

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

**Item 1. Cover Page**

March 30, 2021

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Pharmakon Advisors, LP is an investment adviser that is registered with the United States Securities and Exchange Commission (the “SEC”). Registration with the SEC does not imply a certain level of skill or training.

This brochure (“Brochure”) provides information about the qualifications and business practices of Pharmakon Advisors, LP. If you have any questions about the contents of this brochure, please contact us at (212) 883-2296. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority.

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

## **Item 2. Material Changes**

This Brochure, dated March 30, 2021, contains no *material changes* from the previous annual amendment to the Brochure, which was filed on March 27, 2020. You are encouraged to read this Brochure in its entirety.

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#### Item 4. Advisory Business

- A. Pharmakon Advisors, LP (also referred to as “we”, the “firm” and “Pharmakon”), founded in 2009, is an investment services firm specializing in investment management for private funds that are deemed to be a pooled investment vehicles, their respective feeder funds and separately managed accounts (collectively the “clients”). Pharmakon also provides certain investment advisory services to a public limited company in the U.K. The principal owners of Pharmakon are Pedro Gonzalez de Cosio and Pablo Legorreta.
- B. Pharmakon specializes in offering investment management services to its clients, which are comprised of private funds and separately managed accounts. In providing our advisory services to our clients, we focus on acquiring high yielding debt securities including capped return royalties with short average lives, which are securitized or collateralized by royalty payments on one or more life sciences products which we believe will have good sales visibility during the expected life of the securities.
- C. Our firm tailors our advisory services to the individual needs and specified investment mandates of our clients; however, the firm does not tailor advisory services to the underlying individual investors in the clients. We adhere to the investment strategy set forth in our clients’ confidential Private Placement Memoranda and investment management agreements.
- D. We do not participate in wrap fee programs.

The amount of client assets that we manage, as of December 31, 2020 is approximately \$2,200,874,959. Of those assets, \$2,143,174,664 were managed on a discretionary basis and \$57,700,295 were managed on a non-discretionary basis.

We manage the pooled investment vehicles and the U.K public limited company on a discretionary basis. The separately managed accounts are managed on a non-discretionary basis.

## Item 5. Fees and Compensation

- A. Our firm, or an affiliate of our firm, receives compensation from our clients in the form of a management fee and performance-based compensation, based on the performance of the clients' investments.

### Management Fees

In the case of our client, BioPharma Credit Investments IV, S.à.r.l. ("BioPharma IV") we are paid a management fee quarterly in advance. The management fee is comprised of two parts including a fee based on capital commitments and a fee based on capital contributions. During the investment period, which is set to expire twenty-four months from the initial closing date (unless extended an additional six months by the firm and with the approval of the board of managers), the investment manager is paid both components of the management fee, and following the investment period, the investment manager is paid only the portion of the management fee based on capital contributions. The investment period may be extended for an additional six months with our approval together with the approval of BioPharma IV's board of managers and the affirmative vote of investors in BioPharma IV representing a majority of BioPharma IV's shares. The commitment-based fee is 0.25% of aggregate capital commitments of the investors in the feeder funds. The fee based on capital contributions is equal to 1.25% of all unreturned capital contributions by the investors in the feeder funds. Investors with capital commitments of greater than \$100 million are charged a contribution-based fee at a rate of 0.85%, and investors with a capital commitment of between \$50 million and \$100 million are charged a contribution-based fee at a rate of 1%. In the event our management agreement is terminated, we are required to refund a pro rata portion of the management fee to our client.

In the case of BioPharma Credit Investments V (Master) LP, BioPharma Credit Investments V (Offshore-A) LP, BioPharma Credit Investments V (Cayman) LP and BioPharma Credit Investments V LP (collectively, "BioPharma V") we are paid a management fee quarterly in advance. The management fee is comprised of two parts, including a fee based on capital commitments and a fee based on capital contributions. The commitment-based fee is 0.25% of aggregate unfunded capital commitments of investors in the feeder funds. The fee based on capital contributions is equal to 1.25% of all unreturned capital contributions by the investors in the feeder funds. Investors with capital commitments of greater than \$50 million are charged a contribution-based fee rate of 1.00%. We may agree to a further reduction of the management fee, in our sole discretion, with respect to investors with capital commitments of \$200 million or more.

In the case of the public limited company in the U.K., we are entitled to a management fee calculated on the following basis: (1/12 of 1 per cent. of the Net Asset Value on the last business day of each calendar month in respect of which the management fee is to be paid (calculated before deducting any accrued Management Fee in respect of such calendar month)) minus (1/12 of US\$100,000).

The management fee payable in respect of any quarter will be reduced by an amount equal to the aggregate of: (i) the Firm's pro rata share of any transaction fees, topping fees, break-up fees, investment banking fees, closing fees, consulting fees or other similar fees which we (or an affiliate) receives in connection with transactions involving investments of the Firm; and (ii) any carried forward amount from the previous quarter. Our pro rata share of any transaction fees will be in proportion to our economic interest in the investment(s) to which such transaction fees relate.

In the case of the separately managed accounts, we are paid a management fee quarterly in arrears, in an amount equal to between 0.5% and 1.0% of the initial cost basis of all investments (reduced by any prepayments and amortizations of principal and any debt instruments, including notes), as reasonably determined by the Firm.

#### Performance Compensation

Generally, for each of our clients, the Firm or one of our affiliates receives distributions of 10% of realized gains only after investors receive a return of capital plus a 5% annualized internal rate of return on their unreturned capital contributions, calculated from the date capital contributions were made until the date of return.

Detailed information concerning our compensation and fees is contained in the confidential Private Placement Memorandum of each of our client's feeder funds. Certain investors in our clients are entitled to reductions in the percentage of management fees that they are required to bear.

Generally, for the public limited company in the U.K., subject to the satisfaction of the performance conditions set forth in proposals approved by shareholders at the general meeting on June 29, 2018, in respect of each Performance Period, we (or any of our associates, as we direct) shall be entitled to receive: (i) 50 per cent. of the excess total return relating to the performance period until we have been allocated amounts (i) which, in aggregate, are equal to 10 per cent. of the total return relating to such performance period; and (ii) thereafter, 10 per cent. of the excess total return relating to the performance period.

