

**Item 1: Cover Page**

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

March 31, 2021

**Virage Capital Management LP**

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**This brochure provides information about the qualifications and business practices of Virage Capital Management LP. If you have any questions about the contents of this brochure, please contact us at (713) 840-7700. 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 Virage Capital Management LP is also available on the SEC's website at: [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).**

Though Virage Capital Management LP may refer to itself as a "registered investment adviser," this statement does not imply a certain level of skill or training.

## Item 2: Material Changes

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Virage Capital Management LP last updated Part 2A of its Form ADV on May 15, 2020 (following the annual update filed March 18, 2020). Series 1 – Virage Post Settlement Master LP (“**VPS**”), one of Virage’s Litigation Finance Clients (as defined below), has ceased offering its interests to investors and, in addition, has ceased making new investments. While we continue to provide advice to VPS with respect to its existing investment portfolio, and therefore VPS remains a client, we have updated:

- (i) Item 4 to address the fact that we no longer source investment opportunities for VPS,
- (ii) Item 8 to remove the discussion of our investment strategy that was unique to VPS, and
- (iii) Item 12 to remove VPS considerations from our investment allocation policies.

Finally, we have implemented a litigation funding component to the investment strategy with respect to certain of our Litigation Finance Clients, which is addressed in Items 4 and 8.

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## Item 4: Advisory Business

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Virage Capital Management LP, founded in 2013, is an investment advisory services firm that currently provides investment management services to ten clients, each of which is a pooled investment vehicle, or more specifically, a private investment fund. In his capacity as a limited partner of Virage Capital Management LP, Edward Ondarza is the majority owner of our firm. He is also the manager and majority owner of Virage LLC, which is the general partner of our firm.

With the exception of Virage TTU LP, a Texas limited partnership (“**Virage TTU**”), and Virage Recovery Master LP, a Delaware limited partnership (the “**RecoveryFund**”), all of our private fund clients are separate series of Delaware series limited partnerships: Series 1 – Virage Master LP, Series 2 – Virage Master LP, Series 3 – Virage Master LP, Series 4 – Virage Master LP, Series 5 – Virage Master LP, Series 6 – Virage Master LP, WAM Series 1 – Virage Master LP, and Series 1 – Virage Post Settlement Master LP (such series limited partnership clients, together with Virage TTU, our “**Litigation Finance Clients**”). With the exception of Virage TTU, each of our Litigation Finance Clients and the Recovery Fund is a private pooled investment “master fund” in a master-feeder structure with a domestic feeder fund and, for some clients, one or more offshore feeder funds. With respect to these clients, we only consider each master fund, and not its feeder funds, our client because the feeder funds place all of their investable assets in one or more series the applicable master fund(s). All investment activities for the funds in each master-feeder structure are conducted at the master fund level where we act as the investment manager to the master fund.

In providing our advisory services to our clients, we seek to generate attractive risk-adjusted returns to the underlying investors of our clients. Historically, this has been achieved by primarily originating direct secured and unsecured loans (or other funding arrangements) to well-qualified, State Bar licensed attorneys (each, a “**borrower**”) for the purpose of financing or refinancing borrower business expenses related, as more specifically described in Item 8 (*Methods of Analysis, Investment Strategies and Risk of Loss*), to civil lawsuits and similar litigation matters initiated in U.S. federal and state courts and definitive settlement agreements entered into as a result of such lawsuits and/or litigation matters (each, a “**loan**”). On occasion, rather than originating a loan, a client may enter into a litigation funding agreement with a borrower to fund its business expenses. Our clients may also consider entering into loans or direct funding agreements with plaintiffs in a litigation matter. Additionally, our clients are permitted to also invest in similar loans, debt, notes, or other obligations from other originators, lenders, loan facilitators, funders, or brokers if we determine such opportunities to be attractive and appropriate for the client.

We have also sponsored the Recovery Fund, which is a pooled investment vehicle whose investment program seeks to generate attractive risk-adjusted returns by acquiring and pursuing claims under the Medicare Secondary Payer Act and other applicable law.

In 2018 we facilitated a securitization transaction whereby the loan portfolios for certain of our Litigation Finance Clients—namely, Series 1 – Virage Master LP, Series 2 – Virage Master LP

and Series 3 – Virage Master LP—were securitized. While we no longer manage the loan portfolios that were part of the securitization transaction, we continue to service such loans (collectively, the “**Securitized Loans**”) pursuant to a servicing agreement.

With respect to our Litigation Finance Clients, we source investments directly with the legal community in the United States from existing and newly cultivated relationships, research to identify potential borrowers involved with a certain legal matter, referrals from existing borrowers and attending relevant industry conferences that provide a forum to meet potential borrowers. In addition, we have contractual arrangements with individuals that work in the legal community and who assist in sourcing transactions for an agreed-upon fee paid by the clients. We may also source new transactions from existing borrowers.

The Recovery Fund makes investments through a joint investment vehicle together with a third party whose affiliates (through servicing agreements with the investment vehicle) identify claims under the Medicare Secondary Payer Act, and other applicable law, and pursue recoveries thereunder.

Our firm tailors our advisory services to the individual needs and specified investment mandates of our clients. We adhere to the investment strategy set forth in the confidential offering memoranda of each client or its respective feeder fund(s), as applicable. We do not, however, tailor our advisory services to the individual needs or any specified investment mandates of the investors in the feeder funds and those investors may not impose restrictions on investing in certain securities or types of securities.

We do not participate in any wrap-fee programs.

As of December 31, 2020, we have regulatory assets under management of \$564,230,754.05. We manage 100% of our regulatory assets under management on a discretionary basis and 0% of our regulatory assets under management on a non-discretionary basis. Our total assets under management is \$1,240,197,453.99 comprised of (i) our regulatory assets under management, which includes the net asset value of our Litigation Finance Clients, (ii) the value of the Securitized Loans that we service that do not comprise a part of our Litigation Finance Clients’ securities portfolios and (iii) the estimated net asset value of the Recovery Fund.

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

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This brochure is only delivered to qualified purchasers and therefore does not contain our advisory service fee schedule.

Our firm, or an affiliate of our firm, typically receives compensation from each of our clients based on both the percentage of assets we manage, and performance-based fees based on capital appreciation. With respect to our Litigation Finance Clients, we typically structure our performance-based compensation as profit-sharing allocations through limited partner interests that our affiliates and strategic investors hold in our client funds. Such performance-based compensation is also generally subject to a loss carryforward requirement or “high water mark.” This means that we only receive a performance profit allocation when an investor’s account

value for the year has recovered any losses from prior years (reduced proportionately by any withdrawals an investor makes). With respect to the Recovery Fund, we structure our performance-based compensation as a carried interest distribution that is subject to a preferred return to the underlying investors, which means that we generally only receive a distribution of investment proceeds after the underlying investors have received both a return of their contributed capital and a preferred return thereon.

We only offer interests in our Litigation Finance Client funds to “qualified purchasers” as defined in the Investment Company Act of 1940, as amended (the “***Investment Company Act***”). Qualified purchasers are generally individual investors or certain family-owned entities with over \$5,000,000 in investments or entities with over \$25,000,000 in investments. We only offer interests in the Recovery Fund to persons who are “qualified clients” as defined in Rule 205-3 of the Investment Advisers Act of 1940, as amended. Qualified clients are generally individual investors with a net worth of \$2,100,000 or who have at least \$1,000,000 in investments or an investor who is otherwise a qualified purchaser. For purposes of clarity, any investor in any of our clients must be an “accredited investor” as defined in Regulation D under the Securities Act of 1933, as amended, for purposes of the private securities offering.

With respect to our Litigation Finance Clients, we deduct our asset-based fees directly from such clients’ accounts each month. We generally deduct performance-based compensation on an annual basis or upon a withdrawal or redemption (but only on the amount withdrawn or redeemed) or in connection with a distribution of investment proceeds. The asset-based fee that we charge investors in our Litigation Finance Clients is payable in advance at the beginning of each calendar month. In the unlikely event that an investor is redeemed before the end of the billing period, we will refund a *pro rata* percentage of the fee paid in advance. With respect to the Recovery Fund, we deduct our asset-based fees directly from such client’s account each quarter. In addition, we are entitled to distributions of “carried interest” after the achievement of certain return hurdles (including a return of contributed capital and a preferred return thereon) in connection with the receipt of net proceeds from investments, of which distributions are generally made on a quarterly basis (to the extent thereof).

Investors in our clients do not pay any performance-based compensation in advance. Our fees are generally non-negotiable, but we do have the discretion to waive all or a portion of the management fee and/or the performance-based compensation with respect to our clients.

All of our clients bear various costs, fees and expenses in addition to the compensation payable to our firm or an affiliate of our firm. Although we set forth enumerated lists below, all investors in our clients and prospective investors should review the Private Placement Memorandum or other governing documents for each applicable fund, which may discuss additional costs, fees and expenses not discussed below.

