

## Item 1 – Cover Page



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

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Form ADV Part 2A (the “Brochure”) provides information about the qualifications and business practices of X Cubed Capital Management LLC. If you have any questions about the contents of this Brochure, please contact us at (612) 756-6353 or X3cmllc.com. The information in this Brochure has not been approved or verified by the United States Securities and Exchange Commission (“SEC”) or by any state securities authority.

X Cubed Capital Management LLC is an investment adviser that registered with the SEC under the Investment Advisers Act of 1940, as amended (the “Advisers Act”). Registration of an investment adviser does not imply any level of skill or training.

Additional information about X Cubed Capital Management LLC also available on the SEC’s website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

The delivery of this Brochure at any time does not imply that the information contained herein is correct as of any time subsequent to the date shown above. The information set forth herein is qualified in its entirety by reference to applicable offering and governing documents. In the event of a conflict between the information set forth in this Brochure and the information in the applicable governing and/or offering documents, the governing and/or offering documents shall control.

## **Item 2 - Material Changes**

This section of the Brochure addresses “material changes” that have taken place since the initial Brochure filing and will be posted to the SEC’s public disclosure website (IAPD). The Adviser’s initial filing took place on June 24, 202. There were no material changes since the initial filing.

*The information set forth in this Brochure is qualified in its entirety by reference to a Client’s Governing Documents (as defined herein) and/or offering documents. In the event of a conflict between the information set forth in this Brochure and the information set forth in a Client’s Governing Documents and/or offering documents, the Client’s Governing Documents and/or offering documents shall take precedence.*

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#### Item 4 - Advisory Business

For purposes of this Brochure, the “**Adviser**”, “**X Cubed**”, “**Managing Member**”, “**Investment Manager**” or “**Managing Partners**” means X Cubed Capital Management LLC, a Delaware limited liability company formed in December 2020. X Cubed is an investment advisory firm with its headquarters in Minneapolis, MN. Andrew J. Redleaf is the Manager of the Managing Member. The Managing Member has overall responsibility for managing the business and affairs of the X3 Higher Moment Fund LLC (the “**Master Fund**” or “**Fund**”), and X3 Higher Moment Offshore Fund LP (the “**Offshore Feeder Fund**”, “**Feeder Fund**” or “**Limited Partnership**”) (collectively, the “**Funds**”).

The Offshore Fund is a Cayman Islands exempted Limited Partnership formed and registered with the Cayman Islands Monetary Association on October 14, 2021. The Feeder Fund is required to invest all of its assets (“**Capital**”) in the Master Fund, except such Capital as the Investment Manager determines may be reasonably necessary or appropriate to pay any fees, expenses or other costs related to the Fund.

X Cubed provides investment advisory services for privately offered pooled investment vehicles and separately managed accounts (“**SMAs**”). (collectively, the “**Investors**” or “**Clients**”).

The Master Fund is currently offering its limited liability company Interests and the Feeder Fund is currently offering its limited partner Interests (collectively, “**Interests**”), by way of the Funds’ confidential private placement memorandums. The Funds have not registered or qualified the Interests for offer or sale under the Securities Act of 1933, as amended (the “**Securities Act**”), or the securities laws of any state or any other jurisdiction. The Funds are offering and selling Interests by way of a “private placement” exempt from the registration requirements of the Securities Act and applicable state securities laws pursuant to Rule 506 of Regulation D under the Securities Act (“**Regulation D**”) and comparable state law exemptions. Interests are not and will not be listed on any exchange, and no public market for Interests otherwise exists or is likely to develop.

While the Master Fund will trade in commodity futures and/or commodity options contracts, the Managing Member claims an exemption from registration with the Commodity Futures Trading Commission (the “**CFTC**”) as a commodity pool operator with respect to the Fund pursuant to Rule 4.13(a)(3) under the Commodity Exchange Act of 1936, as amended (the “**CEA**”), because (I) each Investor is an “accredited investor,” as that term is defined in Regulation D, (II) the Interests are exempt from registration under the Securities Act and are offered and sold without marketing to the public in the United States and participations in the Fund are not marketed as or in a vehicle for trading in the commodity futures or commodity options markets, (III) at all times that the Fund establishes a commodity interest or securities future position, either (A) the aggregate initial margins and premiums required to establish commodity interest positions for the Fund do not exceed five percent (5%) of the liquidation value of the Fund’s portfolio, or (B) the aggregate net notional value of the Fund’s respective commodity interest positions do not exceed one hundred percent (100%) of the liquidation value of the Fund’s portfolio. Therefore, unlike a registered commodity pool operator, the Managing Member is not required to deliver a disclosure document and a certified annual report to participants in the Fund. The Managing Member may, in its sole discretion, or as otherwise required by applicable law or regulation, become registered with the CFTC in the future.

The Fund seeks to deliver consistent and superior returns by primarily pursuing opportunistic, low beta investment strategies utilizing a multi-strategy investment approach. Among other things, the Fund seeks to capture “arbitrage” profits that arise out of different templates for prices based on economic factors across diverse markets. The Fund trades risk reversals and conversions in both indices

and individual stocks, often in combination, as well as long/short index options against short/long options on a representative basket of individual components. The Fund may, among other things, trade options on the yield curve and forward yield curve, treasuries versus swaps and short/long credit against long/short equity options or shares.

As of December 31, 2022, the Adviser managed approximately \$158,622,150 of regulatory assets on a discretionary basis.

## Item 5 - Fees and Compensation

The Fund will determine a limited partner's economic interest in the Fund by establishing a separate capital account for each limited partner (a "**Capital Account**"). The Fund shall pay the Managing Member, in respect of the Capital Account balance of each Member, a monthly management fee (the "**Management Fee**") at the management fee rate in arrears as of the first business day of each accounting period prior to reduction for the accrued Management Fee being calculated and any accrued incentive allocation, but after reduction for all other expenses and including any capital contributions effective as of such date. The Management Fee shall be prorated for accounting periods of less than a full calendar month. The Managing Member, however, may waive or reduce any or all of the Management Fee in respect of any Capital Account of a Member, or agree to a management fee arrangement in respect of any Capital Account of a Member that differs from that set forth in the limited partnership agreement (a "**Substitute Management Fee**"). No such waiver, reduction or different arrangement in respect of a particular Capital Account will entitle the Member that holds such Capital Account, or any other Member, to such a waiver, reduction or different arrangement in respect of any other Capital Account.

Unless the Managing Member determines otherwise, the Management Fee or Substitute Management Fee in respect of a Capital Account shall be debited directly from that Capital Account and paid to the Managing Member.