- B. We generally deduct the management fees from clients' accounts quarterly in advance. Performance based compensation is made to an affiliate of our firm concurrently with distributions to our clients' investors.

As noted above, we are eligible to receive performance fees after any performance period, as outlined in the prospectus the public limited company in the U.K.

- C. Each client generally bears its own organizational expenses, investment and trading expenses and accounting and administrative expenses, including, without limitation:

- the management fee;
- legal, accounting, independent valuation and auditing expenses;
- printing and mailing costs;
- research costs and expenses;
- administrative expenses (including any fee payable to an administrator, if appointed);
- government fees, taxes (if any);
- organizational expenses, offering expenses, any registration or filing fees;
- all investment expenses, including, without limitation, consultant and professional advisory fees incurred in connection with the exploration of investment opportunities, the costs of any liability insurance obtained on behalf of clients, Pharmakon or a manager, member, officer, director, principal, employee or affiliate of Pharmakon or an affiliate of any of the foregoing; and
- any extraordinary expenses.

Generally, investors in the public limited company in the U.K. bear the burden initial expenses and subsequent expenses, subject to the disclosures and agreements between us and such investors.

The nature of our investment strategy typically does not result in brokerage transactions and associated costs. However, for more information on our policies regarding brokerage transactions and costs, please see Section 9: Brokerage Practices.

- D. Investors in our clients and in the public limited company in the U.K. are generally not permitted to withdraw money and therefore they will not pay a management fee in excess of what they owe. In the event that an investor is required to withdraw from a client, such investor will receive a prorated refund of previously paid management fees. Although not permitted to withdraw, shareholders in the public limited company may sell their shares through a public exchange.
- E. Neither our firm nor any of our principals or employees receives any transaction-based compensation for the sale of securities or other investment products.

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

Pharmakon (or one of our affiliates) receives performance-based compensation from the clients and from the public limited company in the U.K. We do not generally manage any funds or accounts that do not pay a performance-based fee. As a result, we and our affiliates do not generally face those conflicts of interest that may arise when an investment adviser accepts performance-based fees or compensation from some clients, but not from other clients.



## Item 7. Types of Clients

Our clients consist of certain institutional investors who we advise through separately managed accounts and private funds, in addition we also provide certain investment advisory services to a public limited company in the U.K. Interests in our *private funds* are offered and sold exclusively to investors satisfying the applicable eligibility and suitability requirements in order to comply with applicable federal securities laws and regulations. Typically, these investors are high net worth individuals, trusts, estates, corporate and public pension and profit-sharing plans, endowments, charitable organizations, funds of funds, family offices, institutions and other entities. Interest in our *public limited company in the U.K.* is generally available through a syndicate offering lead by a financial institution.

To ensure that each potential investor in the private funds meets the applicable qualification discussed above, each investor in such private fund must complete and execute written subscription documents before we can consider its subscription. Investors in the separately managed accounts must also meet those same qualifications. Generally, those investors in the public limited company in the U.K. are subject to the qualifications put forth by the financial institution leading any investing syndicate.

This Brochure is not an offer to invest in our clients.

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

### **A. Investment Strategies**

On behalf of its clients, Pharmakon seeks to make investments that provide current income and/or capital appreciation, primarily in loans, notes, bonds or other debt securities or instruments, which are purchased on the secondary market or directly from the issuer. Such debt securities or instruments generally are expected to be secured or collateralized by royalty collateral derived from sales of one or more life sciences products. On behalf of its client, BioPharma IV, Pharmakon had the ability to make investments in unsecured debt instruments such as convertible bonds and notes. On behalf of its client, BioPharma V, Pharmakon has the ability to invest in equity. We may also cause our clients to invest in priority tranches of royalty revenues of life sciences products, where royalty revenue participation is subject to a capped preference and is secured or collateralized by the royalty collateral.

Our clients invest in securities that pay interest on a floating or fixed basis as well as securities that pay no cash interest during certain periods (pay-in-kind securities) and securities that may pay additional coupons or premiums depending on the actual sales of a particular life sciences product. Such investments may include debt instruments that are listed and unlisted, public and private, rated and unrated, as well as other obligations, including structured debt, convertible debt and financial derivatives. Investments may take place in the primary or secondary markets or through direct, principal to principal transactions with issuers.

### **Methods of Analysis**

Our Investment Process. We believe that our extensive, focused industry knowledge and contacts enable us to identify, source, analyze and structure attractive investment opportunities for our clients. We select portfolio investments based upon an in-depth, rigorous analysis of the royalty generating life sciences products underlying the royalty collateral and the structure of our clients' investments.

Royalty Collateral. We employ a disciplined evaluation process of the royalty collateral underlying each potential investment. A key component of this process is to examine future product sales potential. In making such an evaluation, we give particular consideration to:

- the risk of new or existing competitive products, including generics, through the expected maturity of the securities;
- quality and strength of the related patent estate;
- strength of the marketing and sales organization of the company that markets the product, as well as that company's financial strength;
- relevance of the product in terms of revenue contribution to the marketing and sales organization;

- seriousness of the condition or disease that the product targets;
- pricing of the product and any competing products;
- qualification for reimbursements by insurers and Medicaid/Medicare; and
- track record of safety, physician adoption and sales history.

We use relationships with scientific experts and leading physicians to assist in its evaluation of products. Physician studies (i.e., market research) may also be commissioned to ascertain safety, familiarity, usage, and acceptance of products by practicing doctors. We may also retain outside counsel to evaluate the intellectual property rights and patent estate of the royalty collateral. We may rely on the research and analysis performed by third parties, including existing opinions by outside patent counsel and third-party market research, to make investment decisions related to investments available for sale in the secondary market.

Structure of Investments. In conjunction with the analysis of a product's sales potential, we analyze the structure of the investment itself. Each potential investment's structure will be rigorously reviewed with particular consideration of:

- the investment's expected yield and duration;
- strength and enforceability of collateral agreements;
- coverage ratios measured as the commercial value of the license to the amount of debt outstanding;
- priority of payments;
- any embedded calls, puts or revenue sharing agreements; and
- cash flow projections and their impact on expected maturity and duration.