Our clients, and consequently the investors in our clients, generally incur the following expenses:

- offering and organizational expenses,

- costs of identifying and evaluating proposed investments and expenses relating to investment transactions (including airfare and hotel costs for attending conferences attended by prospective borrowers) and, if applicable, all fees and commissions paid to loan facilitators and loan originators or brokers,
- expenses with respect to the acquisition and disposition of investments, whether or not consummated,
- loan fees, appraisal fees, underwriting commissions and discounts and other investment-related expenses,
- all transaction costs, custody fees, fees of professional advisors and consultants relating to investments or prospective investors, travel, specific expenses incurred in obtaining research and other information utilized with respect to the applicable fund's investment program,
- any withholding or transfer taxes imposed on the applicable fund,
- out-of-pocket costs of the administration of the applicable fund, including accounting, audit, legal and compliance expenses and other professional or third-party costs (including FATCA compliance and preparation of regulatory reports),
- costs of holding any meetings of investors or an advisory committee, costs of any liability insurance obtained on behalf of the applicable fund, its general partner and/or us,
- costs of any litigation or investigation involving fund activities, and
- costs associated with reporting and providing information to existing and prospective investors, including travel in connection with providing such information.

In addition, Virage TTU LP and each of the feeder funds of our other clients bears its proportionate share of the expenses listed above incurred by the applicable master fund(s) in which it invests; provided, in addition, that Virage TTU LP is allocated its proportionate share of such expenses along with the other Litigation Finance Clients' master funds (but without duplication) to the extent it invests directly into any special purpose investment vehicle in which such master funds also invest. Furthermore, the Recovery Fund, and consequently its investors, may incur additional expenses incurred in connection the claim recovery process, which are unique to the Recovery Fund, as described in its private placement memorandum.

Other than as provided above, our firm is responsible for all of its normal overhead expenses and other similar expenses.

The fees and expenses we have enumerated above may not contemplate every type of fee or expense our clients may incur.

We have established policies and procedures for allocating investment and other expenses among our clients (and, as applicable, any non-advisory client accounts that we or our affiliates may manage) in a manner that, over time, we believe is fair and equitable taking into consideration the purpose and type of expense and other relevant factors. Expenses are allocated pursuant to such expense allocation policies and procedures (as amended from time to time by us in our discretion), which are available to prospective fund client investors upon request.

For more information on brokerage transactions and costs, please see Item 12 (*Brokerage Practices*).

Neither our firm nor any of our principals or employees accepts compensation for the sale of securities or other investment products.

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

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Our firm (or one of our affiliates) receives performance-based compensation (including, for the avoidance of doubt, carried interest distributions) from all of our clients. Please see Item 5 (*Fees and Compensation*) for a more detailed explanation of the performance-based compensation we receive. We do not manage any funds or accounts that do not pay performance-based compensation.

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

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*Litigation Finance Clients.* As noted in Item 4 (*Advisory Business*), we provide investment management services (including cash management) to Series 1 – Virage Master LP, Series 2 – Virage Master LP, Series 3 – Virage Master LP, Series 4 – Virage Master LP, Series 5 – Virage Master LP, Series 6 – Virage Master LP, WAM Series 1 – Virage Master LP, and Series 1 – Virage Post Settlement Master LP, (each of which is a “master fund” in a master-feeder structure) and Virage TTU LP (which currently co-invests its assets with Series 6 – Virage Master LP, but which may also invest in, or co-invest with, other series of the Master Fund, as directed by its sole limited partner and facilitated by us). With the exception of WAM Series 1 – Virage Master LP, Series 5 – Virage Master LP, Series 6 – Virage Master LP, and Series 1 – Virage Post Settlement Master LP, each client with a master-feeder fund structure has a domestic feeder fund and one or more offshore feeder funds. Each of our Litigation Finance Clients originates loans to borrowers and relies on Section 3(c)(7) of the Investment Company Act for an exclusion from registration as an investment company under the Investment Company Act.

*Recovery Fund.* As noted in Item 4 (*Advisory Business*), we provide investment management services (including cash management) to the Recovery Fund in relation to its strategy of pursuing claims recoveries under the Medicare Secondary Payer Act and other applicable law. The Recovery Fund is not an investment company as defined by the Investment Company Act.



With respect to our master fund clients (i.e., excluding Virage TTU LP), each master fund, and not the feeder funds, is our client because the feeder funds place all of their investable assets in one or more series of the applicable master fund. All investment activities for such funds are conducted at the master fund level where we act as the investment manager to each master fund.

This brochure is not an offer to invest in any of our clients or, as applicable, any of their respective feeder funds.

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

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In providing our advisory services to our clients, as previously discussed in Item 4, we generally seek to generate attractive risk-adjusted returns by primarily (i) originating direct secured and unsecured loans to borrowers for the purpose of financing or refinancing borrower business expenses—i.e., a litigation finance strategy—and (ii) investing in claims under the Medicare Second Payer Act or other applicable law (“*Claims*”)—i.e., a recovery fund strategy.

*Litigation Finance Strategy.* When loans or other funding arrangements are secured, we generally intend to loan capital to a borrower when the borrower is able to provide as collateral a security interest in its right to receive fees from client proceeds related to unsettled or a mix of unsettled and settled civil lawsuits and similar litigation matters initiated in U.S. federal or state courts.

On occasion, rather than originating a loan, clients will enter into a litigation funding agreement with a borrower to fund its business expenses. While the form of such arrangement may differ from a loan, and potentially be subject to different rights and remedies, we underwrite such transactions in the same manner as loan transactions and generally requires a security interest in the borrower’s rights to fees from specified legal matters. We will also consider entering into loans or funding agreements with plaintiffs in a litigation matter, although no such transactions have been executed as of this filing. Additionally, while they have not done so in the past, clients are permitted to also invest in similar loans, debt, notes or other obligations from other originators, lenders, loan facilitators or brokers should we determine such opportunities to be attractive and appropriate for one or more clients.

We seek to make investments on behalf of each client that we believe have an attractive risk/return profile based on specific investment parameters and appropriate pricing guidelines determined by us for the purposes of achieving targeted returns. In evaluating each prospective investment, we will generally, and depending on the particular client, review (i) the track record and history of the borrower; (ii) the jurisdiction in which each of the relevant litigation matters is filed; (iii) the subject matter of each of the relevant litigation matters; (iv) the borrower’s credit history, disciplinary history and criminal history (in each case, if any); (v) the litigious nature of the plaintiff in each of the relevant litigation matters; (vi) the solvency of the defendant in each of the relevant litigation matters and to the extent applicable, the defendant’s defense history of similar cases; and (vii) whether a claim may be covered by insurance in each of the relevant litigation matters.

We anticipate that a certain number of investments may default and will therefore seek to develop and maintain a portfolio for each client with varying par values and anticipated maturity dates. We believe that interest rates on borrower loans will generally be higher than other alternative fixed income products with a similar risk profile. We base our pricing of the interest rate for each loan investment taking into account available market rates for transactions it believes are comparable, internal proprietary research, prior performance, the track record of the borrower and the individual characteristics of each investment. The terms of the clients' litigation funding agreements are similarly tailored.

Loans made to borrowers, when secured, are generally collateralized by the borrower's fees from a basket of cases (settled or unsettled). We generally seek to perfect the lien on the collateral by making the requisite filings under the Uniform Commercial Code to perfect its security interest in the collateral supporting the loan and by requiring deposit account control agreements to perfect a security interest in the bank account of borrower into which borrower is required to direct or deposit fees from the specified cases. Not all security interests in the collateral supporting investments is perfected by such filings or agreements. Although borrowers may collateralize loans with their right to receive fees from client proceeds from civil lawsuits and similar litigation matters initiated in U.S. federal or state courts, borrowers may use the loan proceeds from clients' investments for business expenses unrelated to those cases or matters for which the fees serve as collateral for the clients' loan. We seek to obtain similar security arrangements with respect to the collateral underlying the clients' litigation funding arrangements, although the application of rights and remedies under the Uniform Commercial Code to such arrangements is less certain.

*Recovery Fund Strategy.* The Recovery Fund is party to a limited liability company agreement of a limited liability company (the “**Investment Vehicle**”). The purpose of the Investment Vehicle is to pursue certain Claims under the Medicare Secondary Payer Act and other applicable law. Our primary roles in the investment process with respect to the Recovery Fund include:

- Initially we reviewed and approved the Claims included in the Recovery Fund's economic participation through the Investment Vehicle, which involved a review of types of Claims, the potential assigning parties of such Claims, dates of service and responsible parties, and in certain limited circumstances we may elect (and have so elected) to change which Claims are included in the Recovery Fund's economic participation through the Investment Vehicle;
- Tracking and monitoring the performance of the portfolio to determine how specific characteristics affect the recovery value of the Claims and the timing of recovery;
- Updating analysis process and valuation methodology based on the flow of empirical data from the portfolio, including through the use of an independent valuation agent;
- Identifying loss or unrecoverable Claim drivers and adjusting valuation methodology to reflect experiential data, including through the use of an independent valuation agent; and
- Day-to-day management of the Investment Vehicle (as its manager), including overseeing: cash management and controls with the Recovery Fund's administrator,

valuation, tax reporting and audit processes and running of the Investment Vehicle's co-counsel committee responsible for selection of co-counsel in pursuing claims.