The Fund shall pay such costs and expenses, directly or indirectly, as the Managing Member shall reasonably determine to be necessary, appropriate, advisable or convenient to carry on its business and realize its objective (and shall reimburse the manager associates for any such costs and expenses incurred by them on behalf of the Fund) (collectively, "**Fund Expenses**"), including: (i) all costs and expenses in connection with purchasing, holding, valuing, selling or exchanging securities or other assets (whether or not ultimately consummated), including, but not limited to, brokerage fees, private placement fees, finder's fees and other execution and clearing services, interest on borrowed money, costs and expenses associated with short sales, costs and expenses in connection with the registration of investments under applicable securities laws and related legal, accounting and other fees and expenses; (ii) all borrowing and other leverage costs including interest and other fees and expenses; (iii) all fees and expenses in connection with the opening and maintenance of bank, brokerage or custodial accounts; (iv) all legal, accounting, outside director, administration, valuation, auditing, bookkeeping, tax return and K-1 preparation and other professional and consulting fees and expenses, including the fees and expenses charged by any administrator for the Fund; (v) all director and officer, errors and omissions, fidelity bond and other insurance premiums for insurance for the benefit of the Fund, the Managing Member, the manager parties and their affiliates to the extent related to their respective management of the Fund; (vi) the costs of research products and services that are of benefit to the Fund and not otherwise provided by brokers, including the costs of Bloomberg and other research subscriptions, software products and services, live market data feeds, pricing and valuation data and services and other research products and services; (vii) the costs of internet and other line charges, data storage, transfer and backup and record retention; (viii) information technology systems, services, consulting and software, including without limitation systems, consulting and software for portfolio and order management, pre- and post-trade compliance, portfolio reconciliations and accounting, risk management and other activities of the Fund; (ix) all expenses in connection with meetings of and communications with the Investors and prospective investors; (x) all costs and expenses related to the maintenance and legal and regulatory compliance of the Fund, the Managing Member and its affiliates to the extent related to its management of the Fund, including all costs and fees relating to preparation and filing of required regulatory filings and reports (including without limitation filings under the 1933

Act, such as Form D, filings under the 1934 Act, such as Section 13 filings, investment company related filings under the 1940 Act and the Advisers Act, such as Form PF, filings under the CE Act and state “blue sky” filings) and all registered agent and office and other regulatory costs and expenses; all investment- and operations-related travel expenses; (xi) all taxes applicable to the Fund on account of their operations; (xii) all costs and expenses arising out of the Fund’s indemnification obligations, including those arising under the limited partnership agreement; (xiii) all extraordinary or non-recurring charges such as litigation expenses; (xiv) all organizational costs, fees and expenses in connection with the formation and organization of the Fund, including, without limitation, legal and accounting fees and expenses incident thereto (which will be capitalized and amortized as an expense on a straight-line basis over a 60-month period commencing as of the Fund’s commencement of operations), up to a cap of \$50,000; (xv) all costs, fees and expenses in connection with the liquidation of the Fund and its assets; and all expenses attributable to the formation, operation or administration of any Feeder Fund or restructuring of the Fund for it to serve as a “master fund”; (xvii) the Management Fees; and (xviii) all costs, fees and expenses in connection with the liquidation of the Fund and its assets. The Managing Member may determine at any time to engage an accountant to audit the Fund’s financial statements, in which case the costs and expenses for such services shall also be a Fund Expense.

The Managing Member, in its sole discretion, reserves the right to reimburse the Fund for, or itself to bear, any or all Fund Expenses that would otherwise be allocable to the Fund. The Managing Member’s decision to bear or reimburse any such Fund Expenses should not at any point be taken to imply that the Managing Member will do so in the future.

The Managing Member is responsible for all of its own overhead costs, including office space and equipment, utilities, telephone and telecopier costs and other similar items.

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

The Managing Member charges, when applicable, performance based fees and makes certain performance allocations which are based on appreciation of the Fund’s assets. Such performance based compensation will comply with Section 205 of the Advisers Act and Rule 205-3 thereunder, as applicable.

A performance based compensation arrangement could create an incentive for X Cubed to make investments that are riskier and more speculative than would be the case in the absence of a performance based compensation arrangement. In addition, any performance based compensation will be made or based on unrealized gains and losses. As a result, the performance compensation earned could be based on unrealized gains that may never be realized by the Fund.

#### **Item 7 - Types of Clients**

As described in “**Item 4 - Advisory Business**”, the Adviser provides investment advisory services to privately offered pooled investment vehicles and separately managed accounts.

Generally, investors in the Fund are institutions, which may include pension funds, other high net worth institutions, and high net worth families.

The Fund will generally have a minimum investment amount between \$5 million and \$10 million for third-party Investors in the Fund, and Fund interests will be offered and sold solely to qualified purchasers or qualified knowledgeable personnel of the Adviser. Such minimum investment amounts may be waived by the Adviser.

## **Item 8 - Investment Objective, Strategy and Certain Risk Factors**

Subject to the Fund seeking to deliver consistent and superior returns to Investors by pursuing opportunistic, low-beta investment strategies utilizing a multi-strategy investment approach, there are no material limitations on the investment strategies the Managing Member may pursue for the Fund or the financial instruments it may acquire. Among other things, the Fund seeks to capture “arbitrage” profits that arise out of different templates for prices based on economic factors across diverse markets. The Fund trades risk reversals and conversions in both indexes and individual stocks, often in combination, as well as long/short index options against short/long options on a representative basket of individual components. The Fund may, among other things, trade options on the yield curve and forward yield curve, treasuries versus swaps and short/long credit against long/short equity options or shares.

The Managing Member intends to take an opportunistic approach in sourcing investment opportunities for the Fund, and such flexibility is an essential element to the Fund’s overall investment approach.

The Fund utilizes leverage through bank borrowings, swaps and other derivatives as well as trading stocks on margin, repurchase agreements, futures and other means, subject to the availability of leverage in the marketplace on acceptable terms. The Fund has not imposed a limit on leverage. There are no restrictions on the Fund’s use of leverage, by borrowing or otherwise, other than those which may be imposed by applicable law, rule or regulation.

The Managing Member has organized the Offshore Feeder, and may in the future organize one or more additional Feeder Funds, to accommodate subscriptions by certain non-U.S. and tax-exempt investors. The Fund serves as the “master fund” to the Offshore Feeder, which is required to invest all of its assets in the Fund. The Managing Member will establish a separate Capital Account at the Fund for each investor in interests of the Offshore Feeder, and any expenses of the Offshore Feeder generally will be allocated among the Capital Accounts of such Offshore Feeder investors and the Incentive Allocation generally will be made with respect to such Capital Accounts at the Fund level. For purposes of calculating the Incentive Allocation, expenses of any the Offshore Feeder will be deducted from the Capital Accounts of the Offshore Feeder investors (including if such expenses are paid by the Offshore Feeder or borne or reimbursed by the Fund). The LLC Agreement has been drafted in order to effectively give Feeder Fund investors, including investors in the Offshore Feeder, to the extent possible and on an indirect basis, the same voting, governance and economic rights in the Fund as granted direct Investors in the Fund.

An investment in the Fund is speculative and involves risks not associated with more conventional equity and debt investments. The Fund’s strategies are specialized and may be highly leveraged, and an investment in the Fund is suitable only for financially sophisticated investors that are prepared to lose all or substantially all of the capital which they invest in the Fund. The Interests are highly speculative and illiquid securities involving substantial risk of loss. A decision to make an investment in the Fund should be made only after consulting with qualified independent investment,



legal and tax advisors. The following considerations, which do not purport to be a complete description of any of the individual risks referred to or a complete list of all risks involved in an investment in the Fund, should be carefully evaluated before determining whether to make an investment in the Fund. The Fund's strategies and operations involve a variety of material risks, including, but not limited to, the following:

***Possible Loss of Capital; Risk of Ruin.*** An investment in the Fund involves a high degree of risk, including the risk that an Investor in the Fund may lose all or substantially all of its investment in the Fund.

