective or change the functioning of the capital markets, and there is the possibility of continued severe worldwide economic downturn. Consequently, a Fund may not be capable of, or successful at, preserving the value of its assets, generating positive investment returns or effectively managing risks.

In addition, economic problems in a single country are increasingly affecting other markets and economies. A continuation of this trend could adversely affect global economic conditions and world markets and, in turn, could adversely affect a Fund's performance. Any of the foregoing events could result in substantial or total losses to a Fund in respect of certain or all of its investments, which losses would likely be exacerbated by the presence of leverage in a portfolio company's capital structure.

### **Business and Market Risks**

The investments made by a Fund may involve a high degree of business and financial risk that can result in substantial losses. In particular, these risks could arise from changes in the financial condition or prospects of the entity in which the investment is made, changes in competitive environment, changes in national or international economic and market conditions, and changes in laws, regulations, trade barriers, commodity prices and controls, fiscal policies or political conditions of countries in which investments are made, including the risks of war and the effects of actual or threatened terrorist attacks and security operations. Difficult market conditions may adversely affect a Fund by reducing the value or performance of its investments or by reducing its ability to raise or deploy capital, each of which could negatively impact the returns to the Investors. Moreover, an important component of a Fund's investment strategy is to invest in manufacturing and industrial companies, which could be more susceptible to effects of "Act of God" events, including earthquakes, floods, hurricanes, tropical storms, fires or other natural disasters, epidemics or shortage of electricity or other similar national or local emergency, that are beyond the control of, and may not be easily foreseeable by, the Fund, the relevant general partner or KPS. A Fund may invest in manufacturing companies that may be dependent on a small number of industrial facilities, or even a single industrial facility, in which case any adverse change in one facility could have a material adverse effect on the Fund's investment in such portfolio company. In addition, KPS's strategy for a portfolio company may involve an acquisition program, restructuring and/or operational improvements, all of which entail a high degree of uncertainty. Portfolio companies that KPS expected to be stable may operate at a loss or have significant variations in operating results, may require substantial additional capital to support their operations or to maintain their competitive positions, or may otherwise have a weak financial condition or experience financial distress. The possibility of partial or total loss of capital will exist, and prospective Investors should not invest unless they can readily bear the consequences of such loss.

### **Absence of Regulatory Oversight**

Although KPS is registered as an investment adviser under the Advisers Act and while a Fund may be considered similar in some ways to an investment company, unless and until legislation requiring such Fund to register with the SEC is enacted, it is not required and does not intend to register as such under the Investment Company Act and, accordingly, the Investors are not afforded the protections of the Investment Company Act.

### **Fund, General Partner and Manager Registration**

Generally, the Funds are not registered under the Investment Company Act. The Investment Company Act provides certain protection to investors and imposes certain restrictions on registered investment companies (including, for example, limitations on the ability of registered investment companies to incur leverage), none of which will be applicable to the Funds. Neither KPS nor any general partner is registered as a broker-dealer under the U.S. Securities Exchange Act of 1934 (together with any rules promulgated thereunder, the "Exchange Act") or with the Financial Industry Regulatory Authority, Inc. ("FINRA"), and, consequently, are not subject to the recordkeeping and specific business practice provisions of the Exchange Act or the rules of FINRA.

The U.S. Commodity Exchange Act of 1936 (together with any rules promulgated thereunder, the "Commodity Exchange Act") also provides certain protection to investors by imposing certain disclosure, reporting and recordkeeping obligations on CPOs and commodity trading advisors ("CTAs"). However, pursuant to an exemption granted to certain pools under Rule 4.13(a)(3) of

the Commodity Exchange Act, a general partner is not required to register, and is not registered, with the CFTC as a CPO. Rule 4.13(a)(3) requires that at all times either: (i) the aggregate initial margin and premiums required to establish commodity interest positions does not exceed five percent of the liquidation value of a Fund's investment portfolio; or (ii) the aggregate net notional value of the Fund's commodity interest positions does not exceed one-hundred percent of the liquidation value of the Fund's investment portfolio. As a result of claiming the exemption, a general partner will not be required to comply with certain disclosure, reporting and recordkeeping requirements generally applicable to registered CPOs, including delivery to investors of a disclosure document and a certified annual report designed to meet CFTC requirements. In addition, KPS is not required to be registered, and is not registered, with the CFTC as a CTA.

### **Legal, Tax and Regulatory Risks**

Legal, tax and regulatory changes could occur during the term of a Fund that may adversely affect the Fund, its portfolio companies or the Investors. There can be no assurance that new legislation or regulation, including changes to existing laws and regulations, will not have a material and negative impact on a Fund's investment performance or otherwise impede a Fund's ability to effectively achieve its objectives.

### **Eurozone Risks**

There are significant and persistent concerns regarding the debt burden of certain Eurozone countries and their ability to meet future financial obligations, the overall stability of the Euro and the suitability of the Euro to function as a single currency given the diverse economic and political circumstances in individual Eurozone countries. The risks and prevalent concerns about a credit crisis in Europe could have a detrimental impact on global economic recovery as well as on sovereign and non-sovereign debt in the Eurozone countries. There can be no assurance that the market disruptions in Europe will not spread to other countries, nor can there be any assurance that future assistance packages will be available or, even if provided, will be sufficient to stabilize affected countries and markets in Europe or elsewhere. These and other concerns could lead to the re-introduction of individual currencies in one or more Eurozone countries, or, in more extreme circumstances, the possible dissolution of the Euro entirely. Should the Euro dissolve entirely, the legal and contractual consequences with respect to a Fund, its Investors and their investments in Europe could be determined by laws in effect at such time. These potential developments could negatively impact the ability of a Fund to make investments in Europe, the value of a Fund's investments in Europe and the general availability and cost of financing permitted investments.

### **Risks Associated with United Kingdom Exit from the European Union ("BREXIT")**

On March 29, 2017, the United Kingdom formally notified the European Council of its intention to leave the EU ("Brexit"). The UK formally left the EU on January 31, 2020, and entered a transition period that ended on December 31, 2020. On December 24 2020, the UK government and the EU Commission provisionally agreed a trade and cooperation agreement governing their future relationship, which, following a ratification process, is expected to apply on a provisional basis through an additional transition period.

Although provisionally agreed, the terms of UK's ongoing and future relationship with the EU are still uncertain, including the extent to which UK businesses will have access to the EU single market and the extent to which EU businesses have access to the UK market. There is also risk of significant

disruption to trade between the UK and the EU, particularly as new trade arrangements are intended to be ratified and implemented.

There can be no assurance that any renegotiated laws or regulations will not have an adverse impact on a Fund and its investments, including the ability of a Fund to achieve its investment objectives.

The legal, political and economic uncertainty generally resulting from the UK's exit from the EU may adversely affect both EU and UK-based businesses, including KPS and Fund portfolio companies, as applicable. This uncertainty may also result in an economic slowdown and/or a deteriorating business environment in the UK and in one or more EU Member States.

### **Cyber Security Risks**

Recent events have illustrated the ongoing cybersecurity risks to which operating companies are subject, particularly operating companies in historically vulnerable industries such as the food services and retail industries. To the extent that a portfolio company is subject to cyber-attack or other unauthorized access is gained to a portfolio company's systems, such portfolio company may be subject to substantial losses in the form of stolen, lost or corrupted (i) customer data or payment information; (ii) customer or portfolio company financial information; (iii) portfolio company software, contact lists or other databases; (iv) portfolio company proprietary information or trade secrets; or (v) other items. In certain events, a portfolio company's failure or deemed failure to address and mitigate cybersecurity risks may be the subject of civil litigation or regulatory or other action. The use of internet- or cloud-based programs, technologies and data storage applications generally heightens these risks. Any of such circumstances could subject a portfolio company, or the relevant Fund, to substantial losses, including losses relating to: misappropriation of assets, intellectual property or confidential information; corruption, deletion or destruction of data; physical damage and repairs to systems; reputational harm; financial losses from remedial actions; and/or disruption of operations. Third parties, including activist, criminal, nation-state or terrorist actors, may also attempt fraudulently to induce portfolio companies or their personnel to disclose sensitive information (including passwords) in order to gain access to data, accounts, funds or other assets, or otherwise to inflict harm. In addition, in the event that such a cyber-attack or other unauthorized access is directed at KPS or one of its service providers holding its financial or investor data, KPS, its affiliates or the Funds may also be at risk of loss, despite efforts to prevent and mitigate such risks under KPS' policies and practices.

### **Changes in Cyber Security and Data Protection Laws and Regulations**

The adoption, interpretation and application of consumer protection, data protection and/or privacy laws and regulations in the United States, Europe and other jurisdictions ("Privacy Laws") could significantly impact current and planned privacy and information security related practices, the collection, use, sharing, retention and safeguarding of personal data and current and planned business activities of KPS, the general partners, the Funds and/or their portfolio companies, and increase compliance costs and require the dedication of additional time and resources to compliance for such entities. A failure to comply with such Privacy Laws by any such entity or their service providers could result in fines, sanctions or other penalties, which could materially and adversely affect the results of operations and overall business, as well as have a negative impact on reputation and Fund performance. As Privacy Laws are implemented, interpreted and applied, compliance costs for KPS, the general partners, the Funds and/or their portfolio companies, are likely to

increase, particularly in the context of ensuring that adequate data protection and data transfer mechanisms are in place.