Despite our methodologies, investing in any securities or other investment type involves a risk of loss that any of our clients or any of the investors in our clients must be prepared to bear.

Despite our thorough research and analysis, strategic relationships and comprehensive investment strategies, investing in general involves a risk of loss that our clients and investors in our master fund clients' feeder funds must be prepared to bear. Please see below for an explanation of some of the significant risks associated with the investment strategies we employ. A more comprehensive list of risks associated with an investment in our master fund clients is set forth in the offering memorandum of each feeder fund.

### **General Operational and Investment Risks**

*Investment Risks in General.* All investments risk the loss of capital. No guarantee or representation is made that our investment program will be successful. There can be no assurance that any investor will receive any distributions from our clients. Investment results may vary substantially over time and investors risk the loss of their entire investment. All of our clients' investments have uncertainties and are considered speculative. Each investment is contingent on a counterparty's ability to successfully run its business.

*Investment Judgment.* The success of our investment program depends to a great extent upon our ability to correctly assess the profitability of investments and to ensure our clients' compliance with applicable lending laws and regulations. There can be no assurance that we will accurately predict profitability.

*General Economic and Market Conditions.* The availability of investments, and therefore our client's profitability, will be affected by general economic and market conditions, such as interest rates, availability of credit, the rate of inflation, economic uncertainty, changes in laws (including laws relating to lending activities and taxation of our clients' investments), diseases, pandemics (e.g., COVID-19, as discussed below), natural disasters or other severe public health events, and national and international political circumstances.

Other factors, such as changes in U.S. federal or state tax laws, U.S. federal or state securities laws, bank regulatory policies or accounting standards, may make lending activities less desirable. Similarly, legislative acts, rulemaking, adjudicatory or other activities of the U.S. Congress, state governments, the U.S. Securities and Exchange Commission, the Federal Reserve Board, the New York Stock Exchange, the Financial Industry Regulatory Authority, Inc. or other governmental or quasi-governmental bodies, agencies and regulatory organizations may make the business of our clients less attractive.

In addition, terrorist attacks, or the fear of or the precautions taken in anticipation of such attacks, could, directly or indirectly, materially and adversely affect specific businesses and certain industries in which our clients invests or could affect the countries and regions in which the clients are invested, where we or borrowers have offices or where we or borrowers otherwise do business. Other acts of war (e.g., war, invasion, acts of foreign enemies, hostilities and insurrection, regardless of whether war is declared) could also have a

material adverse impact on the financial condition of businesses, industries or countries in which we invest clients' assets. Finally, natural disasters, epidemics and terrorist attacks can have the effect of compounding or exaggerating the impact of any of the specific investment risks noted above on our operations and our clients' investments.

*Co-Investments with Third Parties.* Our clients may co-invest with third parties through jointly owned acquisition vehicles, partnerships, or other structures. In such situations, such client's ability to control its equity investments will depend upon the nature of the joint investment arrangements with such partners and the client's relative ownership stake in such investments. Our clients may be a minority investor in these circumstances. In addition, such arrangements may restrict any such client's ability to dispose of its investments for potentially significant periods of time. Such investments may involve risks not present in investments where a third party is not involved. A co-venturer or partner of any client may at any time have economic or business interests or goals which are inconsistent with those of such client and may be in a position to take (or block) action inconsistent with the client's investment objectives. A Client may be liable for certain actions of its co-venturers or partners. Co-investments may also involve higher costs than other investments. Co-venturers or partners potentially may include Limited Partners and certain underlying investors. Any management fees or performance compensation received by us or our affiliates with respect to any co-investment will solely be that of that person, and will not be paid to, credited to, allocated to or otherwise shared with the relevant client(s).

*Projections.* Clients may rely upon projections developed by us, the valuation agents, certain of our affiliates and or contracted third-parties concerning one or more investment's future performance and outcome. Projections are inherently subject to uncertainty and factors beyond our control. The inaccuracy of certain assumptions, the failure to satisfy certain financial requirements and the occurrence of other unforeseen events could impair the ability clients to realize projected values and outcomes.

*Competitive Market.* There is currently, and will likely be, competition for investment opportunities by investment vehicles and others with investment objectives and strategies identical or similar to our clients' investment objectives and strategies. The activity of identifying, consummating and realizing investments utilizing the strategies of the clients is highly competitive and involves a high degree of uncertainty. The clients will be competing for investments with other established investors and lenders with substantial resources and experience. Many of the clients' competitors are substantially larger and have more capital and other resources than the clients. Some of the clients' current and potential competitors may be able to leverage their existing resources to be able to offer potential borrowers more favorable terms than those offered by the clients. It is possible that competition for investments may increase, thus reducing the number of investments available to the clients and adversely affecting the terms upon which investments can be made. The clients may incur significant expenses in connection with identifying investment opportunities and investigating other potential investments which are ultimately not consummated, including expenses relating to due diligence, transportation, legal expenses and the fees of other third-party advisers.

Moreover, in originating investment opportunities, we depend in part upon referrals and the successful maintenance of active contacts and communications with legal professionals, other professionals and business and financial parties. If we fail to maintain, develop or grow our origination networks, the clients may not be able to achieve their investment objectives. No individuals or entities are obliged to provide us with investment opportunities and therefore there is no assurance that such relationships and contacts will lead to the origination of investment opportunities.

*Market Liquidity.* If we are relying on short term financing to fund investments, and are unable to roll over our clients' debt, we will likely have to liquidate our clients' assets in order to meet their liabilities. We may be unable to sell our clients' assets, or may have to do so at a discount to market value, which would adversely affect our clients' feeder funds and their investors. Changes in overall market leverage may also adversely affect our clients' performance.

*Lack of Diversification.* Because our clients' portfolios only hold specified types of investments, they lack diversification among securities and types of instruments as compared to investment funds that maintain a wide diversification among securities and types of instruments.

*Leverage.* With respect to our clients whose governing documents permit the use of leverage, we will consider using leverage to enhance such clients' portfolio returns. Losses incurred on our clients' leveraged investment increase in direct proportion to the degree of leverage employed. Our relevant clients will also incur interest expense on the borrowings used to leverage their positions.

Borrowing money to make investments increases the risk of loss with respect to such investments. Although borrowing money increases returns if returns on the incremental investments purchased with the borrowed funds exceed the borrowing costs for such funds, the use of leverage decreases returns if returns earned on such incremental investments are less than the costs of such borrowings. The amount of borrowings which may be outstanding at any time may be large in relation to our relevant clients' capital. In addition, the level of interest rates generally, and the rates at which funds can be borrowed in particular, will affect such clients' operating results. To the extent our relevant clients' assets have been leveraged through the borrowing of money, the interest expense and other costs and premiums incurred in relation thereto may not be recovered. If gains earned by such clients' portfolios fail to cover such costs, the net asset value of such clients' portfolios is likely to decrease faster than if there had been no borrowings.

*Compliance with Applicable Laws and Regulations.* Loan origination and servicing is subject to U.S. federal and state laws including state licensing and interest rate and fee restrictions and U.S. federal and state equal credit opportunity and fair credit reporting laws and regulations and debt collection activities. Because certain of these legal requirements vary by state it will not be possible to have a universal note that will apply to all borrowers and variations in loan origination and servicing practices may be required. We have the burden of ensuring that having our clients enter into a loan agreement with a particular borrower satisfies all legal and regulatory requirements. Determining compliance with all applicable laws and regulations is a complex matter and it is possible that our determination may be challenged. Our failure to comply with applicable laws and regulations may limit

our clients' ability to collect on all or part of their investments, may subject our clients to direct claims asserted by borrowers or counterclaims asserted by borrowers in default. Such factors would result in additional expense or failure to recover principal and interest and have a negative impact on our clients' performance and also result in civil or criminal liability for our clients.

*Expedited Transactions.* Our investment analyses and decisions will generally be undertaken on an expedited basis in order for our clients to take advantage of investment opportunities. The information available to us is limited. Access to material information may not be available to us and could adversely affect our clients.

*Failure to Fund Commitments, Consequences of Default.* If an investor in one of our clients fails to make a capital contribution when due, and any contributions made by non-defaulting investors in such client are inadequate to cover the defaulted capital contribution, such client may be unable to meet its obligations when due. As a result, such client may be subjected to significant penalties that could limit our opportunities for investments with respect to such client, which could materially adversely affect the returns of such client and its investors.

*Investments Longer than Term.* We may make investments that, due to various reasons, may not be capable of an advantageous disposition prior to the date a particular client is required to be dissolved, either by expiration of its term or otherwise. As a result, in such instances, clients may be required to sell, distribute in kind or otherwise dispose of investments at a disadvantageous time as a result of dissolution.

*Inability to Locate and Delay in Making Investments.* The success of our clients is dependent upon our identification of suitable investments. There is no guarantee that we will be able to identify a sufficient number of suitable investments that meet the diversification and investment requirements set forth in the applicable Private Placement Memorandum (and any supplements thereto) or other governing documents and that are in jurisdictions where such arrangements are permitted.