***Limited Performance History.*** The Fund and the Managing Member are recently formed and have a limited performance history. The past performance of other funds or accounts managed by Mr. Redleaf or the Managing Member's team is not necessarily indicative of the Fund's future results.

***Proprietary Capital.*** The Fund initially began trading and operations with only proprietary capital, and as of the date of this Memorandum a significant portion of the Fund's capital has been contributed by Manager Associates. There can be no assurance that the Fund will pursue its investment strategy in the same manner as it has historically as a greater proportion of the Fund's capital is contributed by third-party investors. There is no minimum investment amount required by the Manager Associates.

***Nature of Investments.*** The Managing Member has broad discretion in making investments for the Fund. There can be no assurance that the Managing Member will correctly evaluate the nature and magnitude of the various factors that could affect the value of, and return on, investments. No guarantee or representation is made that the Fund's investment objective will be achieved. Securities prices may be volatile, and securities price movements are influenced by many unpredictable factors. The Fund may experience heightened volatility during turbulent market periods.

***Possible Positive Correlation with Stocks and Bonds.*** There can be no assurance, particularly during periods of market disruption and stress, when the risk control benefits of diversification may be most important, that the Fund will be uncorrelated or negatively correlated with a traditional portfolio of stocks and bonds.

***Disease Outbreak Risks.*** Disease outbreaks that affect local economies or the global economy may materially and adversely impact the Fund and its investments. For example, uncertainties regarding the novel Coronavirus (COVID-19) outbreak have resulted in serious economic disruptions. These disruptions lead to instability in the market place, including market losses and overall volatility, as has occurred in connection with COVID-19. In the event of a pandemic or an outbreak, there can be no assurance that the Managing Member and the Fund's service providers will be able to maintain normal business operations for an extended period of time or will not lose the services of certain personnel on a temporary or long-term basis due to illness or other reasons. The full impacts of a pandemic or disease outbreak are unknown, resulting in a high degree of uncertainty for potentially extended periods of time.

***Government Intervention; Market Disruptions.*** The global financial markets have in the past experienced pervasive and fundamental disruptions which have led to extensive and unprecedented governmental intervention. Such intervention has, in certain cases, been implemented on an "emergency" basis, suddenly and substantially eliminating market participants' ability to continue to implement certain strategies or manage the risk of their outstanding positions. The SEC and the CFTC as well as other regulators, self-regulatory organizations, and exchanges around the world continue to

have the authority to implement additional regulations that could affect the Fund's operations to varying degrees, including the authority to take extraordinary actions in the event of market emergencies. The Fund may incur major losses in the event of disrupted markets and other extraordinary events in which historical pricing relationships become materially distorted. The risk of loss from pricing distortions is compounded by the fact that in disrupted markets many positions become illiquid, making it difficult or impossible to close out positions against which the markets are moving. The financing available to the Fund from its dealers and other counterparties is typically reduced in disrupted markets. Such a reduction may result in substantial losses to the Fund.

***Macro-Economic Risks.*** The current market environment may lead to a recession in the United States or worldwide. A recessionary economy may lower the demand for the Fund, decrease its performance and cause Investors to withdraw all or a portion of their investment in the Fund. These unfavorable effects are more likely to occur and be more severe if a weak economy is accompanied by significant changes in interest rates, rates of inflation, stresses in the financial markets market or actual or potential changes in the legislative and regulatory environment.

***Political and Military Uncertainty.*** Some of the results of recent elections and referenda in the United States, the United Kingdom, Italy, and other developed market countries have been unexpected and resulted in material market changes and increases in market uncertainty. Given expected changes in administrations or applicable law following these votes, the future of current regulations, or the adoption of new regulations, is also uncertain. These uncertainties may have adverse impacts on the Fund.

In late February 2022, Russia launched a large-scale military attack on Ukraine. In response to the military action by Russia, various countries, including the United States, the United Kingdom, and European Union issued broad-ranging economic sanctions against Russia. Such sanctions (and any future sanctions) and other actions against Russia may adversely impact, among other things, the Russian economy and various sectors of the U.S. and global economy. The extent and duration of the military action or future escalation of such hostilities, the extent and impact of existing and future sanctions, market disruptions and volatility, and the result of any diplomatic negotiations cannot be predicted. These and any related events could have a significant impact on the Fund's performance and the value of an investment in the Fund.

***Transaction Volume and Market Liquidity.*** The Fund's investment activities may be affected materially by transaction volumes in the U.S. markets. Higher market volume typically provides greater opportunities to engage in revenue-generating transactions, and any decline in transaction volumes may adversely affect the Fund's profit opportunities. A disruption in the exchanges on which instruments trade is possible and could materially adversely affect the liquidity of the Fund. If the liquidity of the market decreases substantially for a position held by the Fund, the Fund may not be able to close out a position prior to its expiration or exercise and may have to purchase or sell the underlying instrument, make or receive a cash settlement, or meet ongoing margin requirements. Lack of liquidity also increases valuation risk, and valuations are particularly subject to risk and uncertainty during the COVID-19 pandemic and related market disruptions.

***Volatility.*** The prices of the instruments traded by the Managing Member have been subject to periods of volatility in the past, and such periods can be expected to recur. While volatility can create profit opportunities for the Fund, it can also create the specific risk, in the case of the Fund, that historical or theoretical pricing relationships will be disrupted, causing what should otherwise be comparatively low risk positions to incur losses.

***Illiquid Securities; Designated Investments.*** A portion of the Fund's portfolio may consist of securities and other financial instruments which are not actively and widely traded, including a material portion in Designated Investments as described in this Memorandum. Consequently, it may be relatively difficult for the Fund to dispose of such investments rapidly and at favorable prices in connection with withdrawal requests, adverse market developments or other factors. Illiquid securities are also more difficult to value.

***Financing Arrangements.*** The investment strategies utilized by the Fund involve the use of various financing arrangements. As a general matter, the banks and dealers that provide financing to the Fund can apply essentially discretionary margin, haircut, financing and security and collateral valuation policies. Changes in such policies may result in large margin calls, loss of financing and forced liquidations of positions at disadvantageous prices. In addition, the dealers have essentially discretionary authority to close out credit lines. There can be no assurance that the Fund will be able to maintain adequate financing, particularly in adverse market conditions.

***Counterparty and Custody Risk.*** When the Fund invests in options, swaps, derivatives, forward contracts or other over-the-counter ("OTC") transactions, the Fund may take a credit risk with regard to parties with whom it trades and may also bear the risk of settlement default. In addition, there are risks involved in dealing with the custodians or brokers who settle Fund trades. Securities and other assets deposited with the prime brokers, custodians or other brokers may not be clearly identified as being assets of the Fund, and hence the Fund may be exposed to a credit risk with regard to such parties.