For example, California has passed the California Consumer Privacy Act of 2018, as amended, and the EU has enacted the General Data Protection Regulation (EU 2016/679), each of which broadly impacts businesses that handle various types of personal data, potentially including private fund managers and their funds and investments. Such laws impose stringent legal and operational obligations on regulated businesses, as well as the potential for significant penalties.

Other jurisdictions, including other U.S. states, have proposed or are considering similar Privacy Laws, which if enacted could impose similarly significant costs, potential liabilities and operational and legal obligations. Such Privacy Laws and regulations are expected to vary from jurisdiction to jurisdiction, thus increasing costs, operational and legal burdens, and the potential for significant liability for regulated entities, which could include KPS, the general partners, the Funds and/or their portfolio companies.

### **Ongoing Compliance with Anti-Money Laundering Requirements**

KPS will be authorized, without the consent of any person, including any Investor, to take such action determined in its sole discretion to be reasonably necessary or advisable to comply, or to cause a Fund to comply, with any applicable laws and regulations, including any anti-money laundering, counter terrorist financing laws, rules, regulations, directives or special measures. In addition, KPS may disclose, without the consent of any person, including any Investor, to governmental authorities, self-regulatory organizations and financial institutions information concerning a Fund and its Investors that KPS determines in its sole discretion is necessary or advisable to comply with applicable laws and regulations, including any anti-money laundering or counter terrorist financing laws or regulations, and each Investor will be required to provide KPS all information that KPS determines in its sole discretion to be advisable or necessary to comply with such laws and regulations. Additionally, KPS may be required by applicable law to freeze an Investor's funds or cause such Investor to withdraw or be compulsorily redeemed from the relevant Fund. Any determination that KPS has violated any such laws, rules, regulations, directives, or special measures could subject it to, among other things, civil and criminal penalties, material fines, profit disgorgement, injunctions on future conduct, securities litigation and a general loss of Investor confidence, any one of which could adversely affect KPS' business prospects and/or financial position, as well as a Fund's ability to achieve its investment objective and/or conduct its operations.

### **Economic and Trade Sanctions and Anti-Bribery Considerations**

Economic and trade sanctions laws in the United States and other jurisdictions may prohibit KPS, KPS professionals and the Funds from transacting with or in certain countries, in certain economic sectors, and with certain individuals and companies. In the United States, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") administers and enforces laws, Executive Orders and regulations establishing U.S. economic and trade sanctions. Such sanctions prohibit, among other things, transactions with, and the provision of services to, certain foreign countries, territories, entities and individuals. These entities and individuals include specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanctions and embargo programs. The lists of OFAC prohibited countries, territories, persons and entities, including the List of Specially Designated Nationals and Blocked Persons, as such list may

be amended from time to time, can be found on the OFAC website at <http://www.treas.gov/ofac>. In addition, certain programs administered by OFAC prohibit dealing with individuals or entities in certain countries, economic sectors, or subject to certain sanctions programs regardless of whether such individuals or entities appear on the lists maintained by OFAC, which may make it more difficult for a Fund to identify sanctioned parties and prevent dealings with them. These types of sanctions may significantly restrict or limit a Fund's investment activities in certain countries (in particular, certain emerging market countries). Sanctions laws, rules, regulations, directives and special measures frequently change without advance notice, and may impose new or heightened restrictions or obligations on KPS. Ensuring ongoing compliance with these laws, rules, regulations, directives and special measures may require a Fund or its portfolio companies to terminate or wind-up certain business relationships, which may adversely impact such Fund's investment objectives. Further, certain jurisdictions, including EU member states, may have enacted "blocking" regulations that prohibit compliance or agreements to comply with certain U.S. economic and trade sanctions laws. Any determination that KPS has violated any applicable economic and trade sanctions laws or blocking regulations could subject it to, among other things, civil and criminal penalties, material fines, profit disgorgement, injunctions on future conduct, securities litigation and a general loss of Investor confidence, any one of which could adversely affect KPS' business prospects and/or financial position, as well as a Fund's ability to achieve its investment objective and/or conduct its operations.

At the same time, KPS may be obligated to comply with certain anti-boycott laws and regulations that prevent KPS and the Funds from engaging in certain discriminatory practices that may be allowed or even required in certain jurisdictions. These obligations may make it more difficult for the Funds to pursue certain investments and engage in certain business activities, and any compliance with such practices could subject KPS, or the Funds to fines, penalties, and adverse legal and reputational consequences.

In some countries, there is a greater acceptance than in the United States and the UK of government involvement in commercial activities and of activities constituting corruption in the United States and the UK. Certain countries, including the United States and the UK have laws prohibiting commercial bribery. KPS and the Funds are committed to complying with the United States Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), the U.K. Bribery Act and other anti-corruption laws, anti-bribery laws and regulations, as well as anti-boycott regulations, to which they are subject. As a result, a Fund may be adversely affected because of its unwillingness to participate in transactions that violate such laws or regulations. Such laws and regulations may make it difficult in certain circumstances for a Fund to act successfully on investment opportunities and for portfolio companies to obtain or retain business.

In recent years, the United States Department of Justice and the SEC have devoted greater resources to enforcement of the FCPA. In addition, the UK significantly expanded the reach and enforcement of its anti-bribery laws, and other countries are taking similar steps to enhance their domestic enforcement capabilities. While KPS has developed and implemented policies and procedures designed to ensure strict compliance by KPS and its personnel with such laws, such policies and procedures may not be effective in all instances to prevent violations. In addition, in spite of KPS' policies and procedures, portfolio companies and their affiliates, particularly in cases where a Fund or KPS vehicle does not control such portfolio company, may engage in activities that could result in violations of applicable anti-corruption laws. Any determination that KPS or a portfolio company

has violated the FCPA or other applicable anti-corruption laws or anti-bribery laws could subject it to, among other things, civil and criminal penalties, material fines, profit disgorgement, injunctions on future conduct, securities litigation and a general loss of Investor confidence, any one of which could adversely affect KPS' business prospects and/or financial position, as well as a Fund's ability to achieve its investment objective and/or conduct its operations.

### **Certain Restrictions on Ownership**

Current laws and regulations in various jurisdictions give heads of state and regulatory bodies the authority to block acquisitions by foreign persons of local entities if that acquisition threatens to impair national security. In addition, many jurisdictions restrict foreign investment in certain assets by taking steps including, but not limited to, placing limitations on foreign equity investment, implementing investment screening or approval mechanisms, and restricting the employment of foreigners as key personnel. These laws could limit a Fund's ability to invest in some entities or impose burdensome notification requirements, operational restrictions or delays in pursuing and consummating transactions, and could result in a Fund excluding (in whole or in part) the participation of certain Investors in any such transaction.

In some cases, investments by a Fund involving the acquisition of or investment in a U.S. business (including a U.S. branch or subsidiary of a company domiciled outside of the United States) may be subject to review and approval by the Committee on Foreign investment in the United States ("CFIUS"). In the event that CFIUS reviews one or more investments, there can be no assurances that the relevant Fund will be able to maintain or proceed with such investments on any terms, or on terms that are acceptable to KPS. Additionally, CFIUS may seek to impose limitations on one or more such investments that may prevent a Fund from maintaining or pursuing investment opportunities that the Fund otherwise would have maintained or pursued, which could adversely affect the performance of the Fund's investment and thus the performance of the Fund. Legislation to reform CFIUS was signed into law by the U.S. President in August 2018. This legislation, among other things, expands the scope of CFIUS' jurisdiction to cover more types of investments and empowers CFIUS to scrutinize investments more closely.

A Fund's investments outside of the United States may also face delays, limitations, or restrictions as a result of notifications made under and/or compliance with these legal regimes and rapidly-changing agency practices. Other countries continue to establish and/or strengthen their own national security investment clearance regimes, including in response to U.S. encouragement of other countries to impose CFIUS-like regulations on foreign investment in certain sectors and assets on national security grounds, which could have a corresponding effect of limiting a Fund's ability to make investments in such countries. In particular, as of April 2019, the EU adopted and implemented an EU-wide mechanism to screen foreign investment on national security grounds, which could impede, restrict, and/or delay a Fund's investments with a nexus to the EU. As a result of such regimes, a Fund may incur significant delays and costs or be altogether prohibited from making a particular investment, all of which could adversely affect the Fund's ability to meet its investment objectives. Heightened scrutiny of foreign direct investment worldwide may also make it more difficult for a Fund to identify suitable buyers for investments upon exit and may constrain the universe of exit opportunities for an investment. As a result, the above laws may prevent, delay, impede or restrict syndication or sale of Fund assets to certain buyers.