*Transfer of Investments.* Our clients' investments will not be listed on any securities exchange. Our clients must be prepared to hold their investments to maturity.

*Cybersecurity and Reporting Considerations.* Our information, technology and auditing systems and processes may become vulnerable to damage or interruption from computer viruses, network failures, computer and telecommunication failures, infiltration by unauthorized persons and security breaches, usage errors by their respective professionals, power outages and catastrophic events, such as fires, tornadoes, floods, hurricanes and earthquakes. Although we have implemented various measures to manage risks relating to these types of events, if these systems are compromised, become inoperable for extended periods of time or cease to function properly, we may have to make a significant investment to fix or replace them. The failure of these systems and processes and/or of disaster recovery plans for any reason could cause significant interruptions in our or our clients' operations and result in a failure to maintain the security, confidentiality or privacy of sensitive data, including personal information relating to our clients and their investors (and the beneficial

owners of investors), or result in the Investment Manager's ability to timely obtain and provide relevant reports to underlying investors of our clients. Such a failure could harm our reputation, subject us and our affiliates to legal claims and otherwise affect our business and financial performance. The foregoing risks also apply to our service providers, on which we rely to provide relevant information with respect to our clients, including with respect to administration, audit and reporting services.

*Risks Related to Epidemics and Pandemics.* Many countries have become susceptible to epidemics and pandemics, such as severe acute respiratory syndrome, avian flu, H1N1/09 flu and, currently, the coronavirus "COVID-19" which the World Health Organization has declared to be a pandemic. The outbreak of such communicable diseases could result in a widespread health crisis that could adversely affect general commercial activity and the economies and financial markets of many countries. Specifically, disruptions to the operations of the judicial systems, including, but not limited to, court closings or remote hearings may delay or negatively impact borrowers or counterparties of our lending or funding transactions, which in turn may delay or negatively impact our clients' investments. Additionally, our operations could also be affected if some or all our employees were unable to access our offices or remote work systems due to an outbreak of an epidemic or pandemic. None of these conditions are within our control or the control of our clients or the underlying borrowers.

#### **Litigation Debt Finance Risks:**

*Each of the potential risks below relate only to our Litigation Finance Clients.*

*Generally.* The risks of litigation debt finance include the potential regulation or limitation of interest rates and other fees advanced in exchange for the investments made by our clients under U.S. federal and/or state regulation, a change in statutory or case law which limits or restricts the ability of our client as a creditor to collect principal and interest at anticipated levels, claimants being unsuccessful in whole or in part in the claims upon which underlie such investments, and our continued ability to effectively analyze investments in accordance with our applicable investment guidelines.

*Policy Announcements.* The definitive settlement agreements related to the particular civil lawsuits and similar litigation matters in which applicable borrowers are involved may be lengthy and complex. In connection with certain complex settlement agreements, a claims administrator may be appointed to ensure the orderly disbursement of the applicable settlement funds (each, a "***Claims Administrator***"). A Claims Administrator may issue policy announcements setting forth his or her interpretation of a settlement agreement. It is possible that a Claims Administrator could issue a policy announcement severely impairing one or many borrower claims underlying a client's security interest. In addition, it is possible that the level of complexity (and cost) relating to making a successful claim of post-settlement funds will increase if a Claims Administrator issues numerous policy announcements.

*Insufficiency of Funds.* Despite any estimates of aggregate amounts to be paid pursuant to any settlement agreement, there is no guarantee that the relevant defendant will continue to,

or be able to, comply with the terms of the relevant settlement agreement, including the maintenance of a settlement fund out of which claims against the relevant settlement are paid, particularly if the amounts involved are substantial. Furthermore, the actual amount paid under any settlement agreement may be lower than initial estimates. If future payments under such a settlement agreement are less than what we expected, the relevant clients' investments in such claims may be negatively impacted.

*Fee Disputes.* The Litigation Finance Clients' investments are secured in a borrower's right to receive fees from the borrower's clients. In certain instances, co-counsel to the borrower in such lawsuits may dispute the fees due the borrower vis-à-vis such co-counsel. Such fee disputes may impact the clients' collateral and the borrowing law firm's ability to repay under the loan or funding arrangement with the clients.

*Calculation of Damages.* Funds are generally dispersed, if at all, from a settlement by the applicable Claims Administrator. The computation of damages arising under any settlement can become complex. Given the complexity of determining the eligibility of claims and the calculation of damages, a Claims Administrator, as applicable, is expected to exercise significant discretion. Thus, while we expect to conduct significant due diligence with respect to claims underlying our clients' securities interests in loan collateral, it will be difficult for us to predict the outcome of a particular claim.

*Counterparty and Settlement Risk.* Our clients have unsecured credit risks with regard to certain borrowers and other parties with whom they trade or do business and will bear the risk of settlement or other default. Such risk is different materially from those entailed in exchange-traded transactions which generally are backed by clearing organization guarantees, daily marking-to-market and settlement, and segregation and minimum capital requirements applicable to intermediaries. Transactions entered directly between two counterparties generally do not benefit from such protections and expose the parties to the risk of counterparty default. In addition, there may be practical or time problems associated with enforcing our clients' rights to their assets in the case of an insolvency of any such party.

In the event our client's interests may no longer be economically or legally aligned with those of a counterparty, the relationship between our clients (as creditor) and a counterparty (as debtor) can become contentious and adversarial and, potentially, litigious. It is anticipated that our clients' counterparties (generally attorneys and law firms) may use the threat of litigation as a negotiating technique or otherwise avail themselves of the litigation process of which they are inherently familiar, in an attempt to avoid their contractual obligations. Due in part to such factors, we have been named, and anticipate that we and our clients may in the future be named, as defendants in civil proceedings brought by counterparties. The expense of defending against such claims and paying settlements or judgments will be borne by our applicable clients, which would reduce any such client's net assets.

*Risk of Borrower Defaults.* Our expected return on our clients' investments depends on the performance of the borrowers under the corresponding loan or funding arrangement and their ability to successfully run their businesses in a manner sufficient to meet their



contractual obligations. Some borrowers have defaulted on their loans and we expect that some other borrowers will also default on their loans. If a client's portfolio is concentrated in a few investments, its return will depend on the performance of a few borrowers.

*Borrower Operating Risk.* Counterparties who receive proceeds from loans or funding arrangements originated by our clients may fail to successfully operate their business in such a manner as to lead to a successful repayment of the funded amounts. Furthermore, while we generally engage with counterparties with respect to matters that may affect their ability to repay funded amounts, neither we nor our clients have any operational authority over any counterparty or their businesses. As such, counterparties may engage in such activities as malpractice, failure to adhere to professional conduct standards or mismanagement of their business affairs or caseload. Any such activities may lead to a borrower's inability to adequately meet its obligations to our clients, and therefore negatively affect clients' potential returns.

*Fraud.* Some counterparties may set out to defraud lenders like our clients, which could adversely affect our clients' ability to recoup their investment. In addition, borrower applicants may misrepresent their intentions regarding the purpose of a loan or funding arrangement, or other information provided to our clients. There is no assurance that we will detect such fraud, and if undetected, such fraud could adversely affect our clients' performance.

*Incurrence of Additional Debt by Borrowers.* If a borrower incurs additional debt after the date an interest in the applicable loan is acquired by one of our clients, the additional debt may impair the ability of the borrower to make payments on his or her loan and such client's ability to receive its principal and interest payments. To the extent that such borrower has or incurs other indebtedness and cannot pay all of its indebtedness, such borrower may choose to make payments to other creditors, rather than to such client. To the extent a borrower incurs other indebtedness that is secured and our clients' investment is unsecured, the ability of the secured creditors to exercise remedies against the assets of such borrower may impair such borrower's ability to repay our client's investment. Borrowers may also choose to repay obligations under other secured or unsecured indebtedness before repaying our client's investment even when it is secured due to differences in interest rates, maturity dates or other loan terms, regardless of whether such repayment is permitted, which will directly and adversely impact our clients' investments and, additionally, may indirectly and adversely impact our clients' investments by requiring the incurrence of additional enforcement costs to maintain the client's rights as a secured creditor.

*Locating and Delay in Making Litigation Financing Investments.* While we or third parties retained by us do conduct due diligence prior to the making of investments, there is no guarantee that the investments held in our clients' existing portfolios will meet the diversification and investment requirements set forth in the applicable Private Placement Memorandum (and any supplements thereto) or other governing documents.

Initial and/or future investments in litigation financing indebtedness may be delayed or made at a relatively slow rate because, among other things:

- we intend to conduct due diligence prior to investing;
- attractive debt may not be identified or available at the rate we currently anticipated due to competition from other investors or other factors; and
- only indebtedness relating to claims in jurisdictions where we reasonably believe that such arrangements will not breach applicable laws, rules, or regulations will be considered.

It may therefore take a significant amount of time to invest our clients' capital fully and a significant proportion of capital contributions may not be invested for an extended period. We cannot predict how long it will take to deploy our clients' capital, if at all. We are not obligated to invest or return any capital contributions prior to the end of the applicable investment period.