***Insolvency of Prime/Clearing Brokers, Clearinghouses and Others.*** The Fund will be subject to the risk of failure of the Fund's prime brokers, clearing firms or the clearinghouse of which each such clearing firm is a member. Bankruptcy or fraud at one of these institutions could materially impair the operational capabilities or the capital position of the Fund. If any of the Fund's prime or clearing brokers experiences severe financial difficulties, improperly handles funds or securities of the Fund, or does not accurately clear its trades, the Fund may incur losses on securities transactions or lose profit opportunities.

***Reliance on Corporate Management and Financial Reporting.*** Certain of the strategies implemented by the Fund may rely on the financial information made available by the issuers in which the Fund invests. The Managing Member has no ability to independently verify the financial information disseminated by the issuers in which the Fund invests and is dependent upon the integrity of both the management of these issuers and the financial reporting process in general.

***Leverage.*** The Fund employs leverage, which may be substantial, in the execution of certain investment strategies and through leverage typically embedded in the various derivative instruments in which it invests. The more the Fund leverages itself, the more likely a substantial change will occur, either up or down, in the value of the Interests. The Fund may be subject to major losses in the event that market events disrupt the structured nature of its positions or it is forced to liquidate positions at a disadvantageous time.

***Competition.*** The type of investing conducted by the Fund is extremely competitive. Competitive investment activity by other firms tends to reduce the Fund's opportunity for profit by reducing the magnitude as well as the duration of the market inefficiencies that the Fund seeks to exploit.

**Concentration.** The Fund's portfolio will at times be relatively concentrated with respect to geographic areas or types of securities and issuers or specific assets. The Fund is not subject to any limits on concentration.

**Interest Rate Risk.** *The Fund is subject to interest rate risk. In particular, the value of longer term puts and calls will change depending on the interest rate assumption being utilized. As interest rates rise, all things being equal, the value of calls increase as the cost to own or carry long stock increases. Interest-rate variations can materially affect the profitability of the Fund's strategies.* In March and May of 2022, the U.S. Federal Reserve acted to approve increases in the primary credit rate and has signaled that it anticipates implementing additional increases in interest rates in 2022. It cannot be predicted with certainty when, or how, these policies will change, but actions by the U.S. Federal Reserve and other central banks may have a significant effect on interest rates and on the U.S. economy generally.

**Inflation.** The Fund will be exposed to inflation risk. High inflation, including the levels of inflation in effect in the United States as of the date of this Memorandum, may tighten credit and otherwise adversely impact the Fund. Further, if interest rates rise during an inflationary period, the cost of capital to purchase investments may also rise, which could adversely impact the Fund's ability to implement its investment strategies.

**Margin Trading.** Margin trading is borrowing funds from a broker-dealer to purchase securities. The longer an investment is held, the greater the return that is needed to break even.

**Cash Holdings.** There may be periods where the Fund holds substantial cash reserves, which may negatively impact investment performance.

**Model Risk.** The Managing Member may utilize quantitative valuation models in implementing the Fund's investment program. As market dynamics shift over time, due to factors such as changed market conditions and participants, a previously highly successful model could become outdated or inaccurate, perhaps without the Managing Member's recognizing that fact before substantial losses are incurred. The Managing Member's model risk extends to the valuation of its investments, most of which will be made based on internal models in the absence of any readily determinable market value.

**Identification of Opportunities.** The Managing Member may fail to identify and take advantage of profit opportunities and opportunities to hedge the Fund's positions, which could have an adverse effect on the Fund's profits.

**Securities Lending.** The Fund may borrow and lend securities on an on-going basis in the regular course of its investing. Third parties that borrow securities from the Fund may not be able to return these securities on demand, possibly causing the Fund to default on its obligations to other parties, and may also default on the payment obligations owed to the Fund in connection with such securities loans, potentially resulting in substantial losses to the Fund.

**Arbitrage Transaction Risks.** The Managing Member may employ arbitrage strategies attempt to take advantage of perceived price discrepancies of identical or similar financial instruments, on different markets or in different forms. If the requisite elements of an arbitrage strategy are not properly analyzed, or unexpected events or price movements intervene, losses can occur.

***Catalyst Motivated Strategies.*** Investment strategies that rely upon catalyst events are subject to the risk that the catalyst or event that was anticipated to occur does not occur, causing losses to the Fund.

***Unannounced Transactions.*** If the Fund purchases securities in anticipation of an acquisition attempt or reorganization which does not occur, the Fund may sell the securities at a substantial loss. In addition, when securities are purchased in anticipation of an acquisition attempt or reorganization, substantial time may elapse between the Fund's purchase of securities and the acquisition or reorganization.

***Restricted Securities.*** The Fund will invest in restricted securities, which are securities that cannot be offered for public resale unless registered under the applicable securities laws or that have a contractual restriction that prohibits or limits their resale (*i.e.*, Rule 144A securities).

***Special Situations.*** The Fund may invest in companies involved in or undergoing work-outs, liquidations, spin-offs, reorganizations, bankruptcies or other catalytic changes or similar transactions. Because there is substantial uncertainty concerning the outcome of transactions involving financially troubled companies in which the Fund may invest, there is a potential risk of loss by the Fund of its entire investment in such companies.

***Hedging Risks.*** Although certain of the Fund's investments are intended, in part, to hedge the Fund's other holdings, there is no guarantee that they will do so to the degree predicted by theory. In fact, such hedges could result in losses for the Fund. The Managing Member does not, in general, attempt to hedge all market or other risks inherent in the Fund's positions, and will hedge certain risks, if at all, only partially.

***Relative Value Trading.*** The success of relative value trading is dependent on the Managing Member's ability to exploit relative mispricings among interrelated instruments. Mispricings, even if correctly identified, may not converge within the time frame within which the Fund will maintain its positions and may even diverge. Market disruptions may also force the Fund prematurely to close out one or more positions.

***Debt Obligations.*** The Fund may invest in corporate debt obligations, convertible securities and high-yield securities. The market value of debt securities generally tends to decline as interest rates increase and, conversely, increase as interest rates decline. Debt obligations are subject to credit risk and the Managing Member may actively expose the Fund to credit risk.

***Equity Securities.*** The Fund's investment portfolio includes equity and equity-related securities. The Fund may suffer losses if it invests in equity instruments of issuers whose share price performance diverges from the Managing Member's expectations. The Fund also may be exposed to risks that issuers will not fulfill contractual obligations such as, in the case of convertible securities or private placements, delivering marketable common stock upon conversions of convertible securities and registering restricted securities for public resale.

***SPAC Investments.*** The Fund's investment portfolio currently includes investments in "special purchase acquisition vehicles" (SPACs). A SPAC is a development stage companies that have no specific business plan or purpose or has indicated its business plan is to engage in a merger or acquisition with an unidentified company or companies. Due to the broad discretion of SPAC sponsors to select potential business combinations, it is not possible for the Managing Member to fully ascertain the merits and risks of investing in a particular SPAC, and there can be no assurance that a business opportunity will be presented to any SPAC in which the Fund has made an investment.