### **Pay-to-Play Laws, Regulations and Policies**

A number of states and municipal pension plans have adopted so-called “pay-to-play” laws, regulations or policies which prohibit, restrict or require disclosure of payments to (and/or certain contacts with) state officials by individuals and entities seeking to do business with state entities, including those seeking investments by public retirement funds. The SEC has adopted a rule that, among other things, prohibits an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or certain of its executives or employees makes a contribution to certain elected officials or candidates. If KPS, a general partner or any of their employees or affiliates or any service provider acting on their behalf, fails to comply with such laws, regulations or policies, such non-compliance could have an adverse effect on a Fund. The Investors may also seek to pursue individual remedies, including withdrawal rights, which may be included in side letters or otherwise imposed by statute.

### **ERISA Considerations**

KPS presently intends to operate a Fund in such a manner as to avoid the treatment of assets of any of the Fund entities as “plan assets.” KPS reserves the right to decide to operate a Fund either as a VCOC, or instead to limit investment in a Fund by “benefit plan investors” (as defined under ERISA) in order to avoid such “plan assets” status. In any case, however, there can be no assurance that a Fund will be treated as not holding “plan assets” of investing “benefit plan investors.”

If the assets of a Fund were deemed to constitute the assets of an investing “benefit plan Investor,” the operation and administration of the Fund and the duties, obligations, and liabilities of the relevant general partner would be subject to the fiduciary responsibility provisions of ERISA and the prohibited transaction provisions of ERISA and the Code. Specifically, in such circumstances, certain investments by such Fund may not be permitted, and transactions between such Fund, on the one hand, and the relevant general partner, KPS or any of their respective affiliates, on the other hand, including the fees payable to the general partner and KPS, may be prohibited transactions or need to be restructured. Moreover, the fiduciary causing a “benefit plan Investor” to make an investment in the relevant Fund could be deemed to have delegated its responsibility to manage the assets of such “benefit plan Investor” to the relevant general partner or KPS, and to the extent that such delegation was improper, such fiduciary could be liable, either directly or under the co-fiduciary rules of ERISA, for the acts of such general partner and KPS.

### **Unfunded Pension Liabilities of Portfolio Companies**

Recent court decisions have found that, where an investment fund owns 80% or more (or under certain circumstances less than 80%) of a portfolio company, such fund (and any other 80%-owned portfolio companies of such fund) might be found liable for certain pension liabilities of such a portfolio company to the extent the portfolio company is unable to satisfy such liabilities. A Fund may, from time to time, invest in a portfolio company that has unfunded pension fund liabilities, including structuring the investment in a manner where the Fund may own an 80% or greater interest in such a portfolio company. If a Fund (or other 80%-owned portfolio companies of the Fund) were deemed to be liable for such pension liabilities, this could have a material and adverse effect on the operations of the Fund and the companies in which the Fund invests. Such liabilities may change in the future as the case law and guidance on statute and regulations regarding control group liability under ERISA develops further.

**Risks Arising from Provision of Managerial Assistance**

Operating a Fund as a VCOC would require that the Fund obtain certain rights to participate substantially in and to influence substantially the conduct of the management of certain of the Fund's portfolio companies. To satisfy the foregoing, the Fund may designate directors (and potentially non-executive chairpersons) to serve on the boards of directors of portfolio companies. The designation of directors and other measures contemplated could expose the assets of the Fund to claims by a portfolio company, its security holders and its creditors. The exercise of control over a company could also impose additional risks of liability for environmental damage, product defects, failure to supervise management, violation of government regulations and other types of liability. If these liabilities were to occur, the Fund could suffer significant losses in its investments. While KPS intends to manage a Fund in a way that will minimize exposure to these risks, the possibility of successful claims cannot be precluded. In addition, operating a Fund as a VCOC could restrict, at any given time, the level of investment which the Fund would be able to make in entities that do not qualify as operating companies and/or pursuant to which the Fund is unable to obtain rights to participate substantially in or influence the conduct of management.

**Valuation and Changing Accounting Standards**

The valuation of the assets of a Fund, which will affect the Fund's reported performance, may involve uncertainties and judgmental decisions. Although the valuation of a Fund's investment will be performed in accordance with the terms of the Governing Documents, certain of the investments will be investments for which there is no, or a limited, liquid market and the fair value of such investments may not be readily determinable. The process of valuing investments for which reliable market quotations are not available is based on inherent uncertainties and the resulting values may differ from values that would have been determined had a ready market existed for such investments and may differ from the prices at which such investments may ultimately be sold. There is no assurance that the value assigned to an investment at a certain time will accurately reflect the value that will be realized by the relevant Fund upon the eventual disposition of the investment and the performance of such Fund could be adversely affected if such valuation determinations are materially higher than the value ultimately realized upon the disposition of the investment. Absent bad faith or manifest error, valuation determinations in accordance with KPS' valuation policy will be conclusive and binding.

Notwithstanding the foregoing, KPS may determine in certain instances to assign to a particular asset a different value under the terms of the Governing Documents than the value assigned to such asset for financial reporting purposes. In particular, KPS will not necessarily apply U.S. generally accepted accounting principles ("GAAP") when determining whether an asset has declined in value for the purposes of determining distributions (including distributions of carried interest) and management fees payable by a Fund.

Accordingly, to the extent that GAAP would require any of Fund assets or liabilities to be valued in a manner that differs from the terms of the Governing Documents, such assets or liabilities will be valued (i) in accordance with GAAP, solely for purposes of preparing a Fund's GAAP-compliant audited financial statements and (ii) in accordance with the Governing Documents (without regard to any GAAP requirements relating to the determination of fair value), for all other purposes (including for purposes of determining distributions and allocating gains and losses).

Finally, Accounting Standards Codification 820 and other accounting rules applicable to investment funds and various assets they invest in are evolving. Such changes may adversely affect a Fund. For example, the evolution of rules governing the determination of the fair market value of assets to the extent such rules become more stringent would tend to increase the cost and/or reduce the availability of third-party determinations of fair market value. This may in turn increase the costs associated with selling assets or affect their liquidity due to inability to obtain a third-party determination of fair market value.

### **Inflation**

Certain non-U.S. countries have experienced substantial, and in some periods extremely high, rates of inflation for many years and, while inflation generally has been muted in developed economies in recent years, historically high rates of inflation have been present in such areas as well. Inflation and rapid fluctuations in inflation rates have had and may have very negative effects on the economies and securities markets (both public and private) of certain countries in which a Fund may invest. There can be no assurance that high rates of inflation will not have a material adverse effect on a Fund's investments.

### **Valuation of Fund Assets**

When estimating fair value of a Fund's investments, KPS will apply the methodology described in the Governing Agreements; because there is not expected to be an actively traded market for most of the securities owned by the Funds, KPS will use the methodology consistent with its valuation policy, which is subject to change from time to time based on, among other things, accounting guidelines and the nature, facts and circumstances of the applicable investments. In addition, securities that KPS believes are fundamentally undervalued or overvalued may not ultimately be valued in the capital markets at prices and/or within the time frame KPS anticipates. In particular, purchasing securities at prices that KPS believes to be distressed or below fair value is no guarantee that the price of such securities will not decline even further. There is no guarantee that the fair value as determined by KPS will represent the value that will be realized by a Fund on the eventual disposition of the investment or that would, in fact, be realized upon an immediate disposition of the investment. Inaccurate valuations may, among other things, prevent a Fund from effectively managing its investments and risks, affect the diversification and risk management of such Fund.

In addition, there will be situations in which KPS is potentially incentivized to influence or adjust the valuation of a Fund's assets. For example, KPS could be incentivized to (i) employ valuation methodologies that may improve a Fund's track record or (ii) minimize losses from write downs that must be returned prior to receiving carried interest. KPS has adopted valuation policies to address these potential conflicts.

### **Limited Access to Information**

Limited partners' rights to information regarding a Fund, the relevant general partner or KPS generally will be specified, and in many cases strictly limited, by the Governing Documents. In particular, it is anticipated that the general partner and its affiliates will obtain certain types of material information from or relating to a Fund's investments that will not be disclosed to limited partners because such disclosure is prohibited, including as a result of contractual, legal or similar obligations outside of KPS's control. Decisions by KPS or its affiliates to withhold information may have adverse consequences for limited partners in a variety of circumstances. For example, a limited partner that seeks to transfer its interest in a Fund may have difficulty in determining an appropriate

price for such interest. Decisions to withhold information may also make it difficult for a limited partner to monitor KPS and its performance. Additionally, it is anticipated that limited partners that designate representatives to participate on a Fund's advisory board generally may, by virtue of such participation, have more or earlier information about a Fund and its investments in certain circumstances than other limited partners. Limited partners generally will bear the expenses of responding to disclosure requests, including in connection with state public records, similar freedom of information and other laws, whether or not the relevant Fund succeeds in asserting confidentiality for requested documents and other materials, and KPS reserves the right to withhold certain information from investors subject to such laws for reasons relating to KPS's public reputation, business strategy or other reasons.