Royalty receivables are calculated as a percentage of product sales. Our practice in purchasing royalty interests is to complete a thorough assessment of the products that will generate the royalty receivables. In this regard, we analyze clinical data, consult leading clinicians utilizing the product, evaluate the strength of the product's marketers and identify current and pipeline competition. We use this assessment, as well as other relevant information, to evaluate the sales potential of the product and calculate the present value and future value of the product's royalty stream.

- B. Despite our investment approach and methodology, investing in any securities involves a risk of loss that any of our clients or any of the investors in our clients must be prepared to bear.

Certain risks associated with an investment in any of our clients include:

## RISKS RELATED TO INVESTMENTS IN DEBT AND EQUITY

- *Lender Liability Considerations and Equitable Subordination.* In recent years, a number of judicial decisions in the United States have upheld the right of borrowers to sue lending institutions on the basis of various evolving legal theories (collectively termed “lender liability”). Generally, lender liability is founded upon the premise that an institutional lender has violated a duty (whether implied or contractual) of good faith and fair dealing owed to the borrower or has assumed a degree of control over the borrower resulting in a creation of a fiduciary duty owed to the borrower or its other creditors or shareholders. Because of the nature of certain of our clients’ investments, our clients could be subject to allegations of lender liability.

In addition, under common law principles that in some cases form the basis for lender liability claims, if a lending institution (a) intentionally takes an action that results in the undercapitalization of a borrower to the detriment of other creditors of such borrower, (b) engages in other inequitable conduct to the detriment of such other creditors, (c) engages in fraud with respect to, or makes misrepresentations to, such other creditors or (d) uses its influence as a stockholder to dominate or control a borrower to the detriment of other creditors of such borrower, a court may elect to subordinate the claim of the offending lending institution to the claims of the disadvantaged creditor or creditors, a remedy called “equitable subordination”. Because of the nature of certain of our clients’ investments, our clients could be subject to claims from creditors of an obligor that a client’s investments issued by such obligor that are held by such client should be equitably subordinated. A significant number of our clients’ investments will involve investments in which the client would not be the lead creditor. It is, accordingly, possible that lender liability or equitable subordination claims affecting our clients’ investments could arise without the direct involvement of a client.

- *Investments in Debt Obligations Are Subject to Credit and Interest Rate Risks.* Debt instruments are subject to credit and interest rate risks. “Credit risk” refers to the likelihood that an issuer will default in the payment of principal and/or interest on an instrument. Financial strength and solvency of an issuer are the primary factors influencing credit risk. In addition, lack or inadequacy of collateral or credit enhancement for a debt instrument may affect its credit risk. Credit risk may change over the life of an instrument, and debt obligations, which are rated by rating agencies, are often reviewed and may be subject to downgrade. “Interest rate risk” refers to the risks associated with market changes in interest rates. Interest rate changes may affect the value of a debt instrument indirectly (especially in the case of fixed rate debt securities) and directly (especially in the case of debt instruments whose rates are adjustable). In general, rising interest rates will negatively impact the price of a fixed rate debt instrument and falling interest rates will have a positive effect on price. Adjustable rate instruments also react to interest rate changes in a similar manner although generally to a lesser degree (depending, however, on the characteristics of the reset terms, including the index chosen, frequency of reset and reset caps or floors, among other factors). Interest rate sensitivity is generally more

pronounced and less predictable in instruments with uncertain payment or prepayment schedules. In addition, interest rate increases generally will increase the interest carrying costs of borrowed securities and leveraged investments.

- *Difficulty in Valuing Investments and Distributions of Assets Other Than Cash.* Generally, there will be no readily available market for a substantial number of our clients' investments and hence, most of our clients' investments will be difficult to value. Certain investments may be distributed in kind to investors in our clients. An investor that receives assets other than cash from a client may incur costs and delays in converting those assets to cash. Any such distribution could also put downward pressure on the price of such securities.

## RISKS RELATING TO PRODUCTS

- *We may have Limited Information About the Products.* We may have limited information relating to the life sciences products that form the collateral security payment of the instruments that our clients invest in and limited information about other persons with an interest in the life sciences products. Therefore, there may be information that relates to the life sciences products or such persons that a prospective investor would like to know that we are not able to provide. For example, we may not know the results of studies conducted by marketers of the life sciences products or others or the nature or amount of any complaints from doctors or users of such life sciences products about which such persons may have knowledge.
- *The Products are Subject to Intense Competition.* The biopharmaceutical and pharmaceutical industries are highly competitive and rapidly evolving. The length of any product's commercial life, including that of any of the life sciences products, cannot be predicted. There can be no assurance that the life sciences products will not be rendered obsolete or non-competitive by new products or improvements made to existing products, either by the current marketer of the life sciences products or by another marketer. Adverse competition, obsolescence or governmental and regulatory healthcare policy changes could significantly impact royalty revenues of life sciences products which serve as the collateral or other security for the repayment of obligations outstanding under our clients' investments.

Competitive factors affecting the market position and success of the life sciences products include:

- effectiveness;
- side effect profile;
- price, including third-party insurance reimbursement policies;
- timing and introduction of the product;
- effectiveness of marketing strategy;

- governmental regulation;
- introduction of generic competition;
- new and improved medical procedures; and
- product liability claims.

If a life sciences product is rendered obsolete or non-competitive by new products or improvements on existing products or governmental or regulatory action, such developments could have a material adverse effect on the ability of the issuer of an investment to make payments of interest and principal on the investment, and consequently could adversely affect our clients' performance. If additional side effects or complications are discovered with respect to a life sciences product, and such life sciences product's market acceptance is impacted or it is withdrawn from the market, continuing payments of interest on, and repayment of the principal of, our clients' investments may not be made on time or at all.

It is possible that over time side effects or complications from one or more of the life sciences products could be discovered, and, if such a side effect or complication posed a serious safety concern, a life sciences products could be withdrawn from the market, which could adversely affect the ability of issuers of indebtedness to make continuing payments of interest on, and repayment of the principal of, our clients' investments, in which case our clients' ability to make distributions to investors may be materially and adversely affected.

Additionally, even if an additional side effect or complication is discovered that does not pose a serious safety concern, it could nevertheless negatively impact market acceptance and therefore result in decreased net sales of one or more of the life sciences products. This could adversely affect the ability of issuers of indebtedness to make continuing payments of interest on, and repayment of the principal of, our clients' investments, in which case the ability to make distributions to investors may be materially and adversely affected.