***First-Loss Account Investing.*** The Fund currently invests in a “first-loss account” whereby it provides a minority amount of capital in an account and another capital provider provides additional capital in the account, all to be traded consistent with the Fund’s trading strategy. First-loss accounts expose the Fund to greater losses, but all potentially greater returns, than trading the same amount of minority capital outside of a first-loss account. Any losses are first allocated to the Fund before being borne by the other capital provider. As a result, the Fund could lose all or substantially all of its capital allocated to the account. However, the Fund will participate in a substantial percentage of any profit generated as well, although there can be no assurance this will occur. The other capital provider has the ability to withdraw capital from the managed account on little or short notice under certain circumstances. A termination could occur after the Fund’s capital has been offset substantially or entirely by losses and, as a result, the Fund would no longer have the ability to recoup those losses with the benefit of the other capital provider’s capital, making it difficult if not impossible to attempt to earn back the lost funds. In addition, a termination of a first-loss account could result in the quick liquidation of assets that are also held by the Fund outside of the account, which could depress prices or otherwise adversely impact the Fund.

***Options.*** An investment in the Fund will expose Investors to the risks inherent in trading options, including the risks of selling options, including “naked” call and put options. Due to the inherent leveraged nature of options, a relatively small adverse move in the price of the underlying instrument may result in immediate and substantial losses to the Fund.

***Exchange Traded Funds.*** The Fund may also trade in exchange traded funds (“ETFs”) for hedging or speculative purposes. ETFs are themselves subject to ongoing expenses and, in some cases, management or other percentage-of-assets based fees, which are borne by the Fund.

***Derivatives Generally.*** The Fund may make use of various derivative instruments, such as forward contracts, futures contracts (including dividend futures and single stock futures), options on the foregoing, and swaps. The use of derivative instruments involves a variety of material risks, including the extremely high degree of leverage often embedded in such instruments and the possibility of counterparty non-performance, as well as of material and prolonged deviations between the actual and the theoretical value of a derivative (i.e., due to nonconformance to anticipated or historical correlation patterns). In addition, the markets for certain derivatives are frequently characterized by limited liquidity, which can make it difficult as well as costly for the Fund to close out positions in order either to realize gains or to limit losses. Although U.S. Dodd Frank Wall Street Reform and Consumer Protection Act (“**Dodd-Frank**”) and certain EU legislation require certain derivatives to be traded on exchanges, currently many of the derivatives which the Fund may trade are principal-to-principal or OTC contracts between the Fund and third parties entered into privately, rather than on an exchange. As a result, the Fund will not be afforded the regulatory and financial protections of an exchange or its clearinghouse (or of the government regulator that oversees such exchange and clearinghouse) if a counterparty fails to perform. The risk of nonperformance or the lack of financial soundness and creditworthiness of the counterparty can be significant in the case of OTC instruments. Further, prices of derivative instruments are highly volatile.

***Futures Contracts and Futures Options.*** The Fund may trade futures and futures options. Futures prices are highly volatile, and price movements are influenced by a multitude of factors such as supply and demand relationships, government trade, fiscal, monetary and exchange control policies, political and economic events and emotions in the marketplace. Commodity exchanges limit fluctuations in

futures contract prices during a single day, which could prevent the Managing Member from promptly liquidating unfavorable positions and subject the Fund to substantial losses.

***Short Sales.*** The Fund may engage in short selling. A short sale involves the sale of a security that the Fund does not own in the hope of purchasing the same security (or a security exchangeable therefor) at a later date at a lower price. A short sale involves the theoretically unlimited risk of an increase in the market price of the security that would result in a theoretically unlimited loss. Short sales have been subject to emergency bans and additional governmental regulation in the recent past, and there can be no assurance that such governmental regulations or actions will not materially adversely affect the Fund.

***Non-U.S. Investments.*** The Fund may invest in the securities of non-U.S. entities, and a portion of the Fund's trading operations may involve trading on markets outside the United States. These investments involve additional risks, including changes in exchange rates, political and social instability, expropriation, imposition of non-U.S. taxes, less liquid markets and less available information than is generally the case in the United States, higher transaction costs, non-U.S. government restrictions, less government regulation and a lack of uniform accounting and auditing standards. These risks are particularly acute in emerging markets.

***Currency Risks.*** The Fund may be affected favorably or unfavorably by exchange control regulations or changes in the exchange rate between non-U.S. currencies and the U.S. Dollar, as well as the transaction costs associated with converting non-U.S. currencies into U.S. Dollars. As the Fund is denominated in U.S. Dollars, Investors whose functional currency is not the U.S. Dollar will have material exchange-rate risk with respect to their investment in the Fund.

***Distressed Securities.*** The Fund may invest in "distressed" securities, which are claims and obligations of U.S. and non-U.S. entities which are experiencing significant financial or business difficulties. The Fund may lose a substantial portion or all of its investment in a distressed environment or may be required to accept cash or securities with a value less than the Fund's investment. In trading distressed securities, litigation is sometimes required. Such litigation can be time-consuming and expensive, and can frequently lead to unpredicted delays or losses.

***Non-Diversification.*** The Managing Member may allocate the Fund's assets among one or any number of different strategies, techniques and products. However, the Fund's portfolio may not be diversified among strategies, geographic areas or types of securities or issuers. Further, the Fund's portfolio may not be diversified among a wide range of issuers.

***Suspensions of Trading.*** Securities exchanges typically have the right to suspend or limit trading in any instrument traded on the exchange. A suspension would render the Fund temporarily or permanently unable to liquidate its positions and could thereby expose the Fund to losses.

***Portfolio Turnover.*** Certain of the investment techniques employed by the Fund require frequent trading, which increases portfolio turnover, brokerage commissions and other transaction fees and expenses.

***Operational and Human Error.*** The success of certain of the Managing Member's strategies depends in part upon the accurate calculation of price relationships, the communication and execution of precise trading instructions and ongoing position evaluations. There is the possibility that, through human error,

oversight or operational weaknesses, mistakes could occur in this process and lead to significant trading losses.

***Management and Key Person Risk.*** The LLC Agreement gives the Managing Member broad discretion to expand, revise or contract the Fund's business without the consent of the Investors. Any decision to engage in a new activity could result in the exposure of the Fund's capital to additional risks, which may be substantial. The operations of the Fund substantially depend upon the skill, judgment and expertise of Andrew J. Redleaf. In the event of the death, disability or other unavailability of Mr. Redleaf, the business of the Fund will be materially and possibly adversely affected. Investors do not have a right to participate in the management of the Fund or in the conduct of its business.

***Possibility of Fraud and Other Misconduct.*** When the Fund allocates assets to other entities such as brokers, dealers, or counterparties, the Fund typically does not have custody or control of the assets placed with such entities. As such, such entities could divert or abscond with the assets, fail to follow agreed upon investment strategies and techniques, provide false reports of operations, or engage in other misconduct.

***Liability Across Capital Accounts.*** Although each Capital Account is maintained separately by the Fund with separate accounting records, the Fund as a whole is one legal entity. Thus all of the assets of the Fund are available to meet all of the liabilities of the Fund.

***Substantial Withdrawal.*** In the event of substantial withdrawal requests, the Fund may have to suspend withdrawals (as permitted by its constituent documents) and/or sell positions at materially disadvantageous prices to raise cash to pay withdrawals.

***In-Kind Withdrawals.*** Although the Managing Member will generally pay withdrawal proceeds in cash, and has no current plans to do so, in certain situations the Fund may pay the proceeds in-kind (including, but not limited to, interests in special purpose vehicles managed by the Managing Member or its affiliates to liquidate assets, which may hold participation agreements reflecting an economic interest in Fund assets).