### **Material, Non-Public Information**

KPS may come into possession of material non-public information with respect to a portfolio company or other issuer. Should this occur, KPS would be restricted from buying, originating or selling securities with respect to the issuer on behalf of the relevant Fund until such time as the information becomes public or is no longer deemed material, which would preclude such Fund from participating in an investment. Disclosure of such information to KPS' personnel responsible for the affairs of the relevant Fund may result in such Fund not being free to act upon any such information. KPS, in an effort to avoid buying or selling restrictions on behalf of the Funds, may choose to forego an opportunity to receive (or elect not to receive) information that other market participants or counterparties, including those with the same positions in the issuer as the Funds, are eligible to receive or have received, even if possession of such information would otherwise be advantageous to the Funds.

Additionally, the receipt of material non-public information by KPS or the Funds could restrict all affiliates of KPS, not just the manager and/or general partner of the applicable Fund, in receipt of the information. A Fund would in such cases not be free to act upon any such information and could be restricted indefinitely in transactions involving a particular issuer. Due to these restrictions, a Fund may not be able to initiate a transaction that it otherwise might have initiated and may not be able to sell a portfolio company that it otherwise might have sold. Consequently, the possession of material non-public information by KPS may limit the ability of the Funds to buy and sell investments in the relevant company.

### **Other Restrictions Arising under the Securities Laws**

In addition to the restrictions relating to material non-public information, KPS' activities and the activities of the Funds (including, without limitation, the holding of securities positions or having one of its employees on the board of directors of a portfolio company) could result in other securities law restrictions on transactions in securities held by the Funds, affect the prices of such securities or the ability of such entities to purchase, retain or dispose of such investments, or otherwise create conflicts of interest, any of which could have an adverse impact on the performance of the Funds and thus the return to the Investors.

### **Conflicts of Interest**

KPS and its related entities engage in a broad range of advisory and non-advisory activities, including investment activities for their own account and for the account of other Funds, and providing transaction-related, legal, management and other services to Funds and portfolio companies. KPS will devote such time, personnel and internal resources as are necessary to conduct

the business affairs of the Funds in an appropriate manner, as required by the Governing Documents, although the Funds and their respective investments will place varying levels of demand on these over time. In the ordinary course of KPS conducting its activities, the interests of a Fund likely will conflict with the interests of KPS, one or more other Funds, portfolio companies or their respective affiliates in certain circumstances. Certain of these conflicts of interest are discussed herein. As a general matter, KPS will determine all matters relating to structuring transactions and Fund operations using its reasonable judgment considering all factors it deems relevant, but in its sole discretion, subject in certain cases to the required approvals by the Advisory Boards of the participating Funds.

During the commitment period of a Fund, all appropriate investment opportunities will be pursued by KPS principals through such Fund, subject to certain limited exceptions set forth in the Governing Documents and KPS's allocation policies. Without limitation, KPS principals currently manage, and expect in the future to manage, several other investments similar to those in which a Fund will be investing, and expect to direct certain relevant investment opportunities or resources to those investments. KPS personnel reserve the right to manage their own personal investments, whether or not through a formal family office or estate planning structure, and to pay or receive compensation relating to these arrangements. KPS's principals and KPS's investment staff will continue to manage and monitor such investments until their realization. Such other investments that KPS principals expect from time to time to control or manage generally have the potential to compete with companies acquired by a Fund. Following the commitment period of a Fund, KPS principals reserve the right to, and likely will, focus their investment activities on other opportunities and areas unrelated to such Fund's investments. Unless restricted by the Governing Documents, KPS personnel are permitted to serve on boards or act in other roles unaffiliated with KPS, the Funds or their portfolio companies, including boards of charitable and educational institutions, public companies and former portfolio companies, and receive compensation in connection with such services and roles.

From time to time, KPS will be presented with investment opportunities that would be suitable not only for a Fund, but also for other Funds and other investment vehicles operated by advisory affiliates of KPS. In determining which investment vehicles should participate in such investment opportunities, KPS and its affiliates are subject to conflicts of interest among the Investors in such investment vehicles. Except as required by the Governing Documents, KPS is not obligated to recommend any investment to any particular investment vehicle. Investments by more than one client of KPS in a portfolio company also have the potential to raise the risk of using assets of a client of KPS to support positions taken by other clients of KPS.

KPS must first determine which Fund(s) will, or are required to, participate in the relevant investment opportunity. KPS generally assesses whether an investment opportunity is appropriate for a particular Fund based on the Governing Documents, as well as factors including but not limited to: (1) the sourcing of the investment opportunity and the nature and extent of involvement in the transaction on the part of the respective teams of investment professionals dedicated to the Funds, (2) the investment strategy, guidelines or restrictions of the Funds, (3) the risk profile or the need to resize risk in the Funds' portfolios (including the potential for the proposed investment to create an industry, sector, issuer, geographic or currency imbalance in the relevant portfolio), (4) the existing portfolio composition and diversification of the Funds, (5) the potential synergies the prospective investment may have with the existing portfolio of the Funds and the value creation plans that KPS has with respect to the existing portfolio of the Funds, (6) the target return and

investment hold period of the Funds, (7) any applicable transfer, assignment or minimum hold restrictions relating to the investment opportunity, (8) the amount of capital available for investment by the Funds, (9) the liquidity then available or anticipated to become available (including through contributions or leverage, if applicable) to the Funds, (10) the availability and degree of leverage and any requirements or other terms of any leverage facilities available to the Funds, (11) the proximity of the Funds to the end of their commitment period or term, (12) any tax, regulatory or contractual restrictions or obligations, including any considerations applicable to unfunded pension liabilities, (13) the management of any actual or potential conflicts of interest, (14) the prevailing market conditions at the time of determination, (15) the pipeline of potential investment opportunities, (16) the pricing of investment opportunities and (17) the magnitude of the investment and any outsized or *de minimis* allocation. For example, a newly organized Fund generally will seek to purchase a disproportionate amount of investments until it is substantially invested. A Fund generally reserves the right to invest together with other Funds advised by an affiliated adviser of KPS in the manner set forth in the Governing Documents. KPS will determine the allocation of investment opportunities among Funds in a manner that it believes is fair and equitable to its clients under the circumstances over time consistent with KPS's obligations and reserves the right to take into consideration factors such as those set forth above.

KPS reserves the right from time to time to permit one or more strategic investors (which may consist of third parties and Investors that are not affiliates of the Manager) to invest in transactions in which a Fund invests if KPS determines that their investment would be beneficial in consummating such Fund's investment (including, without limitation, where the investors can provide local partnership or expertise in the jurisdiction in which the applicable portfolio company is located or where an investor can commit to invest a significant amount of capital in a short period of time or otherwise under circumstances where KPS determines that it is not practicable to offer one or more of the unaffiliated Investors the opportunity to co-invest in the transaction), successfully operating the portfolio company or its assets, disposing of the investment or otherwise adding value to such Fund's investment because of certain relationships, skills or attributes of the strategic investor. KPS expects to share Deal Fees with such strategic investors, and in no event will any Deal Fees attributable to the investment made by a strategic investor in a portfolio company of a Fund be offset against the management fee otherwise payable by the Fund. The carried interest, management or advisory fees or expenses payable by such strategic investors, if any, may be calculated solely with respect to such co-investment and, if such strategic investor is also an Investor, may be different from the carried interest, management or advisory fees or expenses otherwise payable by such Investor in respect of the Fund. Any carried interest and management fee or advisory fees received by KPS in connection with a strategic investor's co-investment may incentivize KPS to favor such strategic investor vis-à-vis a Fund. In addition, any such arrangements may result in a Fund investing less capital than it otherwise would have in such transactions or offering fewer (if any) co-investment opportunities to Investors of the Fund.

After the allocation of an investment opportunity among Funds has been determined, KPS will determine if the amount of an investment opportunity in which one or more Funds will invest exceeds the amount that would be appropriate for such Fund(s) and KPS reserves the right to offer any such excess to one or more potential co-investors, including third parties, as determined by the Governing Documents, side letters and KPS's procedures regarding allocation. KPS's procedures permit it to take into consideration a variety of factors in making such determinations, including but not limited to: whether a co-investor adds strategic value, sophistication, speed of execution, certainty of closing or tenure as an existing investor, whether a potential co-investor expressed an

interest in evaluating co-investment opportunities or a commitment to making co-investment funds available, whether a potential co-investor has a history of participating in co-investment opportunities with KPS, regulatory and administrative simplicity, industry expertise or other similar synergies, and such other factors that KPS deems relevant under the circumstances, including factors that may benefit KPS (such as the likelihood that a co-investor may invest in a future Fund). Although KPS reserves the right to consider a prospective co-investor's willingness to invest in future Funds, such willingness generally will not be the sole determining factor considered by KPS in identifying co-investors. KPS reserves the right to grant certain third-party investors the opportunity to evaluate specified amounts of prospective co-investments in Fund portfolio companies or otherwise to have priority in co-investment opportunities.