*Length of Claims Processing Period.* There is no definitive timeline for issuance of notices of eligibility by a Claims Administrator generally, or with respect to any particular post-settlement claim. We estimate that, as settlement agreements are established and, as applicable, Claims Administrators are appointed, the post-settlement claims of borrowers may take up to one or more years to be processed in full, but that a majority will be processed within a much more expedited time frame. However, there is no guarantee that such estimates will be accurate. If the actual processing period is longer than we expected, our relevant clients' returns may be negatively impacted.

*Appellate Uncertainty.* Certain clients' investment strategies require an evaluation of the outcome and timing of a claims resolution process. Regardless of the amount of research and other due diligence that may be performed, predicting the outcome of claim resolution and subsequent appellate litigation or other dispute resolution processes is inherently uncertain and depends on a variety of circumstances that may be unrelated to the legal merits of the substantive claims of the parties, including uncertainty regarding the application of law to particular facts, disputed factual records and testimony, unforeseen procedural issues including likely appeals of claim determinations, uneven quality of advocacy, misapplication of settled law by appeal panels, or settlement dynamics in which the motivations of the parties may be unrelated, in whole or in part, to the merits of the dispute. Pending appeal, the claimant (*i.e.*, a borrower's client) will not be paid (and thus the borrower may not be paid). Even if the claim underlying client collateral is ultimately successful, a lengthy appeals process may hinder the borrower's ability to pay the loan and is likely to reduce a client's ability to collect. As a result such client's return may be negatively affected.

*Ethics and Legal Restrictions.* Due to legal and professional ethics consideration, there have historically been a limited number of investment opportunities in the area of claims purchase or litigation debt financing in the U.S. and elsewhere. These include restrictions on assignment of certain kinds of claims, and ethical restrictions on participating in a

lawyer's contingent fee interests (including ethical rules against sharing fees with lawyers and non-lawyers). A number of states will not, for legal and professional ethics reasons, permit persons to make investments in litigation and arbitration cases either directly or through loans to law firms and accordingly we will not be able to make investments on behalf of our clients with respect to claims relating to such states, thereby limiting the number of potential investments we can make.

In many jurisdictions, investment in and syndication of rights to the proceeds of legal claims is a novel concept which has not been considered by the courts or addressed by statute. In certain jurisdictions, such as California, while no binding court decisions specifically disapprove of the practice, a court may still decline to enforce such arrangements if, for example, there is an indication that a non-party to a claim is in any way controlling the prosecution of that lawsuit, or if it appears that a non-lawyer is unlawfully engaged in the practice of law, or if the arrangement otherwise offends the public policy of the jurisdiction.

For our clients' investment activities, we intend to rely on legal counsel for purposes of compliance with applicable laws and regulations of the relevant jurisdictions as they apply to the financing arrangement(s) in question. Despite reliance on legal counsel, there is no assurance that our clients' investments will not be open to challenge, subsequently reduced in value or extinguished in their entirety.

Changes in laws, rules or regulations in jurisdictions where these restrictions currently do not apply could further reduce or limit our opportunities to make investments on behalf of our clients as envisaged or could result in the diminution or extinction of the value of our clients' investments related to such jurisdictions.

*Investment in U.S. Federally-Registered Intellectual Property Claims.* The scarcity of case law addressing the legality of investing in and assigning U.S. federally-registered intellectual property claims leaves considerable uncertainty as to the propriety of investments relating to such claims in U.S. jurisdictions. Certain courts have voided such arrangements in cases involving U.S. federally-registered intellectual property claims as champertous (meaning the intermeddling of a disinterested party to encourage a lawsuit). Accordingly, there is a risk that a court could find that the claims underlying an investment held by one of our clients relating to a U.S. federally-registered intellectual property claim (or any other claims) champertous and render the investment void.

*Lender Registration.* Lending is subject to extensive regulation at both the U.S. federal and state level. Despite our belief that our clients' investments are and should be characterized as "business loans", a U.S. federal or state regulator or court may nonetheless characterize such investments as "consumer loans". If one of our clients were considered to be engaged in consumer lending without the appropriate registrations and licenses, it would become subject to significant regulatory restrictions and potential penalties for noncompliance.

*Bad Case Selection.* The profitability of our clients' portfolios is dependent on the outcome of the cases and claims underlying their investments. We will only have access to public filings and non-privileged information pertaining to these cases or claims. There can be no guarantee that cases and claims underlying the collateral of the investments in which our

clients invest will be successful or will pay the returns we have targeted. If any of the cases, claims or disputes underlying the investments in which our clients invest are unsuccessful or produce investment returns below those we expected, the value of such investments could be materially adversely affected.

*Settlement Agreement Proceeds Collection Risks.* The profitability of certain of our clients' portfolios is dependent on the ability of borrowers to collect proceeds from their client(s). Part of our selection process for client investments involves an assessment of the ability of the opposing party to pay a judgment or award or pursuant to a settlement agreement if the underlying case is successful. If the opposing party is unable to pay or seeks to challenge the validity of the investment on legal or professional ethics grounds, clients may encounter difficulties collecting proceeds from such investment. In addition, we may not have all information pertaining to the relevant cases or claims related to a settlement agreement, and there can be no guarantee that borrowers will be successful in their collection of settlement proceeds. If any of the parties to a settlement agreement underlying such clients' collateral on loans to borrowers breaches the settlement agreement or fails to perform under the settlement agreement, the borrower's ability to collect from its client(s) the proceeds to which it is entitled and the value of such clients' investments could be materially adversely affected. Furthermore, an investment's interest rate could be challenged by a borrower and, if successful, will result in such interest payments being unenforceable or reduced.

*Evaluation and Disclosure of Cases and Case Performance.* Certain details of actual cases underlying an investment may not be disclosed to us, our clients or the applicable feeder fund investors. Any such sharing of confidential information protected by attorney-client privilege or by attorney work-product doctrine could waive all protection of that information. Such waiver could severely damage the value of the underlying claim by giving the opponent access to sensitive information. Such sharing could also make discovery from the adverse party problematic as most discovery is covered by court-issued protective orders that ensure the confidentiality of all parties. A breach of a protective order could subject a party to serious sanctions that would impact the value of the underlying claim.

In some instances, case settlements and case prospects will be confidential and/or subject to attorney-client privilege. Accordingly, we will not be able to evaluate all relevant information regarding cases underlying our clients' investments.

*Financing Expenses Unrelated to Collateral.* We expect proceeds of loans issued to borrowers to generally be used to finance or refinance business expenses of the civil lawsuits or similar litigation matters directly related to the legal cases the proceeds of which are serving as collateral to such loan proceeds (or, as applicable, settlement agreements serving as collateral to such loan proceeds). However, borrowers may not be obligated to use loan proceeds exclusively in such a manner. Thus, borrowers may use loan proceeds to finance or refinance general business expenses, including their expenses related to civil lawsuits or similar litigation matters that are unrelated the legal cases the proceeds of which are serving as collateral to such loan proceeds (or, as applicable, settlement agreements serving as collateral to such loan proceeds). In such instances, because the borrower's use of loan proceeds is not strictly limited to funding its expenses related to the settled cases or

other legal cases the proceeds of which are serving as the loan collateral, the borrower could be less incentivized to use its resources to pursue those settled cases, thereby potentially reducing the probability of recovering fees from the matters serving as collateral. We believe this risk is tempered by the borrower's general interest in collecting its fees from such settled cases.

*Past Performance of Borrowers May Not Accurately Predict Performance of Investments.* We will typically rely on past performance of borrowers, among other factors, as part of our due diligence process. However, prior performance is not an accurate predictor of the likelihood of an investment's repayment and there can be no assurance that we will be able to implement our investment strategy, achieve targeted results or avoid losses.

*Due Diligence Risks.* In making an investment assessment and otherwise conducting customary due diligence, we will rely on resources available to us. There can be no assurance that our due diligence process will uncover all relevant facts or that any investment will be successful. Although we will have access to the written settlement agreements indirectly provide the collateral for our applicable clients' loans to borrowers, certain details of settlement agreements underlying an investment may not be disclosed to us.

The underlying cases or, as applicable, the settlement agreements which our clients finance may be unsuccessful, take considerable time (whether because of appeals or otherwise) or result in a distribution of cash, new security or other assets, the value of which may be less than the investment made by our clients. It may not be possible to dispose of or otherwise realize a return on any such security or other asset received for legal or professional ethics reasons. Our client may incur additional costs in effecting a disposal of or realization on any such security or other assets. Each of these matters could have a material adverse impact on the anticipated value of such investment.

*Concentration Risk.* There are no specific parameters on the level of investment in any one borrower or types of cases underlying a borrower's loan. However, we monitor our clients' exposure to borrowers and loan types and impose exposure limits it believes are appropriate to manage the clients' exposures in light of total assets. The impact on a client's performance and the potential returns to investors will be more adversely affected if the investments we make on behalf of a client perform badly than would be the case if such client's portfolio of investments were more diversified across borrowers or types of underlying cases.