***Valuation Risk.*** The Managing Member, or a delegate approved by the Managing Member, values the Fund's positions, including the value of Designated Investments which are particularly difficult to value. Such valuations directly affect the Management Fees and Incentive Allocations received by the Managing Member, as well as withdrawal proceeds paid to Investors and ownership percentages upon subscriptions. The Fund's asset values are generally based on quotes provided by brokers and dealers and other competent third-party pricing sources. However, certain of the Fund's positions may be valued based on pricing models developed by the Managing Member. While these models from time to time are corroborated by quotes obtained from third-party brokers and dealers, these valuations are generally within the control of the Managing Member (which has conflicts of interest in valuing the Fund's positions). Certain illiquid positions may also have to be valued by the Managing Member based on other methods. A number of the Fund's positions could, from time to time, be difficult to value. The uncertain and fluctuating nature of the valuations of such positions means that certain valuations may, from time to time, materially misstate actual and/or realizable value. In such event, Investors would, among other things, withdraw, subscribe and pay Management Fees and Incentive Allocations on the basis of portfolio values which differ from true value, which could result in inflated advisory fees paid to the Managing Member and reduced withdrawal proceeds paid out to withdrawing Investors, and economic dilution to both new and existing Investors. These risks are exacerbated due to the fact that certain withdrawal proceeds are paid on the basis of unaudited financial data. The Managing Member



will not bear any liability if a price, reasonably believed by it to be an accurate valuation of a particular direct or indirect investment of any Fund, is subsequently found to be inaccurate.

***Position Transparency.*** In an effort to protect the confidentiality of its positions, the Fund may not generally disclose any or all of its positions to Investors on an on-going basis, although the Managing Member, in its discretion, may permit such disclosure on a select basis to certain Investors, if it determines that there are sufficient confidentiality agreements and procedures in place.

***Master-Feeder Fund Structure.*** The Fund currently serves as the “master fund” for the Offshore Feeder, and may in the future serve as a “master fund” for one or more other Feeder Funds, each of which would be required to invest all of its assets in the Fund. A Feeder Fund, including the Offshore Feeder, may not itself engage in any direct trading. While this “lock-step” master-feeder structure has certain regulatory advantages and economies of scale, there are certain transactions in which — due to tax or other reasons — the Fund could engage but a Feeder Fund could not, and vice versa. If the Fund and each Feeder Fund do not trade independently, none will be able to engage in such transactions. In addition, Feeder Fund investors will have voting, governance and economic risks similar to those of the Investors even though the interests of the Feeder Fund investors and the Investors may diverge. Other risks may also result from such a master-feeder structure.

***Cybersecurity Breaches.*** The Managing Member, the Fund and their service providers are subject to a possible cybersecurity attack or breach. Cybersecurity is a broad term referring to the body of technologies, processes and practices designed to protect networks, computers, programs and data from attack, damage or unauthorized access. If a cybersecurity breach were to occur, the Fund may incur substantial costs and expose the Managing Member and/or the Fund to civil liability as well as regulatory inquiry and/or action. In addition, any such breach could cause substantial withdrawals from the Fund.

***Regulation of Credit Default Swaps.*** The regulation of credit default swaps transactions and funds that engage in such transactions is an evolving area of law and is subject to modification by government and judicial action. Dodd-Frank imposes substantial new regulation on all OTC derivatives markets in the United States, including the market for credit default swaps, and parties that are active in these markets. Regulators and legislative bodies outside the United States have also brought increased scrutiny to these markets and have focused particular attention on credit default swaps. New regulations adopted under Dodd-Frank seek to increase the transparency of these markets by requiring exchange-trading, clearing and reporting of many types of OTC derivative trades. Any regulations that restrict the ability of the Fund to buy, or broker-dealers and counterparties to sell, credit default swaps in connection with the Fund’s activities or that subject the Fund to additional regulation could significantly adversely impact the Fund and its profit potential and may make it impossible for the Managing Member to implement certain investment strategies on behalf of the Fund.

***Tax Considerations.*** Under current law, the Managing Member expects that the Fund will be classified and treated as a partnership for U.S. federal income tax purposes, and not taxable as a corporation. Assuming the Fund is treated as a partnership, each Investor must take into account in its own income or loss its allocable share of the Fund’s income, gain, loss, or deduction, whether or not cash or other property is actually distributed. The Fund may take positions with respect to certain tax issues that depend on legal conclusions not yet addressed by the courts. Should any such positions be successfully challenged by the Internal Revenue Service (“IRS”), an Investor might be found to have a different tax liability for that year than that reported on its U.S. federal income tax return. The Fund may not be able to provide final Schedules K-1 to Investors for any given calendar year until after April

15 of the following year, although it will attempt to provide them as soon as practicable. Investors should be prepared to obtain extensions of the filing date for their income tax returns at the U.S. federal, state and local level. The Managing Member's investment decisions are based primarily upon economic, not tax, considerations, and could result, from time to time, in adverse tax consequences to some or all Investors. The Fund will invest in securities of issuers from multiple countries and it is possible that any withholding or other taxes paid by the Fund may not be recoverable to the Fund, and other tax payments may be required which would lower the returns of the Fund. Tax laws in various jurisdictions may change and such changes may be applied retroactively.

***Tax Audits.*** The Fund may be audited by U.S. federal, state or other tax authorities. An income tax audit may result in an increased tax liability for the Fund or its Investors, including with respect to tax years when an investor was not an Investor in the Fund. Any tax liability imposed on the Fund will reduce the NAV of the Fund and affect the return of all Investors.

***Risk of Litigation.*** In the ordinary course of its business, the Fund may be subject to litigation from time to time. The outcome of litigation, which may materially adversely affect the value of the Fund, may be impossible to anticipate, and such proceedings may continue without resolution for long periods of time. Any litigation may consume substantial amounts of the Managing Member's time and attention and result in significant indemnification expenses borne by the Fund, and that time and the devotion of these resources to litigation may, at times, be disproportionate to the amounts at stake in the litigation.

***Absence of Regulatory Oversight.*** The Fund is not registered under the Investment Company Act in reliance upon an exemption available to privately-offered investment companies, and, accordingly, certain protections of the Advisers Act and the Investment Company Act will not be afforded to the Fund or the Investors.

***Regulation of Credit Default Swaps.*** The regulation of credit default swaps transactions and funds that engage in such transactions is an evolving area of law and is subject to modification by government and judicial action. Dodd-Frank imposes substantial new regulation on all OTC derivatives markets in the United States, including the market for credit default swaps, and parties that are active in these markets. Regulators and legislative bodies outside the United States have also brought increased scrutiny to these markets and have focused particular attention on credit default swaps. New regulations adopted under Dodd-Frank seek to increase the transparency of these markets by requiring exchange-trading, clearing and reporting of many types of OTC derivative trades. Any regulations that restrict the ability of the Fund to buy, or broker-dealers and counterparties to sell, credit default swaps in connection with the Fund's activities or that subject the Fund to additional regulation could significantly adversely impact the Fund and its profit potential and may make it impossible for the Managing Member to implement certain investment strategies on behalf of the Fund.