- *Sales of the Products are Subject to Regulatory Actions that Could Harm the Fund's Ability to make Distributions to Investors.* All of the life sciences products have been approved for at least one indication by the regulatory authorities of the relevant countries where the royalty collateral is originated. There can be no assurance, however, that any of these regulatory approvals will not be revoked or restricted in a manner that would have a material adverse effect on the sales of such life sciences products and on the ability of issuers of indebtedness to make continuing payments of interest on, and repayment of the principal of, our clients' investments, in which case the ability to make distributions to investors may be materially and adversely affected.

- *The Products are Subject to Governmental Healthcare Policy Changes and Managed Care Considerations, Which Could Affect Their Pricing.* The healthcare

industry is likely to continue to change as the public, government, medical practitioners, and the pharmaceutical and biopharmaceutical industries focus on ways to expand medical coverage while controlling the growth in healthcare costs. In the United States, comprehensive legislative changes have been proposed from time to time, which, if enacted, could reduce the prices charged for pharmaceutical and biopharmaceutical products. In addition, the growth of large managed care organizations and prescription benefit managers as well as the prevalence of generic substitution has hindered price increases for prescription drugs. These conditions may have a material adverse effect on the Fund. In Europe, following approval by European Agency for the Evaluation of Medicinal Products (“EMA”) the pricing of a new pharmaceutical or biopharmaceutical product is negotiated on a country-by-country basis with each national regulatory agency. In addition, each European country has an approved formula for which it reimburses the cost of prescription drugs. The failure of any of the life sciences products to be added to the formula, or to achieve satisfactory pricing, could have a material adverse effect on our clients’ investments.

- *Product Liability Claims May Diminish Returns.* The manufacturers, developers or marketers of the life sciences products could become subject to product liability claims. A successful product liability claim could adversely affect the amount of royalty payment, and consequently, could adversely affect the ability of an entity in which a client invests to make payments of interest or principal. Although we do not believe that our clients will bear responsibility in the event of a product liability claim against the company manufacturing, marketing and selling the underlying life sciences products, there can be no assurance that such claims would not materially and adversely affect the clients’ investments.
- *Sales Risk.* Sales from life sciences products may be lower than their historical levels or lower than the amounts projected due to pricing pressures, insufficient demand, product competition, lack of market acceptance, obsolescence, safety or efficacy issues, loss of patent protection or other factors.
- *Independent Licensees.* In the case of priority royalty tranches, revenue received by our clients consists mostly of royalties paid by licensees of intellectual property who develop, market and manufacture the products based on the intellectual property. In the case of bonds or other securities collateralized by pharmaceutical royalties, revenue received by our clients consists mostly of payments supported by royalties paid by the licensees. These licensees are not owned by or affiliated with our clients, us, or our principals and some of these licensees may have interests that are different from our clients’ interests. These licensees may be motivated to maximize income by allocating resources to other products and, in the future, may decide to focus less attention on the life sciences products. There can be no assurance that each of these parties has adequate resources and motivation to continue to produce, market and sell the life sciences products. Aside from any limited audit rights relating to the activities of the licensees that our clients may have in certain circumstances, neither our clients, us, nor our principals has oversight rights with respect to the licensees’ operations. Our clients also has limited information on the

licensees' operations. While our clients may be able to receive certain information relating to sales of life sciences products through the exercise of the audit rights and review of royalty reports, our clients will not have the right to review or receive certain information relating to life sciences products, including the results of any studies conducted by the licensees or others or complaints from doctors or users of life sciences products, that the licensees may have. The market performance of the life sciences products, therefore, may be diminished by any number of factors relating to the licensees that are beyond our control.

- *Generic Substitutes.* Although the life sciences products are based upon patents and/or patent applications with exclusive rights, a regulatory authority may authorize marketing by a third party for a generic substitute for a life sciences product, in which case the life sciences products would become subject to competition from such generic substitute. The absence of marketing expenses generally permits generic substitutes to be sold at significantly lower prices than branded products. Governmental and other pressures to reduce pharmaceutical costs, including from third-party payers such as health-maintenance organizations and health insurers, could result in physicians or pharmacies increasingly using generic substitutes for the life sciences products.
- *Manufacturing and Supply Risk.* Pharmaceutical products, and in particular biopharmaceutical products, are manufactured in specialized facilities that require the approval of, and ongoing regulation by, the FDA in the United States and, if manufactured outside of the United States, foreign regulatory agencies. With respect to the life sciences products, to the extent operational standards set by such agencies are not adhered to, manufacturing facilities may be closed or the production of such life sciences products interrupted until such time as any deficiencies noted by such agencies are remedied. Any such closure or interruption may interrupt, for an indefinite period of time, the manufacture and distribution of a life sciences products.

In addition, manufacturers of such life sciences products may rely on third parties for packaging of the life sciences products or to supply bulk raw material used in the manufacture of the life sciences products. In the United States, the FDA requires that all suppliers of pharmaceutical bulk materials and all manufacturers of pharmaceuticals for sale in or from the United States achieve and maintain compliance with the FDA's current "Good Manufacturing Practice", or "GMP", regulations and guidelines.

Licensees generally rely on a small number of key, highly specialized suppliers, manufacturers and packagers. Any interruptions, however minimal, in the operation of these manufacturing and packaging facilities could have a material adverse effect on product sales.

## RISKS RELATING TO THE LICENSE AGREEMENTS UNDERLYING THE PRODUCTS



- *The Marketers of the Products are, Generally, Entirely Responsible for the Ongoing Regulatory Approval, Commercialization, Manufacturing and Marketing of the Products.* Generally, the holders of royalties on the life sciences products have granted exclusive regulatory approval, commercialization, manufacturing and marketing rights to the marketers of the life sciences products. The marketers have full control over those efforts and sole discretion to determine the extent and priority of the resources it will commit to its program for a life sciences product. Accordingly, the successful commercialization of the life sciences products depends on the marketer's efforts and is beyond our control. If a marketer does not devote adequate resources to the ongoing regulatory approval, commercialization and manufacture of a life sciences product for any reason, the product's sales may not generate sufficient royalties for our clients to be paid interest and principal in respect of its investments, and consequently, of our clients to make adequate distributions to their investors.