Furthermore, KPS or its related persons expect to make decisions regarding whether and to whom to offer co-investment opportunities in consultation with other participants in the relevant transactions, such as a lender or co-sponsor. Co-investment opportunities typically will be offered to some and not to other Fund Investors, and the consideration of the factors set forth above likely will result in certain Investors receiving multiple opportunities to co-invest while others expressing interest in co-investments have the potential to receive none. When and to the extent that employees and related persons of KPS and its affiliates make capital investments in or alongside certain Funds, KPS and its affiliates are subject to potentially conflicting interests in connection with these investments. There can be no assurance that any Fund's return from a transaction would be equal to and not less than another Fund participating in the same transaction or that it would have been as favorable as it would have been had such conflict not existed.

KPS's allocation of investment opportunities among the persons and in the manner discussed herein often will not result in proportional allocations among such persons, and such allocations likely will be more or less advantageous to some such persons relative to others. While KPS will allocate investment opportunities in a manner that it believes is fair and equitable to its clients under the circumstances over time and considering relevant factors, there can be no assurance that a Fund's actual allocation of an investment opportunity, if any, or the terms on which that allocation is made, will be as favorable as they would be if the potential conflicts of interest to which KPS expects to be subject, discussed herein, did not exist.

In certain cases, KPS will have the opportunity (but, subject to any applicable restrictions or procedures in the Governing Documents, no obligation) to identify one or more secondary transferees of interests in a Fund. In such cases, KPS will not receive compensation for identifying such transferees, and will use its discretion to select such transferees based on eligibility and other factors, and unless required by the Governing Documents, will determine in its sole discretion whether the opportunity to receive a transfer of Fund interests should be offered to one or more existing Fund Investors.

As further disclosed in the Governing Documents, the KPS Partners reserve the right to invest in different or overlapping levels of a portfolio company's capital structure with the Funds, including but not limited to investments in debt instruments issued by portfolio companies. In such circumstances, there is a potential for conflicts of interest in determining the terms of each such investment. Questions may arise subsequently as to whether payment obligations and covenants should be enforced, modified or waived, or whether debt should be refinanced or restructured. In troubled situations, decisions including whether to enforce claims, or whether to advocate or initiate a restructuring or liquidation inside or outside of bankruptcy, and the terms of any workout or restructuring may raise conflicts of interest. Because of the different legal rights associated with

debt and equity of the same portfolio company, KPS may face a conflict of interest in respect of the advice it gives to the Funds, and the actions KPS Partners take on their own behalf in respect of such debt investments (*e.g.*, the terms of debt instruments, the enforcement of covenants, the terms of recapitalizations and the resolution of workouts or bankruptcies). In general, it is expected that the relatively small size of the KPS Partners' investments in debt, as well as their investments in the Funds and their share of carried interest, will serve to materially reduce this conflict of interest; however, it may not be mitigated entirely.

Potential conflicts are expected to arise when and to the extent a Fund makes investments in conjunction with an investment being made by another Fund, or if it were to invest in the securities of a company in which another Fund has already made an investment. A Fund may not, for example, invest through the same investment vehicles, have the same access to credit or employ the same hedging or investment strategies as other Funds. This likely will result in differences in price, terms, leverage and associated costs. Further, there can be no assurance that the relevant Fund and the other Fund(s) or vehicle(s) with which it co-invests will exit such investment at the same time or on the same terms. KPS and its affiliates may from time to time express inconsistent views of commonly held investments or of market conditions more generally, including in instances where different portfolio managers express different views regarding the same investment. There can be no assurance that the return on one Fund's investments will be the same as the returns obtained by other Funds participating in a given transaction. Given the nature of the relevant conflicts there can be no assurance that any such conflict can be resolved in a manner that is beneficial to both Funds. In that regard, actions taken for one or more Funds may adversely affect other Funds.

Subject to any relevant restrictions or other limitations contained in the Governing Documents, KPS will allocate fees and expenses in a manner that it believes is fair and equitable to its clients under the circumstances over time and considering such factors as it deems relevant, but in any case in its sole discretion. In exercising such discretion, KPS expects to be faced with a variety of potential conflicts of interest.

As a general matter, Fund expenses typically will be allocated among all relevant Funds or co-invest vehicles eligible to reimburse expenses of that kind. In all such cases, subject to applicable legal, contractual or similar restrictions, expense allocation decisions generally will be made by KPS or its affiliates using their reasonable judgment, considering such factors as they deem relevant, but in their sole discretion. The allocations of such expenses may not be proportional, and any such determinations involve inherent matters of discretion, *e.g.*, in determining whether to allocate *pro rata* based on number of Funds or co-invest vehicles receiving related benefits or proportionately in accordance with asset size, or in certain circumstances determining whether a particular expense has greater benefit to a Fund or KPS. The Funds generally have different expense reimbursement terms, including with respect to management fee offsets, which is expected from time to time to result in the Funds bearing different levels of expenses with respect to the same investment.

As a result of the Funds' controlling interests in portfolio companies, KPS and/or its affiliates typically have the right to appoint portfolio company board members (including current or former KPS personnel or persons serving at their request), or to influence their appointment, and to determine or influence a determination of their compensation. From time to time, portfolio company board members approve compensation and/or other amounts payable to KPS and/or its affiliates. Except to the extent such amounts are subject to the Governing Documents' offset provisions, they will be in addition to any management fees or carried interest paid by a Fund to KPS.



Additionally, a portfolio company typically will reimburse KPS or service providers retained at KPS's discretion for expenses (including without limitation travel expenses) incurred by KPS or such service providers in connection with its performance of services for such portfolio company. This subjects KPS and its affiliates to conflicts of interest because the Funds generally do not have an interest or share in these reimbursements, and the amount of such reimbursements over time is expected to be substantial. KPS determines the amount of these reimbursements for such services in its own discretion, subject to its internal reimbursement policies and practices. Although the amount of individual reimbursements typically is not disclosed to Investors in any Fund, their effect is reflected in each Fund's audited financial statements, and any fee paid or expense reimbursed to KPS or such service providers generally is subject to: agreements with or review by sellers, buyers and management teams; the review and supervision of the board of directors of or lenders to portfolio companies; and/or third party co-investors in its transactions. These factors help to mitigate related potential conflicts of interest.

In connection with its services to the Funds and their investments, KPS, its affiliates and personnel expect to receive the benefit of certain tangible and intangible benefits. For example, in the course of KPS' operations, including research, due diligence, investment monitoring, operational improvements and investment activities, KPS and its personnel expect to receive and benefit from information, "know-how," experience, analysis and data relating to Fund or portfolio company (as applicable) operations, terms, trends, market demands, customers, vendors and other metrics (collectively, "KPS Information"). In many cases, KPS Information will include tools, procedures and resources developed by KPS to organize or systematize KPS Information for ongoing or future use. Although KPS expects its Funds and their portfolio companies generally to benefit from KPS' possession of KPS Information, it is possible that any benefits will be experienced solely by other or future Funds or portfolio companies and not by the Fund or portfolio company from which KPS Information was originally received. KPS Information will be the sole intellectual property of KPS and solely for the use of KPS. KPS reserves the right to use, share, license, sell or monetize KPS Information, without offset to management fees, and the relevant Fund or portfolio company will not receive any financial or other benefit of such use, sharing, licensure, sale or monetization. Additionally, expenses relating to the Funds or portfolio companies are expected to be charged using credit cards or other widely available third-party rewards programs that provide airline miles, hotel stays, travel rewards, traveler loyalty or status programs, "points," "cash back," rebates, discounts and other arrangements, perquisites and benefits under the available terms of such reward programs. Such terms are expected to vary from time to time, and any such rewards (whether or not de minimis or difficult to value) generally will inure to the benefit of the personnel participating in the rewards program, rather than the portfolio companies, the Funds or their respective investors; no such rewards will offset management fees.

KPS generally exercises its discretion to recommend to a Fund or to a portfolio company thereof that it contract for services with certain service providers, and from time to time such service providers are expected to include: (i) KPS or a related person of KPS (which may include a portfolio company of such Fund); (ii) an entity with which KPS or its affiliates or current or former members of their personnel has a relationship or from which KPS or its affiliates or their personnel otherwise derives financial or other benefit, including relationships with joint venturers or co-venturers, or relationships where KPS personnel are seconded, or from which KPS receives secondees; or (iii) certain limited partners or their affiliates. For example, KPS expects to be presented with opportunities to receive financing and/or other services in connection with a Fund's investments from certain limited partners or their affiliates that are engaged in lending or related business. This

discretion subjects KPS to conflicts of interest, because although KPS selects service providers that it believes are aligned with its operational strategies and will enhance portfolio company performance and, relatedly, returns of the relevant Fund, KPS has a potential incentive to recommend the related or other person (including a limited partner) because of its financial or other business interest. There is a possibility that KPS, because of such belief or for other reasons (including whether the use of such persons could establish, recognize, strengthen and/or cultivate relationships that have the potential to provide longer-term benefits to the relevant Funds or KPS), would favor such retention or continuation even if a better price and/or quality of service could be obtained from another person. KPS will not necessarily seek out the lowest cost options when incurring (or causing a Fund or its portfolio companies to incur) such expenses. Although KPS generally seeks appropriate rates for services, it reserves the right to prioritize prior usage, perceived sector competence or expertise, familiarity, onboarding speed or other other factors in retaining or recommending service providers. In certain circumstances where KPS commits or has committed to seek “market” or “arms-length” rates or terms, KPS will do so in its sole discretion, seeking rates that it has determined in its sole discretion to be reflective of the range of rates in the applicable or related markets. Consequently, KPS undertakes no minimum amount of benchmarking, and does not represent that any such benchmarking ultimately will be accurate, comparable or relate specifically to the assets or services to which such rates or terms relate. Where such rates or terms include hourly components, KPS reserves the right to rely on approximations or estimates of time spent for purposes of allocating or charging for services. Any methodology, or choice among methodologies, involves potential conflicts of interest. Whether or not KPS has a relationship or receives financial or other benefit from recommending a particular service provider, there can be no assurance that no other service provider is more qualified to provide the applicable services or could provide such services at lesser cost.