***Economic Sanction Laws.*** The Fund and the Managing Member are subject to laws that restrict it from dealing with entities, individuals, organizations, investments and/or governments which are subject to applicable sanctions regimes. Enforcement of economic sanctions laws in the United States, European Union and other countries is increasing, and the failure by the Fund or the Managing Member to comply with such sanctions could have serious legal and reputational consequences. In addition, sanctions restrictions may prevent or delay consummation of an investment based on the need for enhanced due diligence or additional measures to mitigate sanctions risks.

## CERTAIN CONFLICTS OF INTEREST

**Transaction Costs.** The Managing Member selects Prime Brokers and other broker-dealers that execute the Fund's securities transactions, and the Managing Member determines the brokerage commission rate paid by the Fund to the broker-dealers. The rates paid by the Fund will probably not be the lowest rates the Fund could have obtained, but the Managing Member believes they will generally be competitive with rates paid by similar customers. The Managing Member does not solicit competitive bids from broker-dealers and has no obligation to seek the lowest available commission cost. In certain markets in which the Fund trades, there may be only a very limited number of broker-dealers available to choose from, and their pricing structures may be materially different. The Managing Member selects the broker-dealers based on various factors. The main factors are generally the broker-dealer's quality of execution, commission rates, market knowledge and financial condition. However, the Managing Member may also consider factors that benefit the Managing Member, such as the broker-dealer's referral of prospective Fund investors to the Managing Member, and the broker-dealer's agreement to pay certain expenses of the Managing Member (sometimes referred to as "soft dollars"), such as research services or quotation equipment. The Managing Member's receipt of such benefits (which is limited to the "safe harbor" in Sec. 28(e) of the Exchange Act will give it an incentive to select a broker-dealer that it would not otherwise use, but the Managing Member intends to use only those broker-dealers that provide the Fund with high-quality services and competitive commission rates.

**Other Accounts.** The Managing Member does not currently but may in the future manage and advise private investment funds and accounts other than the Fund ("**Other Accounts**"). These Other Accounts may pursue similar or substantially overlapping strategies as those implemented by the Fund, including trading in parallel or at a higher degree of leverage than the Fund, either on a stand-alone basis or which ultimately invest through the Fund. In addition, any Other Accounts may be selling or acquiring the same or comparable positions as those which the Fund is acquiring or selling at or about the same time. As a result, trading activities of different portfolio manager teams and Other Accounts may adversely affect the Fund. While there are no Other Accounts as of the date hereof, there is no limit on the number of Other Accounts that may be managed by the Managing Member. The Managing Member seeks to allocate investment opportunities and treat all similarly situated funds and accounts fairly and equitably over time to the extent such opportunities are determined to be appropriate for the Fund and the Other Accounts. Although the Managing Member has an investment allocation policy designed to treat all such funds and accounts fairly and equitably over time, the performance of the Fund and such other funds or accounts may differ substantially even though their investment objectives and strategies may be substantially the same or similar.

In particular, the Managing Member expects to invest its, or its principals', capital through use of one or more first-loss accounts. The Managing Member has a conflict of interest in doing so. Capital contributed to first-loss accounts by third parties enhances assets under management of the Managing Member and provides greater performance compensation earned by the Managing Member than earned by the Managing Member with respect to the Fund. As a result, the Managing Member has an incentive to utilize these arrangements. However, as with any account, the other capital provider to the first-loss account may withdraw capital or terminate the account on short or no notice, resulting in quick liquidations of assets that are also held by the Fund, depressing prices or otherwise resulting in adverse impacts to the Fund. In addition, the Managing Member or its principals bear any initial losses of the first-loss account, which may result in the Managing Member trading the first-loss account in a way that is different from, and conflicts with, the manner in which the Fund's capital is traded. Any third-

party capital provider to a first-loss account will also have better transparency into the positions of the account than the investors in the Fund will have with respect to the Fund's assets.

***Material Non-Public Information.*** From time to time, the Managing Member may possess material, non-public information. Although it is unlikely that possession of such information would limit the Fund's ability to buy or sell Fund investments, such a limitation is possible, and the Fund's investment flexibility may be constrained as a consequence of the Managing Member's inability to use material, non-public information or other information for investment purposes.

***Incentive Allocation.*** The Investors are subject to an Incentive Allocation. The Incentive Allocation creates an incentive for the Managing Member to engage in more speculative investment strategies in an effort to maximize the Fund's rate of return or may give the Managing Member the incentive to cause the assets of the Fund to be valued in a way that increases the Incentive Allocation. The Incentive Allocation will be retained by the Managing Member and will not be repayable to the Investor if the NAV of the Investor's Capital Account from which an Incentive Allocation has been taken subsequently declines. The Incentive Allocation is made with regard not only to realized profits, but unrealized profits as well. In addition, a specific provision of U.S. federal income tax law treats certain allocations of capital gain by a partnership to a service provider (such as the Managing Member) as short-term capital gain, taxable to non-corporate taxpayers at ordinary income tax rates, unless the applicable holding period is more than three years. Absent this provision, capital gain is treated as long-term capital gain, taxable to non-corporate taxpayers at reduced rates, if the applicable holding period is more than one year. This provision could affect the Managing Member's beneficial owners and could create an incentive for the Managing Member to cause the Fund to hold investments for a longer period than it might if the provision did not exist.

***Management Fee on Designated Investments.*** The Management Fee is charged on the NAV of Designated Investments which may be difficult to accurately value. As a result, the Managing Member has a conflict of interest in valuing the NAV of any Designated Investments given that higher valuations of Designated Investments results in higher Management Fees being paid to the Managing Member.

***Side Letter Agreements.*** The Managing Member on its own behalf and on behalf of the Fund may from time to time enter into a side letter or similar agreement with an Investor that has the effect of establishing rights under, or altering or supplementing the terms of, the Fund's LLC Agreement, including but not limited to Management Fee or Incentive Allocation terms, reporting rights, timing of withdrawals, prior notice period for withdrawals, indemnification and/or exculpation standards, and notice of certain events affecting, or information regarding, the Managing Member, any of its principals or employees, the Administrator or the Fund. Although the Managing Member may enter into side letters as described, it will not agree to materially better management fee, incentive allocation, voluntary withdrawal or position-level transparency terms to similarly situated investors making the same level of investment in the Fund.

***Diverse Investors.*** The Investors in the Fund are expected to include diverse Investors that have conflicting tax and other interests with respect to their investment in the Fund. As a result, conflicts of interest may arise in connection with decisions made by the Managing Member that may be more beneficial for one type of Investor, such as, for example, Investors that are exempt from U.S. federal income tax. As of the date of this Memorandum, a private foundation controlled by Mr. Redleaf has made a significant investment in the Fund and as a result has a conflict of interest in acting in the interests of such foundation and the Fund. In making decisions, the Managing Member intends to

consider the investment objectives of the Fund as a whole, and not the investment objectives of any Investor individually.