- *License Agreements Relating to the Products may, in Some Instances, be Unilaterally Terminated.* Certain license agreements relating to the life sciences products may be terminated, which may adversely affect sales of such life sciences products. For example, under certain license agreements, marketers retain the right to unilaterally terminate the agreements with the licensors. When the last patent covering a life sciences product expires or is otherwise invalidated in a country, a marketer may be economically motivated to terminate its license agreement, either in whole or with respect to such country, in order to terminate its relevant obligations. In the event of such a termination, a licensor may be unable to secure all of the necessary resources to continue developing and commercializing a life sciences product in the countries as to which the license agreement has been terminated.

In addition, license agreements may fail to provide significant protection for failure to perform or in the event of disputes.

If a marketer were to default on its obligations under a license agreement, the licensor's remedy may be limited to either terminating certain licenses related to certain countries or to generally terminate the license agreement with respect to such country. In addition, if a marketer were to initiate or become subject to a bankruptcy proceeding, royalty payments relating to the applicable life science product may be delayed during the pendency of such a proceeding and may ultimately not be made in full or at all.

- *An Insolvency of a Marketer Could Adversely Affect the Rights of the Entities in which our Clients Invest to Receive Royalty Payments.* If a marketer were to become insolvent and seek to reorganize under Chapter II of Title II of the U.S. Code, as amended (the "Bankruptcy Code"), or liquidate under Chapter 7 of the Bankruptcy Code, such event could delay the payment of the amounts due under a license agreement, pending a resolution of the insolvency proceeding. Any unpaid royalty payments due for the period prior to the filing of the bankruptcy proceeding would be unsecured claims against the marketer. While royalty payments due for periods after the filing may qualify as administrative expenses entitled to a higher priority, the actual payment of such post-filing royalty payments could be delayed for a

substantial period of time and might not be in the full amount due under the license agreement. The licensor would be prevented by the automatic stay from taking any action to enforce their rights without the permission of the bankruptcy court. In addition, the marketer could elect to reject the license agreement, which would require the licensor to undertake a new effort to market the applicable life sciences product with another distributor. Such proceedings could adversely affect the ability of an issuer of debt obligations in which a client invests to make payments of interest or principal on its debt obligations and could consequently adversely affect a client.

## INTELLECTUAL PROPERTY RISKS

- *Our Clients Depend on Third Parties to Maintain, Enforce and Defend Patent Rights on the Life Sciences Products.* The right to receive royalty payments generally depends on the existence of valid and enforceable claims of registered and/or issued patents in the United States and elsewhere throughout the world. The life sciences products on which our clients receive payments are dependent on patent protection for the life sciences products and on the fact that the manufacturing, marketing and selling of such products does not infringe intellectual property rights of third parties. In many cases, we have no ability to control the prosecution, maintenance, enforcement or defense of patent rights, but must rely on the willingness and ability of the entities in which it invests to do so. In these cases, we believe that the parties required or entitled to maintain, enforce and defend the underlying patent rights are in the best position and have the requisite business and financial motivation to do so, there can be no assurance that these third parties will vigorously maintain, enforce or defend such rights. Even if such third parties seek to maintain, enforce or defend such rights, they may not be successful. In other cases, our clients have the right to control and require enforcement and defense of underlying patent rights. In either case, any failure to successfully maintain, enforce or defend such rights would have a material adverse effect on the ability of an issuer of debt obligations in which our clients invest to make payments of interest and principal on its debt obligations, and could consequently adversely affect our clients' investment performance.
- *Infringement of Third-Party Patents.* The commercial success of the life sciences products depends, in part, on avoiding infringement of the proprietary technologies of others. Patents issued to third parties or patent applications claiming subject matter necessary to manufacture and market the life sciences products could exist. Such third-party patents or patent applications may include claims directed to the mechanism of action of the life sciences products. There can be no assurance that a license would be available to licensees for such subject matter if such infringement were to exist or, if offered, would be offered on reasonable and/or commercially feasible terms. Without such a license, it may be possible for third parties to assert infringement or other intellectual property claims against the licensees based on such patents or other intellectual property rights. An adverse outcome in infringement proceedings could subject the licensees to significant liabilities to third parties, require disputed rights to be licensed from third parties or require the licensees to cease or modify their manufacturing, marketing and distribution of the life sciences products.

- *Trade Secrets.* Our clients' rights to receive payments in respect of royalties depends, in part, on trade secrets, know-how and technology, which are not protected by patents, to maintain the licensees' competitive position. This information is typically protected through confidentiality agreements with parties that have access to such information, such as collaborative partners, licensors, employees and consultants. Any of these parties may breach the agreements and disclose the confidential information or competitors might learn of the information in some other way.
- *Finite Terms.* The rights to receive the payments in respect of royalties have limited terms that are generally not subject to extension. Following the expiration of the patent, or the termination of the license or the contractual right to receive payments under any agreement pursuant to which our clients have the right to receive payments in respect of royalties, our clients will not receive any revenue related to the sale of the related life sciences product even if the life sciences product continues to be sold.
- *Risks Associated with Cybersecurity:* We must rely in part on digital and network technologies to maintain computerized data about activities for client accounts and otherwise conduct their businesses. Like all businesses that use computerized data, the Firm and the cyber-networks it uses might in some circumstances be subject to a variety of possible cybersecurity incidents or similar events that could potentially result in the inadvertent disclosure of confidential computerized data or client data to unintended parties, or the intentional misappropriation or destruction of data by malicious hackers mounting an attack on its computer systems. The Firm maintains an information technology security policy and certain technical and physical safeguards intended to protect the confidentiality of its internal data and takes other reasonable precautions to limit the potential for cybersecurity incidents, and to protect data from inadvertent disclosure or wrongful misappropriation or destruction. Nevertheless, despite reasonable precautions, the risk remains that cyber security incidents could potentially occur, might in some circumstances result in unauthorized access to sensitive information about the Firm or its clients, and might cause damage to client accounts or the Firm's activities for clients

For investors in the public limited company in the U.K., the complete set of risks is available in the prospectus and you are encouraged to reference and read through that document. Certain of the risks enumerated above may be applicable to investors in the public limited company in the U.K.; however, such disclosures should not be relied upon as a comprehensive understanding of the risks involved in investing into ours or any other public limited company in the U.K.