In certain circumstances, current or former KPS personnel are expected to serve in interim or part-time roles at a portfolio company, or provide services to a portfolio company as a secondee or in similar capacities, whether or not while maintaining certain legacy economic arrangements, benefits, support services or indicia of employment at KPS. Under such arrangements, KPS and/or the relevant portfolio company is authorized to pay all or a portion of the personnel costs of such employee, or supervise or oversee such employee. These arrangements have the potential to create conflicts of interest, in that amounts paid by a portfolio company in connection with secondee relationships or to former employees generally will not offset or reduce the management fee. Due to the nature of secondee relationships, which are often initiated to meet a temporary portfolio company need, the arrangements between such employees and the related portfolio company are expected to change over time, and in many cases will be terminated when the portfolio company is sold or when the position can be filled on a longer-term or permanent basis. Employees may or may not return to KPS at the end of such secondee arrangement.

In addition, as described above, portfolio companies and, the Funds typically pay certain fees to Industry Consultants and other consultants (including consultants introduced or arranged by KPS and/or its affiliates that regularly provide services to one or more portfolio companies), and such fees do not offset or reduce the management fee as described herein. Industry Consultants generally make use of KPS resources or otherwise are associated with KPS. KPS and/or its affiliates reserve the right to agree to compensate certain of such persons to the extent portfolio company-related compensation falls below certain specified levels on an aggregate annualized basis, or provide other compensation. Industry Consultants generally receive investment opportunities, reimbursements and other compensation that do not offset or reduce the management fee of any Fund, as described

herein. To the extent that Industry Consultants are paid retainers or guaranteed minimum compensation amounts, there is the possibility that certain portfolio companies or Funds will bear a greater share of such compensation due to the utilization of the Industry Consultant's services at a time when fewer portfolio companies or Funds make use of such Industry Consultant. Although the use of Industry Consultants and the allocation of compensation paid to them by KPS, its affiliates and/or the portfolio companies subjects KPS and/or its affiliates to potential conflicts of interest, KPS believes that such potential conflicts have the potential to be reduced by the anticipated cost savings to portfolio companies (which is expected to be to the benefit of the applicable Fund(s)) that will result if the cost of the Industry Consultants is lower than market rates for the services provided and/or if the services of the Industry Consultants align with KPS's model for the portfolio company and improve portfolio company performance. Although KPS seeks to retain Industry Consultants with a view to reducing costs to portfolio companies (and, ultimately, the Funds) and/or improving portfolio company performance, a number of factors may result in limited or no cost savings from such retention. KPS also seeks to reduce potential conflicts of interest resulting from such arrangements by structuring compensation packages for such persons in a manner that KPS believes will align such persons' interests with those of the Funds' limited partners, and seeks to retain only Industry Consultants and service providers which it believes provide a level of service at a value generally consistent with other relevant market alternatives. However, there can be no assurance that no other service provider is more qualified to provide the applicable services or could provide such services at lesser cost.

Although uncommon, KPS reserves the right from time to time to cause a Fund to enter into a transaction whereby the Fund purchases securities from, or sells securities to, other Funds managed by KPS, or co-investors or co-investment vehicles. Such transactions may arise in the context of automatic or other re-balancing of an investment among parallel investing entities or in contexts where a portfolio company owned by one Fund is acquired by a portfolio company acquired by another Fund. Certain of such transactions raise potential conflicts of interest, including where the investment of one Fund supports the value of portfolio companies owned by another Fund. These conflicts are heightened to the extent the relevant securities are illiquid or do not have a readily ascertainable value, and there generally can be no assurance that the price at which such transactions are entered into represent what would ultimately be the underlying investment's fair value. To the extent required by the Governing Documents or otherwise in the sole discretion of KPS, KPS reserves the right to seek to mitigate such conflicts by seeking the opinion of an unaffiliated third party (including the use of a consultant or investment banker to opine as to the fairness of a purchase or sale price) or by obtaining the consent of the relevant Fund(s) (including, where authorized, the consent of each Fund's Advisory Board) to such transactions. In certain circumstances, KPS reserves the right to determine that the willingness of a third party to make an investment on the same terms demonstrates the fairness of the relevant transaction to the Fund under then-current market conditions. KPS intends that any such transactions be conducted in a manner that it believes to be fair and equitable to each Fund under the circumstances, including a consideration of the potential present and future benefits with respect to each Fund.

Although KPS generally structures Funds to avoid cross-guarantees and other circumstances in which one Fund ultimately bears liability for all or part of the obligations of another Fund, in certain circumstances lenders and other market parties negotiate for the right to face only select Fund entities, which may result in a single Fund being solely liable for other Funds' share of the relevant obligation and/or joint and several liability among Funds. In such case, KPS intends to cause the relevant other Funds to enter into a back-to-back guarantee, indemnification or similar

reimbursement arrangement, although the Fund undertaking the obligation in the first instance generally will not receive compensation for being primarily liable under these arrangements.

KPS and/or its affiliates reserve the right to employ personnel with pre-existing ownership interests in portfolio companies owned by the Funds or other investment vehicles advised by KPS and/or its affiliates; conversely, current or former personnel or executives of KPS and/or its affiliates are expected from time to time to serve in significant management roles at portfolio companies or service providers recommended by KPS. Similarly, KPS, its affiliates and/or personnel maintain relationships with (or may invest in) financial institutions, service providers and other market participants, including but not limited to managers of private funds, banks, brokers, advisors, consultants, finders (including executive finders and portfolio company finders), executives, attorneys, accountants, institutional investors, family offices, lenders, current and former employees, and current and former portfolio company executives, as well as certain family members or close contacts of these persons. Certain of these persons or entities will invest (or will be affiliated with an investor) in, engage in transactions with and/or provide services (including services at reduced rates) to, KPS and/or its affiliates, and/or the Funds or other investment vehicles they advise. In other circumstances, these vendors are expected to provide personal banking, private wealth or lending arrangements (including lending arrangements with respect to personal investments in or through KPS entities) to KPS personnel and their estate planning vehicles. KPS expects to be subject to a potential conflict of interest with a Fund in recommending the retention or continuation of a third-party service provider to such Fund or a portfolio company if such recommendation, for example, is motivated by a belief that the service provider or its affiliate(s) will continue to invest in one or more Funds, will provide KPS information about markets and industries in which KPS operates (or is contemplating operations) or will provide other services that are beneficial to KPS or one or more other Funds. KPS expects to be subject to a potential conflict of interest in making such recommendations, in that KPS has an incentive to maintain goodwill between it and the existing and prospective portfolio companies for a Fund, while the products or services recommended may not necessarily be the best available to a Fund or its portfolio companies.

KPS, its affiliates, and equity holders, officers, principals and employees of KPS and its affiliates reserve the right to buy or sell securities or other instruments that KPS has recommended to a Fund. In addition, officers, principals and employees reserve the right to buy securities in transactions deemed unsuitable for a Fund. Any such transactions are subject to any restrictions in the Governing Documents and any related policies and procedures set forth in KPS's Code of Ethics. The investment policies, fee arrangements and other circumstances of these investments generally vary from those of any Fund. Employees and related persons of KPS have, and are expected to continue to have, capital investments in or alongside certain Funds, or in prospective portfolio companies directly or indirectly, as well as in investment vehicles (including private funds) sponsored by potential competitors, and therefore expects to have additional potential conflicting interests in connection with these investments.

Except to the extent prohibited by the Governing Documents, KPS and its personnel are permitted to market, organize, sponsor or act in other capacities (including as director, founder or manager) for other pooled investment vehicles or accounts, the investment or business strategy of which does not overlap with the Fund(s) and to receive compensation (including in the form of management fees, performance-based compensation, founders' equity or similar interests) relating thereto. Subject to any limitations imposed by the Governing Documents and anti-"assignment" provisions

of the Advisers Act, KPS and its personnel are also permitted to offer, restructure and monetize interests in KPS.

Because there is a fixed investment period after which capital from Investors in a Fund may only be drawn down in limited circumstances and because management fees are, at certain times during the life of a Fund, based upon capital invested by such Fund, this fee structure creates an incentive to deploy capital when KPS may not otherwise have done so.