*Legal Professional Conflicts.* Our clients' borrowers have duties to their clients which include independent judgment, client confidentiality and the rules relating to attorney-client privilege. The borrowers to whom our clients make investment will, with respect to all legal professional representations, owe overriding duties to their clients. Circumstances may exist in which borrowers are required to act in accordance with duties contrary to the objectives of our clients.

*Public Disclosure Obligations.* The clients may be required to disclose confidential information relating to their investments and their financial results to third parties that may

request such information if and to the extent required by federal, state or local law or regulation applicable to the clients or any of their limited partners, including those limited partners that are public agencies or governmental bodies. There can be no assurance that such information will not be disclosed either publicly or to regulators, or otherwise. In addition, in order to comply with regulations and policies to which we, the clients, Virage LLC (in its capacity as the general partner of the clients), the borrowers or service providers (including financial institutions) are or may become subject, or to satisfy regulatory or other requirements in connection with transactions, we, the clients or Virage LLC may be required to disclose information about the limited partners, including their identities. Such disclosure obligations may adversely affect certain limited partners, particularly limited partners who are not otherwise subject to public disclosure of information relating to the private holdings of funds in which they invest.

*Need for Follow-on Investments.* Following their initial investment with certain borrowers, the clients may provide additional funds to such borrower. There is no assurance that the clients will make follow-on investments or that the clients will have sufficient funds to make all or any of such investments. Any decision by us on behalf of a client not to make follow-on investments or a client's inability to make such investments may have a substantial negative effect on the litigation in need of such an investment or may result in a lost opportunity for such client to increase its participation in a successful case.

*Tort Reform Efforts and Changes in Mass Tort Litigation Rules.* An array of interest groups continues to seek to enact tort reform. If enacted, such reform may have a material adverse effect on the clients, by reducing or limiting the amount of tort awards available for the clients to finance. Any changes to law, regulation, the legal environment, the economic environment, industry conditions or otherwise, which impact potential borrowers' ability to bring mass tort claims, could have a material adverse effect on the clients. For example, plaintiff law firms involved in mass tort litigation often have significant capital requirements as such law firms may incur substantial case-related expenses in advertising, research/medical review, expertise and other third-party expenses. In the event that changes in law and related regulations limit a law firm's ability to advertise in respect of mass tort cases, or place limits on the types of experts that may be retained (and for which law firms incur substantial fees), law firms may require less capital in respect of mass tort litigation, which could adversely affect the clients' ability to obtain investment opportunities.

### **Medicare Secondary Payer Act Claims**

*Each of the potential risks below relate only to the Recovery Fund.*

*Investing in Claims Generally and Regulatory Risk.* The Recovery Fund's primary investment strategy is to invest in Claims. Accordingly, the success of the Recovery Fund is dependent on successful assignment and recovery of Claims. As explained below and in the Recovery Fund's private placement memorandum, the assignment and recovery of claims, especially by court action, involves risks that could have a material adverse impact on the Recovery Fund and its investments, such as a complete or partial loss of it investments, including, but not limited to, the ability of an assignor to assign a Claim (and related recovery rights); the existence and scope of a right in favor of assignors, or their

assignees, to recover conditional payments under the Medicare Secondary Payer Act; the availability and scope of an assignor's right to bring a cause of action for recovery; statutory, regulatory or case law changes to the Medicare Secondary Payer Act or the CMS Regulations; the validity and timeliness of underlying Claims; and the outcome of lawsuits filed against responsible parties. Industry experts may disagree with some of our projections, estimations and assumptions related to the Medicare Secondary Payer Act and applicable regulations relied upon in our preparation of the Recovery Fund's investment strategy and program.

*Claims Risks.* The Recovery Fund's investments in Claims through the Investment Vehicle have uncertainties and are considered speculative. Each investment in a Claim is contingent in part on the ability to identify a Claim and recover under such Claim. Further, return of capital or realization of gains from recovery under Claims may not occur for a number of months or years after an investment in any given Claim is made. Each underlying investor must be prepared to bear the economic risk of an investment for an indefinite period of time. If the Investment Vehicle fails to identify a Claim or fails to recover under one or more Claims, the Recovery Fund will not receive payments on such Claims, and, therefore, it is expected that the Recovery Fund will not receive payments on all of its investments.

*Novel Theories of Recovery.* We expect counsel to consistently assert aggressive and novel legal positions and theories with respect to the recovery of Claims. Given the unsettled state of the law with respect to the assignment and recovery of Claims, there can be no assurance that the legal positions and theories MSP Recovery Law Firm (or co-counsel) asserts in its efforts to recover Claims will be successful or validated by the courts. Such efforts include, but are not limited to, its recovery efforts that consist of making pre-suit demands for reimbursement or filing court actions to recover payments. Further, in addition to asserting statutory and regulatory theories for recovery under the Medicare Secondary Payer Act and related regulations, MSP Recovery Law Firm (or co-counsel) may also assert other legal theories in its efforts to recover claims, including, but not limited to, right to charge claims and applicable state or federal contract and consumer protection law claims. It is also uncertain to what extent such right to charge claims and state or federal contract and consumer protection law claims will be successful or validated by the courts. There is a risk that the MSP Recovery Law Firm (or co-counsel) will partially or wholly be unable to recover Claims.

*Claims Fraud.* Of concern in investing in Claims is the possibility of material misrepresentations or omissions on the part of an assignor of a Claim, underlying beneficiary or other counterparty (e.g., some Assignors may set out to defraud investors like the Recovery Fund). For example, an Assignor may misrepresent the quality, validity or existence of a Claim or other information provided to us. There is no assurance that we will detect such fraud and any inaccuracy or incompleteness, if undetected, may adversely affect the valuation of one or more Claims and adversely affect the Recovery Fund's performance. Under certain circumstances, distributions to the Recovery Fund's feeder funds may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance.

*Health Care Fraud.* There are a number of state and federal fraud and abuse laws, such as the federal Health Care Fraud Statute found at 18 U.S.C. § 3729, that are intended to protect

the integrity of the federally regulated health care system of which the Medicare Secondary Payer Act mechanism is a part. There is a risk that Claims recovery efforts, such as demands to responsible parties, could trigger enforcement action based on novel theories under such fraud and abuse laws or could result in legislative or regulatory oversight, scrutiny or other action. For example, at least one court has found that automobile insurers are a “health care benefit program” under the federal Health Care Fraud Statute. Therefore, there is a risk that any demand for payment from an automobile insurer under arguably “false or fraudulent pretenses, representations, or promises,” such as, potentially, a claim for more than is owed, could arguably trigger liability. Any violations or allegations of violations (regardless of the veracity of such allegations) of these fraud and abuse laws, or any increased government scrutiny of issues related to Claims recovery efforts, could materially adversely affect the Recovery Fund’s Claims recovery efforts, such as due to changes in law or the potential imposition of civil fines or criminal penalties, which could result in complete or partial loss of investments.

*Limitations.* Generally, a statute of limitations establishes a time limit for a plaintiff to file a lawsuit, after which a lawsuit may become time barred and a defendant may assert such statute of limitations as a defense. All Claims will generally be subject to one or more such limitations periods (depending on the legal theories pursued). There is a risk that the Recovery Fund may be unable to recover on certain Claims due to the applicable limitations period expiring prior to or shortly after the acquisition of such Claims or prior to a court action being filed with respect to such Claims. Furthermore, there may be uncertainty with respect to the length of the applicable limitations time period for certain Claims. To the extent Claims are time barred or responsible parties under Claims otherwise successfully assert statute of limitations defenses against court actions filed to recover Claims, the Recovery Fund may be partially or wholly prevented from recovering on such Claims, and the underlying feeder fund may lose some or all of its investments.

Under the Medicare Secondary Payer Act, the United States must file a complaint with respect to a payment owed within 3 years of the date of the receipt of notice of a settlement, judgment, award or other payment made. While it is not settled that this limitations period applies to Medicare Secondary Payer Act claims filed by Claim assignors or other non-governmental parties, to the Investment Manager’s knowledge, the only courts to address this issue are the United States District Court for the Eastern District of Louisiana and the United States District Court of Appeals for the Eleventh Circuit. Both courts concluded the 3 year statute of limitations found in 42 USC § 1395y(b)(2)(B)(iii) would apply via borrowing to a private cause of action under the statutory theory of recovery in 42 USC § 1395y(b)(3)(A) of the Medicare Secondary Payer Act.

To the extent Claims are pursued under alternative theories, such as breach of contract, subrogation, tort or other theories of recovery grounded in state or federal statutory, regulatory or common law, various other state and federal statutes of limitations, with varying limitations periods, may also apply to Claims and such corresponding theories of recovery. Moreover, even when the length of an applicable limitations period is known for a given Claim, additional uncertainty may exist with respect to when such limitations period expires based on uncertainties. These uncertainties include determining when a Claim accrued, whether the accrual date can be deferred, whether a limitations period can be tolled, whether a defendant can be estopped from asserting the defense of limitations, whether a



statute of repose cuts off a plaintiff's right to bring an action, or whether a claim is subject to other relevant legal doctrines, such as laches. For example, the United States federal courts generally hold that a non-jurisdictional limitations period may be tolled under equitable circumstances and a defendant's limitations defense may be subject to forfeiture or waiver. Accordingly, there is a risk that we may not be certain of, or a court may disagree with our belief with respect to, the length of the applicable limitations time period for certain Claims and the date when such limitations period expires.