- C. We primarily recommend and provide investment management service with respect to high yielding debt securities with short average lives, which are securitized or collateralized by royalty payments on one or more life sciences products. We encourage our investors to consider all of the risk factors we have explained, as any

investment bears the risk of a total loss of investment and investors must be prepared to assume any potential loss.

**Item 9. Disciplinary Information**

There have been no legal or disciplinary events involving Pharmakon or any of our principals or executive officers that are material to a client's or prospective client's evaluation of our advisory business or the integrity of our management.

## Item 10. Other Financial Industry Activities and Affiliates

- A. Neither our firm nor any of our directors, officers or principals is registered, or has an application pending to register, as a broker-dealer or a registered representative of a broker-dealer.
- B. Neither our firm nor any of our directors, officers or principals is registered, or has an application pending to register, as a futures commission merchant, commodity pool operator, a commodity trading advisor, or is an associated person of any of the above.
- C. We do not have any related person who is:
- A broker-dealer, municipal securities dealer or governmental securities dealer or broker;
  - A futures commissions merchant, commodity pool operator or commodity trading adviser except that certain affiliates of RP Management, LLC, which are related persons are considered commodity pool operators and are except from registration by meaning of Commodity Futures Trading Commission Regulation 4.13 (a) (3);
  - A banking or thrift institution;
  - An accountant or accounting firm;
  - A lawyer or law firm;
  - An insurance company or agency;
  - A pension consultant; or
  - A real estate broker or dealer.
- D. We do not recommend or select unaffiliated investment advisers for our clients, receive compensation directly or indirectly from unaffiliated advisers that create a material conflict of interest, or have other business relationships with them that create a material conflict of interest.

### Relationships with Pooled Investment Vehicles

We or one of our affiliates manages each of our clients and its respective feeder funds:

- BioPharma Credit Investments IV, S.à.r.l.;
- BioPharma Credit Investments V (Cayman) LP;
- BioPharma Credit Investments V (Offshore-A) LP;
- BioPharma Credit Investments V (Master) LP; and
- BioPharma Credit Investments V LP.

We disclose to prospective investors the terms of all of our fees and performance-based compensation, as well as the other terms of an investment, in detail in the Private Placement Memorandum relating to each client.

Our principals manage and expect to continue to manage their own proprietary accounts and other investment and trading accounts with objectives similar in whole or in part to those of our clients.

We are required to act in a manner that we consider fair, reasonable and equitable in allocating investment opportunities among our clients, but there are no specific obligations or requirements concerning the allocation of time, effort or investment opportunities to any particular client or any restrictions on the nature or timing of investments for the account of our clients and our principals' own accounts or for other accounts which we or our principals may manage.

We and our principals currently and from time to time in the future, directly or indirectly, provide investment management services on behalf of other pooled investment vehicles, funds, accounts and clients. We are not restricted from entering into other investment advisory or management relationships, or from engaging in other business activities with other clients, even though such activities may involve substantial time and resources. Such activities may involve similar or different investment objectives, philosophy or strategies as those of our clients and could be viewed as creating a conflict of interest in that our time and effort will not be devoted exclusively to the business of any particular client.

We may manage multiple clients that may hold positions in, or enter into transactions with, entities in which another of our clients invests and several clients may have divergent interests from others. In addition, conflicts may arise due to the fact that different clients may enter into such transactions or invest in different levels of the capital structure of such entities.

We may determine that an investment opportunity is appropriate for a particular client, or for itself, but not for another client. Situations may arise in which investment funds managed by us have made investments that would have been suitable for investment by another client, but, for various reasons, were not pursued by, or available to, such client. To the extent we, our principals or one of our clients invests in a particular investment, the ability of another client to invest in the same investment may be adversely affected by any limitation on availability of the investment. In addition, we may be required to choose between our clients with respect to a particular investment.

Each client may have divergent interests with respect to strategies in acquiring or exiting from certain investments. Conflicts may arise due to the fact that multiple clients may invest in different levels of the capital structure of, or otherwise in different securities or other instruments issued by or related to the same issuer. Investments by multiple clients may cause us to become subject to legal or contractual restrictions on our ability to effect transactions for a particular client, for example due to the receipt of non-public information or due to the existence of a control relationship between us and an issuer of a security in which we have invested on behalf of another client. We will act in a manner that we

consider fair, reasonable and equitable in allocating investment opportunities among our clients, taking into consideration available capital, diversification considerations, any other anticipated opportunities and other relevant factors.

#### Relationship with Investment Adviser

We are affiliated with RP Management, LLC because one of our principals, Pablo Legorreta, is the sole principal of RP Management, LLC. We have a shared-services agreements with RP Management. All persons who are party to this agreement are subjected to Pharmakon's compliance program, certain aspects of which are generally described below in Item 11.

This relationship and the services rendered under the shared services agreement are not material to our advisory business and we believe it does not create any material conflict of interest with our clients.



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

- A. We have adopted a Code of Ethics in accordance with the U.S. Securities and Exchange Commission requirements. This Code of Ethics is designed to ensure, among other things, that employees conduct their investing activities in accordance with applicable law and in a manner where clients' interests are placed first and foremost. All employees are responsible for upholding our firm's fundamental principles of openness, integrity, honesty and trust. The Code of Ethics focuses on specific areas where employee conduct has the potential to affect clients' or investors' interests adversely.

The Firm has engaged Compliance Science, Inc. ("ComplySci") as its compliance platform. The Firm utilizes ComplySci for various functions including, but not limited to, personal trading reporting, Compliance Manual and Code of Ethics acknowledgements, and certain other pre-clearances such as gifts and entertainment, outside business activities, and political contributions.