Since KPS is permitted to retain certain Deal Fees (as described under “Fees and Compensation”) in connection with Fund investments, it expects to be subject to a potential conflict of interest in connection with approving transactions and setting such compensation. In many cases, Deal Fees are based on enterprise value or other metrics relating to a portfolio company, and there can be no assurance that the amount of Deal Fees charged will be proportional to the amount of hours of work performed on behalf of the portfolio company. Additionally, KPS, its personnel, affiliates or others designated by KPS expect from time to time to receive compensation in the form of portfolio company securities. To the extent any such securities are received, after any applicable offset provisions in the Governing Documents are applied (typically based on the then-present value of such securities), KPS and/or such other recipients will be permitted to retain such securities as Deal Fees, and in doing so will be subject to potential conflicts of interest in determining whether to sell such securities (subject to restrictions imposed by the portfolio company and/or KPS or retain such securities for a period consistent with their own financial and investment objectives, which may differ from those of the relevant Fund). In addition, because portfolio company securities typically represent newly issued incentive equity (whether in the form of common stock, warrants or options to buy common stock, or similar instruments), the receipt of compensation in the form of securities typically has the result of diluting a Fund’s relative ownership of the portfolio company awarding such compensation.

In certain circumstances, such as those relating to short- or long-term portfolio company cash or liquidity needs, and regardless of whether the portfolio company is undergoing financial stress, KPS reserves the right to accrue, defer or forego payments of Deal Fees, and reserves the right to charge interest at then-available rates with respect to such amounts. In such cases, in accordance with the Governing Documents, investors will not receive the benefit of Management Fee offsets with respect to such amounts until they are actually received.

The Investors are expected be diverse and may have conflicting investments, tax and other interests with respect to their Fund investments. The conflicting interests of individual Investors may relate to or arise from, among other things, the nature of a Fund’s investments, the structuring or the acquisition of investments and the timing of disposition of a Fund’s investments. As a consequence, conflicts of interest may arise in connection with decisions made by KPS, including with respect to the nature or structuring of investments and dispositions, that may be more beneficial for one investor than for another investor, especially with respect to investors’ individual tax situations. In addition, a Fund may make investments that may have a negative impact on related investments made by the Investors in separate transactions. In selecting and structuring investments appropriate for a Fund, KPS will consider the investment and tax objectives of the Fund and its Investors as a whole, not the investment, tax or other objectives of any Investor individually. As a consequence of the foregoing, KPS may elect to exclude certain Investors from particular investments for legal, regulatory, accounting, tax, political, national security or other similar reasons applicable to any such investment, in which case non-excluded Investors shall be allocated a greater proportionate interest in such investment. In addition, certain Investors also may be limited partners in other Funds

and/or may include employees or affiliates of KPS. Such Investors described in the previous sentence may therefore have different information about KPS and the Funds than Investors not similarly positioned. In addition, conflicts of interest may arise in dealing with any such Investors, and KPS may not be motivated to act solely in accordance with its interests relating to the Funds.

KPS and/or its affiliates reserve the right to enter into side letters with certain Investors in a Fund providing such Investors with different or preferential rights or terms, including but not limited to different fee structures (including discounted or rebated compensation terms), information rights, specialized reporting, priority co-investment rights or targeted co-investment amounts, and liquidity or transfer rights. Side letters may also relate to strategic relationships under which an Investor agrees to make capital commitments to multiple Funds. Except where required by Governing Documents, other Investors will not receive copies of side letters or related provisions, and as a general matter, the other Investors have no recourse against a Fund, the relevant general partner or any of their affiliates in the event that certain Investors have received additional and/or different rights and/or terms as a result of such side letters. As a consequence of one or more limited partners being excused or excluded, or from regulatory or other factors limiting their participation in investments, the aggregate returns realized by participating limited partners could be adversely affected in a material manner by the unfavorable performance of particular investments.

KPS has incentives to use or to recommend products or services of one portfolio company to another, which may involve fees, commissions, servicing payments or other compensation. Potential conflicts of interest arise in making such recommendations, as KPS has incentives to maintain goodwill between it and its former, existing and prospective portfolio companies, and as a result the products or services recommended may not necessarily be the best or lowest cost option. In most cases, the relevant Fund(s) will not consent, participate in the negotiations or be directly involved in such arrangements. From time to time KPS, its affiliates and personnel and persons selected by them expect to receive the benefit of “friends and family” and similar discounts from portfolio companies owned by the Funds under which such portfolio companies make their goods and/or services available at reduced rates. KPS, its affiliates and personnel generally refrain from requesting or negotiating for such discounts in the ordinary course. Discounted prices or better terms offered by a portfolio company to KPS, any other portfolio company or third parties have the potential to affect the returns of the portfolio company.

Conflicts of interest may arise because KPS personnel may serve as directors of certain of the portfolio companies or their affiliates. In those instances where a Fund is not the sole shareholder of the applicable portfolio company, in addition to any fiduciary duties KPS personnel owe to such Fund, as directors of portfolio companies, such personnel will owe fiduciary duties to the shareholders of the portfolio companies and to persons other than the Fund. In general, such director positions are often important to a Fund’s investment strategy and may have the effect of enhancing the ability of KPS personnel to manage investments. However, such positions may place KPS personnel in a position where they must make a decision that is either not in the best interests of the relevant Fund, or not in the best interests of the shareholders of the portfolio company. Should any KPS personnel make a decision that is not in the best interest of the shareholders of a portfolio company, such decision may subject KPS and the relevant Fund to claims that they would not otherwise be subject to as an investor, including claims of breach of the duty of loyalty, securities claims and other director-related claims. In addition, because of the potential conflicting fiduciary

duties, KPS may be restricted in choosing investments for a Fund, which could negatively impact returns received by such Fund.

Any of these situations subjects KPS and/or its affiliates to potential conflicts of interest. KPS attempts to resolve such conflicts of interest in light of its obligations to Investors in its Funds and the obligations owed by KPS's advisory affiliates to Investors in investment vehicles managed by them, and attempts to allocate investment opportunities among a Fund, other Funds and such investment vehicles in a manner it believes to be fair and equitable to the Funds under the circumstances over time. To the extent that an investment or relationship raises particular conflicts of interest, KPS will review the circumstances of such investment or relationship with a view to addressing and reducing the potential for conflict. Where necessary, KPS consults and receives consent to conflicts from an Advisory Board consisting of limited partners of the relevant Fund(s) and such other investment vehicles.

## **Disciplinary Information**

KPS and its employees have not been involved in any legal or disciplinary events in the past 10 years that would be material to an Investor's evaluation of KPS or its personnel.

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

Related persons of KPS are expected from time to time to serve as directors and officers of, and provide advice to, publicly traded companies and private companies. Investors should be aware that receipt of material non-public information by KPS's related persons regarding these companies could preclude KPS from effecting transactions in the securities of such companies. Any compensation received by KPS employees for directorships with portfolio companies of the Funds will be deemed to be "Transaction Fees" and will reduce the management fees otherwise payable by the applicable Fund (as described in the *Fees and Compensation* section above).

Certain of the related persons of KPS may have personal investments in companies, limited partnerships or limited liability companies. To the extent that conflicts arise, they are reviewed by KPS's Chief Compliance Officer.

Expenses borne by the Funds are allocated among any parallel funds, alternative investment vehicles, co-investment vehicles, and other entities that comprise the Funds that shared in the activities generating such expenses; however, in the event that a co-investment opportunity is not consummated, and prospective co-investors do not agree to bear their share of any broken deal expenses, such expenses will be considered operating expenses of and be borne by the applicable Funds.

KPS reserves the right to occasionally utilize the services of entities that have, directly or indirectly, or whose affiliates have, investments in the Funds. Such services will only be used on an arm's length basis and when KPS determines they are in the best interest of the Funds.

KPS Capital Finance Management, LLC ("KPS Finance Management"), a wholly-owned subsidiary of KPS, serves as administrative agent and/or collateral agent for certain subordinated or second-lien loans made by the Funds to their respective portfolio companies as part of acquisition financing. KPS Finance Management does not charge the Funds or their portfolio companies for its services,

nor does it otherwise generate revenue in the ordinary course. However, if a portfolio company defaults on its obligations with respect to any such loan, the interests of KPS Finance Management and the interests of the Funds that issued the loan will potentially conflict with respect to KPS Finance Management's exercise of any of its default remedies with respect to such loan. It is KPS's policy that, in exercising such default remedies, KPS Finance Management will at all times act in the best interests of the Funds that provided the loan.

Any cash or securities received by KPS Finance Management as a result of the exercise of such default remedies against a portfolio company will be deposited with a qualified custodian on behalf of the applicable Funds. Any other assets received by KPS Finance Management as a result of the exercise of default remedies against a portfolio company will be held for the benefit of the applicable Funds and the proceeds of any sale of such assets shall be deposited with a qualified custodian on behalf of the applicable Funds.