*Dispute Resolution Uncertainty.* Substantially all of the Recovery Fund's assets are intended to be invested in the purchase and recovery of Claims through the Investment Vehicle. The Recovery Fund's investment strategy requires an evaluation of the outcome and timing of the Claim recovery process. Regardless of the amount of research and other due diligence that may be performed, predicting the outcome of any given Claim's dispute resolution process (including litigation and subsequent appeals) is inherently uncertain and depends on a variety of circumstances that may be unrelated to the legal merits of the substantive claims of the parties, including uncertainty regarding the application of law to particular facts, disputed factual records and testimony, application of a statute of limitations, unforeseen procedural issues including likely appeals of Claim determinations, uneven quality of advocacy, misapplication of settled law by appeal panels, or settlement dynamics in which the motivations of the parties may be unrelated, in whole or in part, to the merits of the dispute. Pending dispute resolution, the Recovery Fund will not be paid. Even if the underlying Claim is ultimately successful, a lengthy appeals process may hinder or reduce the Recovery Fund's ability to collect on the Claim. As a result, returns may be negatively affected.

*Priority.* The Recovery Fund intends to invest in Claims, a type of claim for the recovery of payment. These types of claims are typically unsecured, will be subordinated to secured obligations of a debtor and may be subordinated to other unsecured obligations of a debtor. The repayment of these claims and rights is subject to significant uncertainties. The Recovery Fund's investments in Claims through the Investment Vehicle may also entail special risks including, but not limited to, fraud on the part of the assignor of the Claim as well as logistical and mechanical issues which may affect the ability of the Investment Vehicle or its agents to collect the Claim in whole or in part.

*HIPAA.* The Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act of 2009 (together with their implementing regulations, "**HIPAA**") create certain privacy, data security, and data breach notification obligations for HIPAA covered entities, including health plans like the Assignors and their business associates. HIPAA is a highly technical area of law that governs the disclosure of protected health information ("**PHI**"), including the disclosure of PHI to the Recovery Fund (or certain other person in the investment structure) to identify Claims. HIPAA provides for certain mandatory contracting obligations, and limits the purposes for which PHI may be used or disclosed. HIPAA generally prohibits the sale of PHI, limits to the minimum amount necessary disclosures of PHI for an intended purpose, and requires reasonable and appropriate administrative, physical, and technical safeguards be undertaken to protect the privacy and security of health information. Failure to comply with HIPAA the Recovery Fund (or certain other person in the investment structure) suffers a data breach or other unauthorized use or disclosure of PHI, it could trigger mandatory

notification to the Claim assignor, the affected individuals, and the U.S. Government, and may require public notice. In addition to regulatory audits or material regulatory penalties, a data breach could negatively affect the Investment Vehicle's good will, and may reduce the number of participating Claims or Claims assignors, which could negatively affect the performance of the Recovery Fund.

We encourage our investors to consider all of the risk factors we have explained, in addition to those we provide in the Private Placement Memoranda and other governing documents of our feeder funds of our clients, as any investment can be risky and investors must be prepared to assume any potential loss.

## **Item 9: Disciplinary Information**

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Neither our firm, nor any of our managers, officers or principals has been involved in any investment-related criminal actions in a domestic, foreign or military court that would be material to an evaluation of our firm's advisory business or the integrity of our firm's management.

On April 3, 2020, the California Department of Financial Protection and Innovation (formerly, the Department of Business Oversight of the State of California) revoked the license of Virage Master LP under the California Financing Law due to an administrative oversight involving a delayed annual filing. On May 13, 2020, the license was reinstated pursuant to a consent order and payment of a \$6,500 administrative penalty.

Other than the matter described above, neither our firm, nor any of our managers, officers or principals has been involved in any administrative proceedings before the Securities and Exchange Commission, any other federal regulatory agency, any state regulatory agency or any foreign financial regulatory authority that would be material to an evaluation of our firm's advisory business or the integrity of our firm's management. Neither our firm, nor any of our managers, officers or principals has been involved in any self-regulatory organization proceedings that would be material to an evaluation of our firm's advisory business or the integrity of our firm's management.

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

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Neither our firm, nor any of our managers, officers or principals is registered as a broker-dealer or a representative of a broker-dealer or has an application pending to register as a broker-dealer or a registered representative of a broker-dealer.

Neither our firm nor any of our managers, 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.

### Relationships with Pooled Investment Vehicles

Our firm and our affiliate, Virage LLC, have sponsored eight private investment funds that we manage and to which Virage LLC serves as the general partner. In addition, our firm and our affiliate, Virage Recovery LLC, has sponsored the Recovery Fund, also a private investment fund that we manage and to which Virage Recovery LLC serves as the general partner.

Our clients do not have independent management, although our offshore feeder funds have a majority of independent directors on their boards of directors. Although this arrangement generally gives us heightened control and discretion over our clients, we manage any potential conflicts of interest by adhering to the investment strategy and investment allocation policy discussed in their Private Placement Memoranda or other governing documents.

In addition, Virage LLC and Virage Recovery LLC, as our clients' general partners, entered, respectively, into each investment management arrangement with our firm. While these can be considered interested party agreements, the material terms of each investment management arrangement are fully disclosed to all investors in the client prior to their investment.

Virage LLC and Virage Recovery LLC are each owned by Edward Ondarza and Martin Shellist. Neither of the foregoing persons is obligated to devote any specific amount of time to the general partner of our clients and our firm.

### Relationships with Lawyers or Law Firms

Martin Shellist is a founder, Principal, Managing Director and Head of Legal Review responsible for legal asset analysis for our firm. He is also a founder and Principal of Virage LLC. Mr. Shellist is also a founding partner of the law firm Shellist Lazarz Slobin, LLP, where he has been a managing partner since March 1994. Although Mr. Shellist expects to continue managing his existing docket of cases and cases of other lawyers in his law firm during his service for our firm, he does not intend to take on new matters and will retain only limited managerial duties with respect to Shellist Lazarz Slobin, LLP during his services for our firm. Mr. Shellist is not obligated to devote any specific amount of time to the affairs of our clients and is not required to accord exclusivity or priority to our clients. Furthermore, while our clients are prohibited from making investments related to claims or cases administered by Shellist Lazarz Slobin, LLP attorneys, Mr. Shellist or other Shellist Lazarz Slobin, LLP attorneys may be engaged in certain legal matters that may conflict with the interests of our clients or their investments or prohibit us from making certain investments on behalf of our clients entirely.

We do not recommend or select other investment advisers for our clients.

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

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As an investment adviser, our firm stands in a position of trust and confidence with respect to our clients, our investment funds. Our firm has a fiduciary duty to place the interests of our client funds before the interests of our firm and our firm's employees and must not subordinate the interests of our client funds to those of our firm and our firm's employees, subject to our clients' informed consent (which may require the client fund investors' informed consent) of any material conflicts of interest. All of our personnel must put the interests of our clients before their own personal interests and must act honestly and fairly in dealings with our clients. All of our personnel must also comply with all federal and other applicable securities laws.

To promote our fiduciary duties and legal obligations, our Code of Ethics contains policies regarding gifts and entertainment, outside business activities, political contributions, reporting violations and disciplinary action. We will provide a copy of our Code of Ethics to any client, or investor in a client, or prospective client or prospective investor upon request.

As part of our Code of Ethics, we have adopted a personal trading policy requiring all of our employees to disclose all holdings in personal accounts and all personal securities transactions in a timely manner.

Our portfolio managers will occasionally, under exceptional circumstances, determine that it is in line with certain clients' investment strategies and in the best interest of our clients to have one client purchase a security from another client that is selling the same security, otherwise known as a "cross trade." Cross trades may create conflicts of interest because they are not independently negotiated and may provide an opportunity for an investment adviser to collect related commissions. However, we do not take any commissions or fees in connection with effecting cross trades between our clients. Our chief compliance officer must approve all cross trades in advance.

Our personnel invest their personal funds in our clients, and other unaffiliated private funds, and, therefore, hold the same securities as the investors in our clients. As described above and further in our Code of Ethics, we have established procedures designed to limit conflicts of interest in cases where our employees may buy or sell, for themselves, securities that we recommend to our clients.

Our Code of Ethics prohibits our employees from actively buying or selling securities for their own accounts securities that we are currently recommending that our clients buy or sell.

## **Item 12: Brokerage Practices**

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We have complete investment and brokerage discretion over our clients' accounts. Currently, we do not utilize any brokers or dealers to execute, settle or clear securities transactions. In selecting broker-dealers and determining the reasonableness of their commissions for our clients' transactions in the future, we will consider the following factors, among others:

- a broker-dealer's quality of execution,
- a broker-dealer's ability to effect the transaction,
- a broker-dealer's trading expertise and volume,
- a broker-dealer's facilities,
- a broker-dealer's reliability,
- a broker-dealer's reputation, financial responsibility and stability,
- a broker-dealer's willingness and ability to commit capital,
- the nature and extent of a broker-dealer's customer service,
- a broker-dealer's general responsiveness,
- a broker-dealer's access to underwritten offerings and secondary markets,
- any research-related services and equipment provided by a broker-dealer, and
- the overall cost of a trade, including commissions.