***Cross Trades.*** The Managing Member does not expect to enter into “cross trades” in the normal course of business. However, the Managing Member may cause the Fund to purchase securities or other assets from or sell securities or other assets to, or engage in other transactions with, Other Accounts when the Managing Member believes such transactions are in the best interests of the Fund and such Other Accounts. In the event the Managing Member wishes to reduce the investment of one or more of such funds or accounts in a security or other asset and increase the investment of other funds or accounts in such security or other asset, it may effect such transactions by directing the transfer of the securities or other assets between funds or accounts if in the best interests of the funds and accounts involved.

***Trading Errors.*** In the course of carrying out investing and trading responsibilities on behalf of the Fund, the Managing Member’s personnel may make trading errors — i.e., errors in executing specific trading instructions. Trading errors are distinguishable from errors in judgment, due diligence or other factors leading to a specific trading instruction being generated, as well as from unauthorized trading or other improper conduct by Managing Member personnel. The Managing Member will treat all operational or trading errors (including those which result in losses and those which result in gains) as for the account of the Fund, unless they are the result of conduct on the part of the Managing Member which constitutes willful misfeasance, bad faith or gross negligence in the performance of, or reckless disregard of, its duties under the LLC Agreement. The conduct of the Managing Member will be evaluated in the overall context of the control and compliance environment of the Managing Member as it relates to trading errors.

***Subscriptions to the Fund.*** The Managing Member also determines whether or not the Fund should accept additional subscription proceeds into the Fund. The Managing Member has a conflict of interest between deciding to accept additional subscription proceeds because it has the effect of increasing the Management Fee paid to the Managing Member, even though the Managing Member may not elect to immediately invest any such additional capital.

## **Item 9 - Disciplinary Information**

There currently are no legal or disciplinary events regarding X Cubed, its affiliates, and management that are required to be disclosed in this Item.

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

Neither the Adviser nor any of its management persons is registered, or has an application pending to register, as a broker-dealer or a registered representative of a broker-dealer.

X Cubed claims an exemption from registration with the CFTC as a commodity pool operator under the CEA.

X Cubed is affiliated with Park State Bank and with the General Partner, X3 Higher Moment Offshore GP LLC.

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

X Cubed strives to adhere to the highest industry standards of conduct based on principles of professionalism, integrity, honesty and trust. As such, pursuant to Rule 204A-1 of the Advisers Act, X Cubed has adopted a written Code of Ethics (the “**Code**”) predicated on the principle that the Adviser owes a fiduciary duty to its clients, the Fund and its investors. The Code is designed to address and avoid potential conflicts of interest and is applicable to all officers, directors, members, partners and employees of X Cubed and its affiliates (collectively the “Employees”). The Adviser will require its Employees to act in the Fund’s best interests, abide by all applicable regulations and avoid any action that is, or could even appear to be, legally or ethically improper.

Employees are subject to strict reporting and preclearance requirements with respect to personal securities transactions. Employees must obtain approval from the CCO prior to executing a transaction in any Reportable Security in a Personal Account by submitting a pre-clearance request via the compliance portal Gvue. All approved transactions must be executed on the same day that preclearance is obtained. Good-until-cancel trade orders are not permitted. Post approval of personal securities transactions is also not permitted. The following securities are exempt from the preclearance requirements: Money-market funds; Open-end mutual funds; Exchanged traded funds; Bankers acceptances, bank CDs, commercial paper and high quality short term debt instruments; Unit investment trusts; Brokerage certificates of deposit; Direct obligations of the U.S. government (U.S. Treasury securities); and Transactions through an established Automatic Investment Plan.

A copy of X Cubed’s Code shall be provided to any Investor or prospective investor upon request.

## **Item 12 – Brokerage Practices**

X Cubed has a fiduciary duty to use its reasonable efforts to obtain best execution of securities transactions for its client, specifically, the Fund. X Cubed may at times choose to solicit competitive bids or offers to ensure the most favorable execution for the Fund. X Cubed, however, need not necessarily solicit competitive bids on every transaction, and may ultimately consider several factors in choosing a broker-dealer to execute transactions. Some of the factors X Cubed may consider in choosing a broker-dealer include, but are not limited to, reputation, financial strength, willingness to commit capital and confidentiality. X Cubed will periodically review its relationships with broker-dealers and effectiveness of best execution.

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

X Cubed’s investment committee, which consists of X Cube’s Managing Partners and other key employees, periodically reviews the securities and other financial instruments which are held by the Fund. The investment committee reviews the risk profile of the Fund in order to attempt to ensure that they are appropriate in light of prevailing market conditions and consistent with the Fund’s current investment objectives.

Investors in the Fund will receive audited annual financial statements.

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

X Cubed does not currently have any arrangements whereby it will compensate third parties for soliciting new investors for the Fund.

#### **Item 15 - Custody**

All of the Fund's assets are held in custody by unaffiliated broker-dealers, futures commission merchants or banks. As a registered investment adviser that directly, or through an affiliate, acts as the general partner or managing member to a limited partnership or other pooled investment vehicle, or otherwise has direct access to client accounts, X Cubed will be considered to have custody over client assets. Rule 206(4)-2 under the Advisers Act imposes a number of requirements on an SEC-registered investment adviser that is deemed to have custody of its clients' funds and securities.

To comply with Rule 206(4)-2, and to provide meaningful protection to investors, the Fund is subject to an annual financial statement audit by an independent public account registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board. The audited financial statements will be prepared in accordance with generally accepted accounting principles, and will be distributed to each investor or shareholder in the Fund within 120 days of the Fund's fiscal year end.

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

X Cubed maintains investment discretion and will be generally authorized to make the following determinations, subject to the Fund's investment objectives and restrictions, without obtaining prior consent from the Fund or its underlying investors: (i) which securities or other instruments to buy or sell; (ii) the total amount of securities or other instruments to buy or sell; (iii) the executing broker or dealer for any transaction; and (iv) the commission rates or commission equivalents charged for transactions.

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

In accordance with its fiduciary duty to clients and Rule 206(4)-6 of the Advisers Act, X Cubed has adopted and implemented written policies and procedures that govern the voting of Client securities in a prudent and diligent manner. X Cubed has implemented its voting policy in an attempt to serve the best interests of the Fund in a manner that is consistent with the respective investment objectives of the Fund.

X Cubed will take into account all relevant factors, as determined in its discretion, including, without limitation: (i) the impact on the value of the securities or instruments owned by the Fund and

the returns on those securities; (ii) the anticipated associated costs and benefits; (iii) the continued or increased availability of portfolio information; and (iv) industry and business practices.

In limited circumstances, X Cubed may refrain from voting proxies where it believes that voting would be inappropriate when considering the cost of voting such proxies weighed against the anticipated benefit to the Fund. As a general matter, investors in the Fund will not be able to direct X Cubed's vote in a particular solicitation.

Conflicts of interest may arise between the interests of the Fund, on the one hand and X Cubed on the other. If X Cubed determines that it may have, or is perceived to have, a conflict of interest when voting proxies, X Cubed will vote in accordance with its proxy voting policies and procedures. Investors may obtain a copy of X Cubed's proxy voting policies and its proxy voting record, when applicable, upon request.

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

A balance sheet is not required to be provided as X Cubed (i) does not solicit or otherwise require prepayment of fees more than six months in advance, (ii) does not have a financial condition that is likely to impair its ability to meet contractual commitments to clients or (iii) has never been subject to any bankruptcy proceeding.