An employee must submit an Initial Disclosure Report to our firm's Compliance Department, via ComplySci, for the review of the Chief Compliance Officer, or his designee, within 10 days after the start of his or her employment. The Initial Disclosure Report includes all covered accounts such as (1) any personal account of an employee or such employee's related persons; (2) any joint or tenancy in common account in which either the employee or his or her related person has an interest or is a participant; (3) any account for which either the employee or his or her related person acts as trustee, executor, or custodian; (4) any account over which either the employee or his or her related person has power of attorney; and (5) any corporate or investment club accounts in which either the employee or his or her related person has investment discretion or otherwise participates in the investment decision-making process relating to such account. In addition, employees must report any new covered on ComplySci, within 10 days of opening such account. Any changes to a covered account, including account number, name, whether the account is closed, etc. should be reported within 10 days of such change.

Employees must provide our firm with all necessary information to arrange for their broker-dealer, bank or other third-party financial institution to send periodic account statements for each covered account directly to the Chief Compliance Officer, or his designee.

Our Code of Ethics applies to all of our employees and each of our employee's related persons, which include (i) the employee's spouse, (ii) members of the employee's immediate family living in the same household, including children and/or stepchildren and (iii) other relatives of the employee living in same household who are supported financially by the employee, whose investment holdings and accounts the employee exercises direct or indirect influence or control or from whose investment holdings and accounts the employee derives a financial benefit.

Employees must obtain prior written approval before either they or a related person places an order to sell or otherwise dispose of a security that is being offered as part of an initial public offering or investing in a private placement. Prior to placing an order for such a securities transaction, a pre-trade request via email must be sent. The submitted request will be reviewed and, as soon as practicable, a determination will be made as to whether the proposed securities transaction(s) can be authorized. If the securities transaction(s) is denied, no explanation will be provided.

Violation of our Code of Ethics provides for a range of sanctions, both legal and those that our firm may impose as we deem appropriate, should anyone violate the Code of Ethics. Such sanctions include, but are not limited to, disgorgement of profits (if any), and depending upon the facts or circumstances, more severe actions up to and including monetary fines and termination of employment.

In addition to the policies described above, the Code of Ethics is comprised of several other policies and procedures that are designed to eliminate or reduce potential conflicts of interest, including prohibitions against market manipulation or front running. Pharmakon prohibits the misuse of material non-public information (“inside information”) and maintains a Restricted List of securities that may not be purchased or sold by its employees for their own accounts or for client accounts because of the actual or possible possession of inside information. Pharmakon also has a gifts & entertainment policy which covers the acceptance of gifts or entertainment from service providers and other parties.

Each employee must annually execute a statement to the effect that he has read and understands, has complied with and will continue to comply with, the procedures set forth in this Code of Ethics.

The paragraphs above only represent a summary of key provisions in our Code of Ethics. We provide a copy of our Code of Ethics to any client or any investor in our clients that requests one.

- B. Employees of our firm do not recommend to clients, nor do they buy or sell for client accounts, securities in which they have a material financial interest. Our firm, its employees, officers, partners, directors (and any persons performing similar functions), and persons directly or indirectly controlling our firm, controlled by our firm or under common control with our firm, may not engage in a principal transaction with the firm’s clients, unless such transactions have been approved as required by law.
- C. Principals and employees of our firm are not permitted to invest in the same securities that principals and employees recommend to clients.
- D. Principals and employees of our firm do not recommend securities to clients, or buy or sell securities for client accounts, at the same time that they buy or sell the same securities for their own (or a related person's own) account.

## Item 12. Brokerage Practices

Because of the nature of our investment strategy, and because most of our investments are made on a negotiated basis, we typically are not involved in securities trade executions on public markets and do not anticipate being involved in trade executions on public markets in the future. To the extent that we ever arrange for execution of securities trades on behalf of our clients, we will strive to obtain best overall execution of securities trades for our clients based on the circumstances of each transaction we place. To the extent we are ever in a position to arrange execution of securities trades on public markets on behalf of our Clients, we have proactively established policies and procedures to ensure we act in the best interests of our Clients, and that we act in compliance with the SEC rules and best practices.

As part of our developed policies, when selecting broker or dealers and determining the reasonableness of their commissions for our clients' transactions, we will generally take into account the following factors:

- the broker-dealer's ability to execute difficult trades
- commitment of capital,
- access to new issues,
- nature and frequency of sales coverage,
- breadth of services provided,
- operational capabilities,
- back office and processing capabilities,
- financial stability and responsibility,
- reputation, access to markets,
- confidentiality,
- commission rates,
- responsiveness, and
- the value of research products and services provided by such brokers.

To the extent that we arrange for execution of securities trades on public markets for our Clients, we will establish a committee, which meets on a periodic basis, to oversee and monitor compliance with this policy. The committee's review will include trading volumes, commissions paid, gifts and entertainment, as well as trade errors, among other things. Members of the committee will include our Chief Executive Officer, Chief Compliance Officer and representatives from our investment staff and operations department. In the event the nature of our investments change, our procedures related to brokerage practices will be more fully described in this section.

1. Soft Dollar Benefits: Our firm does not engage in soft dollar transactions with brokers. To the extent we enter into soft dollar transactions, we will effect these transactions in compliance with the safe harbor provided by Section 28(e) of the U.S. Securities Exchange Act of 1934, as amended.

2. Our Clients Do Not Direct Brokerage. Our firm does not recommend, request or require that a Client, nor do we permit a Client to, direct us to execute transactions through a specified broker-dealer.

### Item 13. Review of Accounts

- A. Our portfolio manager reviews all the client portfolios for which they are responsible and analyze their performance on a regular basis, no less than quarterly for the private equity clients. Where applicable, these reviews include an assessment of daily profit and loss reports with respect to our clients' investment positions.
- B. The portfolio manager will meet with the principal owners of our firm at least monthly or more frequently, as deemed necessary, and will meet upon the occurrence of certain significant events. A "significant event" is generally an event that will materially affect the value of a security for a period of time.
- C. We provide investors in our client funds with unaudited quarterly reports. Additionally, we provide audited annual reports containing financial statements examined by our independent auditors as well as such tax information as is necessary for each investor in our funds to complete its U.S. federal and state income tax or information returns, along with any other tax information required by law.