If we determine, in good faith, that any commissions a broker charges or the prices a dealer charges are reasonable in relation to the value of services that we and our clients receive, our clients may pay commissions or prices that are greater than those another broker or dealer might charge.

We do not utilize research or other "soft dollar" benefits provided by brokerage firms and do not currently intend to do so in the future.

Because we do not currently engage in soft dollar arrangements, we do not have any procedures to direct client transactions to broker-dealers in return for soft dollar benefits.

Because we do not currently utilize any securities brokers or dealers, we do not consider referrals in selecting or recommending broker-dealers.

As all of our clients are private investment funds that we manage, we will select all broker-dealers for our clients, if any.

#### Trade Aggregation and Allocation – Litigation Finance Clients

Because our clients within the same master fund family (i.e., each series of Virage Master LP, a "**VCP Client**") generally follow the same investment strategy, they tend to participate in the same types of investment opportunities. If an investment opportunity is too large for a single

client based on its available capital, it will be allocated to the next client in the rotation within such client's master fund family.

If there is more than one client with available capital to invest, and the investment opportunity is for less than \$2 million for VCP Clients, each such transaction will be allocated to the VCP Client with capital to invest sequentially by series number, in the order the transactions are executed. Such rotation sequence will occur for all executed transactions until the relevant investment opportunity has been fully allocated. If all the transactions cannot be completed during a single calendar day, the allocation process will resume the next day beginning with the next relevant client in the allocation sequence.

If a transaction is \$2 million or more and more than one VCP Client has capital available to invest, the VCP Clients will co-invest in the opportunity, normally by each VCP Series investing through a special purpose vehicle or other means of participation (*e.g.*, a participation agreement with a special purpose vehicle). The amount each VCP Client will invest is determined by dividing the aggregate investment amount by the number of participating VCP Clients. If the investment amount is too large for any participating VCP Client, that VCP Client will invest its maximum permissible amount and the balance will be divided evenly between the remaining VCP Clients until the total investment required is committed.

#### Loan Refinancing and Allocation of Repayments

From time to time borrowers have refinanced an existing loan (or consolidated multiple loans) or increased funding under an existing loan, and borrowers may do so in the future. In such circumstances, we view the refinancing, consolidation or increased funding as a new investment opportunity, conduct additional underwriting (which may involve additional borrower collateral, certain changes to the terms of the existing loan or other considerations) and apply the investment allocation policy described above. In certain instances at our and the relevant borrower's discretion, a refinanced or consolidated loan may result in "legacy interest," *i.e.*, previously accrued interest that is not capitalized and included in the principal amount of the resulting new loan, but rather is immediately accrued and outstanding at the inception of such new loan for the sole benefit of the original participating VCP Client, which may result in the pro rata ownership of the total outstanding interest being in a different ratio than the ownership of the principal amount, as described in more detail below.

A refinancing, consolidation or incremental funding is typically achieved by a borrower's existing loan (or loans) being amended and restated, consolidated, or replaced by a new loan for the additional loan amount. When this occurs, a VCP Client that was a participant in the original loan (or loans) could have a participation percentage in such new loan that is lower than its participation percentage in the original loan (or loans). However, the total capital exposure and anticipated interest generated from such client's original investment will not decrease (and, in the instance where interest is capitalized, the anticipated interest generated will increase). For example, for those such clients that have existing exposure to a loan but no available capital for the increased funding or refinancing of such loan, such client's relative share of the aggregate exposure to such loan of all clients will decrease because its participation percentage in the total loan has decreased, but the amount of capital at risk and earning interest generally does not, and may even increase (accrued interest at the time of

such transaction is typically capitalized, other than in the case of “legacy interest,” as described above). Any transaction that would result in one VCP Client replacing another client’s entire exposure to a loan is expected to be rare. The consummation of any such transaction would require that it be in the interests of both participating clients (with any additional disclosure and investor approvals as may be deemed necessary) to participate in such transaction.

Our repayment allocation policies and procedures govern the repayments made to the multiple clients co-investing in a loan (through a special purpose vehicle or otherwise). For any loan that is owned by more than one client, interest payments on such loan are allocated pro rata to the relevant clients based on each such clients’ allocable portion of the total outstanding interest attributable to the loan. This amount will equal the ownership percentage of the original principal amount originated for such loan (as opposed to just the interest on the loan), unless there is “legacy interest” attributable to the loan. In cases involving legacy interest, because the interest payments on the loan will be allocated pro rata based on total outstanding interest (i.e., legacy interest and accrued interest), the clients entitled to the legacy interest will be instead allocated a larger relative portion of such interest payments so that all clients participating in the loan will receive payment in full of their outstanding interest at the same time (as opposed to allocating the interest payments on a pro rata basis based strictly on the percentage of the loan owned by each VCP Client, which would result in a client not entitled to any legacy interest receiving payment in full of its outstanding interest first).

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

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We maintain comprehensive review procedures for the ongoing monitoring of portfolio investments. In connection therewith, we typically conduct monthly reviews of all investments held by our clients. All investment and operational staff participate in the ongoing monitoring of the client’s portfolios, although responsibilities vary by individual.

We frequently monitor portfolio investments for events that have a material impact on our original investment thesis. Any change to an investment thesis necessitates a review by the managers of the merits of the investment. Changes in valuation and underlying borrower fundamentals will generally trigger a review by portfolio managers. Investors in all of our clients receive written monthly statements that contain performance information for the applicable feeder fund and audited written annual reports. In addition, investors generally also receive unaudited written monthly reports of the performance of the feeder fund in which they have invested.

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

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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.

Our firm does not, nor do any principals or employees of our firm, compensate anyone for client referrals.

## **Item 15: Custody**

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While it is our firm's general practice not to accept or maintain physical possession of any of our clients' assets, we are deemed to have custody of their assets under Rule 206(4)-2 of the Investment Advisers Act of 1940, as amended, because we have the authority to access clients' funds and deduct fees and expenses from clients' accounts.

In order to comply with Rule 206(4)-2, we utilize the services of a bank to hold all cash for our clients' accounts. We also ensure that the bank maintains these funds in accounts that contain only clients' funds or assets. Our clients do not possess certificated securities. However, we utilize the services of a qualified custodian (as defined under Rule 206(4)-2) to maintain custody of all of our clients' assets, and expect to use such qualified custodian to maintain custody of all of our clients' assets in the future. We also ensure that the qualified custodian maintains these assets separately from other assets held by the qualified custodian. In accordance with Rule 206(4)-2, with respect to our clients and, potentially, with respect to new clients in the future, we also (1) engage an outside auditor that is registered with, and subject to inspection by, the Public Company Accounting Oversight Board (PCAOB) to audit our clients at the end of each fiscal year and (2) distribute the results of the audit in audited financial statements to all investors in our clients within 120 days after the end of the fiscal year.

## **Item 16: Investment Discretion**

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### Scope of Authority

Our firm accepts discretionary authority to manage our clients' securities accounts. Essentially, this means that we have the authority to determine, without obtaining specific client consent, which securities to buy or sell and the amount of securities to buy or sell. Despite this broad authority, we are committed to adhering to the investment strategy and program set forth in each of our clients' Private Placement Memorandum or other governing documents.

### Procedures for Assuming Authority

Before accepting their subscriptions for interests, we provide all investors in our clients with a Private Placement Memorandum or other 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 client funds, investors give us complete authority to manage their investments in accordance with the Private Placement Memorandum and governing documents they each received.



In addition, under investment management agreements with each client fund, all of our clients have granted our firm full power of attorney over their assets, which gives us the right to pursue their investment programs at our full discretion and all rights, privileges and powers of ownership with respect to their assets.

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

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Even though we have complete authority to manage our clients' investments, which would include the authority to vote proxies, our clients do not typically receive proxy solicitations due to the nature of their investments.

Should we ever need to vote a proxy for one of our clients, our policy is to vote proxies solely in the interests of our clients. If any of our clients make investments which would cause them to receive proxies, we would not allow them (or their investors) to direct our vote. Generally, we believe that a company's management is best suited to make decisions that are essential to the ongoing operation of the company. Therefore, we would generally vote proxies in line with a company's management. However, under certain circumstances, if we believe that management's proposal is not designed to maximize value for our clients, we will vote against management.

If we believe that a conflict may exist between our firm or any of our employees and our client in connection with voting a client's securities, we will engage a third-party voting firm to make the vote on behalf of the client.

Upon request, any of our clients or any of the investors in our clients can obtain (1) a copy of our proxy voting policies and procedures and (2) information concerning proxy votes on its behalf (if applicable).

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

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We do not require nor do we solicit prepayment of more than \$1,200 in fees per client, six months or more in advance.

We are not aware of any financial condition that is likely to impair our ability to meet our contractual commitments to our clients.

Our firm has never been the subject of a bankruptcy petition.