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

KPS employees must put the interests of the Funds before their own personal interests and must act honestly and fairly in all respects in dealings with the Funds and Investors. KPS has adopted a Code of Ethics and related internal compliance policies and procedures which govern, among other things, the personal trading activities of its employees. Among other requirements, all employees must obtain pre-approval from the Chief Compliance Officer or his designee for certain personal trades and must also periodically report personal securities accounts in which they hold a beneficial interest, including certain related holdings and transactions. Should potential conflicts of interest arise, KPS employees have an ongoing responsibility to report such conflicts to the Chief Compliance Officer or his designee, who will address such conflicts on a case-by-case basis. KPS has also adopted compliance policies and procedures regarding gifts and entertainment as well as charitable and political contributions. The Chief Compliance Officer or his designee will periodically review employee personal trading activity to confirm that transactions are being conducted in accordance with KPS's internal compliance policies and procedures. Investors or prospective Investors may obtain a copy of the Code of Ethics by contacting KPS at (212) 338-5100.

KPS and its affiliates expect to from time to time incur expenses on behalf of one or more existing or subsequent Funds. In such cases, KPS and its affiliates will attempt to allocate such expenses on a basis that it considers equitable under the circumstances.

From time to time, KPS employees expect to receive and utilize discounts or complimentary services not otherwise available to the public from a KPS portfolio company or other business relationship. KPS and its portfolio companies have entered group purchasing arrangements with certain third-party vendors. KPS does not receive any direct group purchasing fees as a result of these arrangements and participates on the same terms as its portfolio companies. Any applicable incentive rates or rebates are either applied across KPS and its portfolio companies or paid directly to KPS and its portfolio companies, based on the amount of their respective purchases.

KPS and its related persons make decisions separately with respect to each Fund. From time to time, a decision that is in the best interest of one Fund may not be in the best interest of, or may be



detrimental to, another Fund. KPS will resolve any such conflicts in accordance with any applicable policies and procedures and consistent with its duties to the Funds. In certain cases, KPS reserves the right to seek the approval of the Advisory Board(s) of the applicable Fund(s) for its proposed course of action. Any decisions of an Advisory Board authorized by the Governing Documents are binding on the Investors of the applicable Fund.

MDRJ Credit Partners, LP (“MDRJ LP”) is owned and controlled by the Principals. MDRJ LP was formed in 2014 to permit the Principals to invest in term debt securities issued by portfolio companies of certain Funds, up to a maximum amount of 5% of any such issuance, on terms and conditions no less favorable to the applicable portfolio company than the terms and conditions available to third-party investors in such issuance. A similar vehicle, KPS Credit Partners, LP (together with MDRJ LP, the “Credit Partners Vehicles”) was formed in 2019 and includes participation by KPS Partners other than the Principals. If a portfolio company defaults on its obligations with respect to any such securities, the interests of the relevant Credit Partners Vehicle and the interests of the portfolio companies that issued the securities may conflict with respect to the Credit Partners Vehicle’s exercise of any of its default remedies relating to such securities. However, the size of a Credit Partners Vehicle’s investments in debt issued by portfolio companies is limited with the intention that the relevant KPS Partners’ indirect interest in any portfolio company of the Funds should outweigh their interests in the portfolio company as a result of debt investments held by the relevant Credit Partners Vehicle. Furthermore, it is KPS’s policy that, in exercising any default remedies, a Credit Partners Vehicle will at all times act in the best interest of the Funds that invested in the portfolio companies that issued the securities. The Principals will disclose the amount of term debt securities purchased by each Credit Partners Vehicle to the advisory board of the relevant Funds on an annual basis.

KPS and its related persons expect to, from time to time, come into possession of material, nonpublic and other confidential information which, if disclosed, might affect an investor’s decision to buy, sell or hold a security. Under applicable law, KPS and its related persons are prohibited from improperly disclosing or using such information for their own benefit or for the benefit of any other person, regardless of whether such person is a Fund. By reason of its responsibilities to the Funds and notwithstanding procedural safeguards including restricted securities lists, KPS expects to acquire material nonpublic or other confidential information that would limit its ability to direct the purchase or sale of certain investments. Moreover, KPS may be restricted from initiating transactions in certain instruments or selling certain investments, due to its possession of material nonpublic or other confidential information, at a time when it would otherwise take such action.

KPS and certain of its affiliated parties and employees are Investors in the Funds. As such, KPS and certain of its affiliated parties and employees have a direct financial interest in the transactions of each of the Funds. While investments by such related parties are intended to align the interests of KPS and the related parties with those of the Funds, such investments create potential conflicts of interest. To address such conflicts, the investment arrangements are described and agreed upon in the Governing Documents of each Fund. Generally, investments and dispositions are made on the same economic terms for all Investors, including KPS and its related parties and each investment is made pro rata among the Investors of each Fund, including KPS’s related parties who are Investors, so that KPS and its related parties may not receive more favorable terms or greater exposure to certain investments.

## **Brokerage Practices**

KPS's business is to focus on making investments in private securities. Accordingly, it does not typically trade in public securities. In the limited circumstances where KPS purchases or sells public securities or holds such securities as a result of a portfolio company going public, it intends to follow applicable SEC guidelines and to seek to obtain best execution of such transactions. KPS does not have any formal soft dollar arrangements or other arrangements that would commit the Funds to any specific or implied level of trading. As an institutional money manager, KPS expects to receive access to research made available through brokerage counterparties or investment banks. KPS believes this research is available to all institutional money managers of similar size.

KPS strives to select broker-dealers, investment banks or financial intermediaries that provide the Funds with favorable execution capabilities and qualities. Certain entities are utilized for the Funds due to their presence in specific markets and their ability to trade certain securities or complete specialized types of transactions. Research or additional ancillary services not associated with the transaction provided by such service providers are not determining factors for engaging a particular service provider.

## **Review of Accounts**

As noted above, KPS focuses on investments in private equity. Prior to being made, all investments are carefully reviewed and approved by the Investment Committee for the applicable Fund. The progress of all portfolio companies is monitored on a regular basis, including monthly review calls conducted by staff of the KPS Ops Group with company management, and is subject to supervision and review by KPS's senior management. KPS's Valuation Committee reviews the valuation of the Funds' investments quarterly in accordance with its valuation policy.

KPS also exercises oversight of its investments through representation on the board of directors of its portfolio companies. KPS generally requires that its portfolio companies report their financial condition on a monthly basis and hold regular board meetings. In addition, KPS generally conducts meetings on at least a monthly basis to review the financial condition of each investment with the members of the applicable deal team.

KPS provides quarterly and annual reports (including annual audited financial statements) to each of the Funds' Investors in accordance with the terms of the Governing Documents of the Funds. In addition, each Investor receives annual tax information with respect to the Funds as necessary for the completion of any applicable Federal tax returns.

## **Client Referrals and Other Compensation**

In certain circumstances, KPS expects to, pursuant to a written agreement, pay cash consideration for solicitation activities to third parties. KPS intends to pay such consideration in compliance with applicable SEC rules and other laws and regulations that may be in effect from time to time.

As discussed under "Fees and Compensation" above, "Transaction Fees" will, in certain circumstances, be paid to KPS-affiliated parties by a portfolio company.

## **Custody**

To the extent required, the assets of the Funds are held in custody by unaffiliated broker/dealers, banks or other qualified custodians. KPS is deemed to have access to Investor accounts since its affiliates serve as the general partners of the Funds. Investors will not receive statements from the custodian. Instead, the Funds are subject to an annual audit by an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board, and the audited financial statements are distributed to each Fund's Investors. The audited financial statements are prepared in accordance with generally accepted accounting principles and distributed within 120 days of each Fund's fiscal year end.

## **Investment Discretion**

The Governing Documents of each Fund grant KPS's affiliated management entities and affiliated general partners discretionary authority to implement investment decisions on behalf of the Funds and to utilize a broad range of investment vehicles. KPS's investment decisions and advice with respect to each Fund is subject to the limitations set forth in such Fund's Governing Documents and any side letters that it executes with Investors.

## **Voting Client Securities; Class Actions**

The Funds are primarily invested in private companies which typically do not issue proxies. In the event that a Fund acquires equity positions or other positions in entities that may solicit proxies, KPS will follow applicable policies and procedures to vote such proxies.

As is typical in private equity investing, KPS generally approves one or more of its employees to act as representatives on the board of directors of portfolio companies on behalf of the Funds. As noted herein, the KPS Partners serve as board members of the Funds' portfolio companies in such representative capacity. In situations where KPS votes the proxy for a company in which an employee or employees of KPS serve on the board of directors, KPS has determined that this does not inherently present a conflict of interest as (a) the employee is on the board of directors as a representative of the Funds and (b) the sole purpose of this representation is to maximize the return on the Funds' investment in such company and to ensure that the Funds' interests are protected. Given these facts, the Funds and the representative's role are aligned with respect to proxy voting and otherwise.

In the event that one or more of the Funds becomes involved in any class actions, KPS and the general partner(s) of the applicable Fund(s) will use their discretionary authority to act in what they believe to be the best interests of the Funds in directing their participation in such class actions.

## **Financial Information**

KPS has never filed for bankruptcy and is not aware of any financial condition that is expected to affect its ability to manage client accounts.