*Generally, investment-related reviews undertaken for the public limited company in the U.K. are conducted pursuant to U.K. corporate law as well as those disclosures made to investors in the company's prospectus.*

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

- A. Our firm does not, nor do any principals or employees of our firm, receive any economic benefit from non-clients for providing advisory services to our clients.
- B. Pharmakon engages consultants to arrange introductions with potential investors who may be interested in investing in our client funds. If we accept investors who are introduced to us by such consultants, we will pay the consultant a fee, which will be a percentage of the management fees and performance-based fees that we will receive from the introduced investor. The percentage to which the consultants are entitled vary based upon the size of the investor's commitment to our client fund. In certain instances where a large pool of related investors are brought into the private funds, the fee will be rebated directly to investors.

## Item 15. Custody

Due to our access to securities and funds as investment manager of the private funds that we manage, and our authority to deduct fees and other expenses from such clients' accounts, we are deemed to have custody of these funds and securities within the meaning of Rule 206(4)-2 of the Investment Advisers Act of 1940, as amended ("Custody Rule").

As a result, we comply with the periodic reporting requirements of the Custody Rule by arranging for annual financial statements for clients' accounts, which are prepared in accordance with generally accepted accounting principles and are audited by an independent auditor that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board, to be delivered to each investor in our private funds within 120 days of the end of the fiscal year of the fund.

*We are not deemed to have custody over the separately managed accounts or the public limited company in the U.K. we advise.*

## Item 16. Investment Discretion

### Scope of Authority

All of our firm's investment advisory services involve the management of client accounts on a fully discretionary basis, with the only exceptions being the separately managed accounts which are advised on a non-discretionary basis. We have the authority to determine, without obtaining specific client consent, which investments to acquire on behalf of our clients. In exercising this authority, we adhere to the investment strategy and program set forth in the private placement memorandum of each Pharmakon fund.

### Procedures for Assuming Authority

Before accepting investors' subscriptions for interests, we provide all investors in our clients with a Private Placement Memorandum and governing documents that set forth, in detail, our investment strategy and program and the terms of investment for investors. By completing our subscription documents to acquire an interest in one of our funds, investors give us complete authority to manage their investments in our clients in accordance with the private placement memorandum and governing documents they each received.

*We have investment discretion over the public limited company in the U.K.; however, an independent board has overall responsibility for risk management and internal control of the Company. The board does not supervise our due diligence or other investment-facing activities and relies on us for all investment management responsibilities. Investors are provided with a prospectus in advance of making any investment that sets forth, in detail, our investment strategy and program and the terms of investment for investors. By participating in an investment syndicate, our investors give us complete authority to manage their investments in accordance with the prospectus and other governing documents they each received.*



## Item 17. Voting Client Securities

### A. Proxy Voting Policies and Procedures pursuant to Rule 206(4)-6

Our client funds' portfolios typically do not contain voting securities, and thus we are not typically called upon to vote a client's securities. We have adopted the following policies and procedures in the event our client funds' securities portfolios contain voting securities in the future: Our investment professionals, in consultation with the Chief Compliance Officer, will be responsible for voting proxies, either in writing or via the internet, for such clients. When voting client proxies, our firm is required to vote such proxies in the best interest of its clients. However, we may abstain from proxy votes when, in our reasonable opinion, the outcome of the vote has been decided (regardless of how we may vote) or when the subject of the vote is immaterial to the investment or interest of our clients. The firm will be responsible for maintaining records of the manner in which each proxy was voted.

Our accounting department is responsible for monitoring corporate actions and receiving, processing and voting proxies. Our investment professionals and the Chief Compliance Officer will set the voting policy and will review on a periodic basis new corporate governance issues as they arise and determine how our firm will respond to such issues. They also will take steps to ensure that those who assist in the administration of the voting of proxies perform their responsibilities consistent with these voting policies.

Proxies will be voted (i) on computerized proxy cards, where such cards are used by the security issuer, (ii) by returning the proxy voting card via mail per instructions provided by the security issuer, (iii) via e-mail or fax, or (iv) via the internet, in accordance with the specific procedures of such vote.

#### Factors We Consider When Determining Whether to Vote Proxies

Our investment professionals consider the following factors, and any other factors he or she determines is relevant, when determining whether to vote a client proxy:

- The holding period of a security's position.
- The economic value of a security's position.
- Whether the cost of voting (e.g., required in-person voting at a distant location) will likely exceed the value of any potential benefits of voting.
- Whether voting is impracticable due to timing or mechanics.
- Whether our custodian lent the securities and had not recalled them as of the relevant voting date.

- Whether the relevant client has specified in writing (e.g., an agreement with us) that it will maintain the authority to vote proxies or that it has delegated the right to a third party.

When an investment professional determines that voting a proxy is in a client's best interest, he or she uses all relevant factors and information at his or her disposal to determine how to vote in a client's best interest.

Our investment professionals do not vote securities that our account custodian has loaned to a third party.

Clients cannot direct our portfolio managers' proxy votes.

### Potential Conflicts of Interest

The Chief Compliance Officer is responsible for identifying potential conflicts of interest concerning the proxy voting process. While this will generally be evaluated on a case-by-case basis, one or more clients' ownership of securities in a company which is the subject of a proxy vote for another client will not in itself create a conflict of interest. In cases where it is determined that a potential conflict exists, the Chief Compliance Officer will disclose the nature of the conflict to the affected client(s), disclose the specific matter under proposal to the clients, and obtain the client(s) consent before voting

In certain circumstances, to address a conflict of interest in the context of proxy voting, we may establish policies for proxy voting with respect to certain issues on which we will vote consistently. In other circumstances, where appropriate, to resolve conflicts of interest, we may consult with counsel and/or appoint an independent third party to evaluate and recommend the voting of proxies.

### Recordkeeping

We will provide a copy of our proxy voting policies and procedures and information regarding any proxies actually voted on behalf of a client to any investor in such client upon the request of such investor.

Our firm maintains written records of client requests for proxy information and any written response to any (written or oral) client request for information on how our firm voted proxies on their behalf for a period of seven years.

**Item 18. Financial Information**

- A. We do not require nor do we solicit prepayment of more than \$1,200 in fees per client, six months or more in advance.
- B. We are not aware of any financial condition that is reasonably likely to impair our ability to meet our contractual commitments to our clients.
- C. Pharmakon Advisers, LP has never been the subject of a bankruptcy petition.

**Item 19. Requirements for State-Registered Advisers**

Not applicable.

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