

UTAH PEAKS CAPITAL, INC.

Utah Peaks Capital, Inc.
1090 Center Drive
Park City, Utah 84098

Form ADV Part 2A

March 8, 2023

Item 1 - Cover Page

This brochure ("**Brochure**") provides information about the qualifications and business practices of Utah Peaks Capital, Inc. ("**Utah Peaks**" or the "**Firm**"), an investment adviser registered with the United States Securities and Exchange Commission ("**SEC**"). Any reference to Utah Peaks as a "registered investment adviser" or as being "registered," does not imply a certain level of skill or training. The information in this Brochure has not been approved or verified by the SEC or by any state securities authority.

This Brochure is neither an offer to sell nor a solicitation of an offer to buy shares or corporate interests in any of the accounts sponsored, managed, or advised by Utah Peaks. An offer of such accounts can only be made through the offering materials for the relevant investment fund and only in jurisdictions in which such an offer would be lawful.

If you have any questions about the contents of this Brochure, please contact Daniel Zgodny, the Chief Compliance Officer, at 914.646.3365 or at Dan@UtahPeaksCapital.com. Additional information about Utah Peaks is also available on the SEC's website at www.adviserinfo.sec.gov.

Item 2 - Summary of Material Changes

This is Utah Peaks' annual amendment to its Brochure, dated July 5, 2022.

Utah Peaks amended its Brochure to reflect the appointment of Daniel Zgodny as the Firm's Chief Compliance Officer, to reflect the Firm's change in address to 1090 Center Drive, Park City, Utah 84098 and to reflect an update to regulatory assets under management in Item 4.

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Item 4 - Advisory Business

Utah Peaks is a Utah Corporation that was formed on November 18, 2021 and is owned by Emma Jane Worsley. Any references to the “Firm”, “us,” “we,” and “our” in this Brochure refer to Utah Peaks. Any defined terms used in this Brochure not otherwise defined herein, have the definition ascribed to them in the offering documents of the applicable client (as defined below).

Utah Peaks has a sub-advisory agreement (“**Service Agreement**”) to provide investment advisory services to a pooled investment vehicle overseen by an investment manager (“**Investment Manager**” or “**Client**”). Emma Jane Worsley, the Vice President and Treasurer of the Firm, is the sole owner of Utah Peaks.

All discussions of the Client in this Brochure, including but not limited to their investments, the strategies used in sub-advising the pooled investment vehicle, the fees and other costs associated with sub-advising services, and conflicts of interest faced by the Firm in connection with sub-advising services, are qualified in their entirety by reference to the pooled investment vehicle’s offering documents and Investment Management Agreement.

Utah Peaks tailors its investment advisory services to the strategies and conditions set forth in the Firm’s Service Agreement. The Service Agreement generally contains provisions and trading restrictions specific to Utah Peaks. Utah Peaks’ oversight is generally focused on monitoring the Firm’s compliance with any applicable investment guidelines and parameters.

Utah Peaks does not participate in any wrap fee programs.

As of December 31, 2022, Utah Peaks manages \$300,000,000 of regulatory assets under management, all managed on a discretionary basis.

Item 5 - Fees and Compensation

The Investment Manager is charged monthly the total cost of rent, salaries and bonuses of staff, and subscriptions and other reasonable costs, plus an additional 10% of the total monthly cost (“**Compensation**”). The payments and terms are subject to the Service Agreement between the Firm and Investment Manager and may be individually amended from time to time.

The Compensation does not include taxes (i.e., federal and state income taxes, corporate taxes, and personal income taxes) and employer benefit contributions, such as 401k contributions, discretionary parties, office supplies, and travel expenses.

Utah Peaks does not accept compensation for the sale of securities or other investment products.

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

The only fees charged to the Investment Manager are the Compensation described in *Item 5 – Fees and Compensation*. Therefore, there is no performance-based fee charged. No charges are made to the pooled investment vehicle.

An advisor concurrently managing various clients subject to differing fees, such as differently calculated performance allocations, may be incentivized to prefer the client subject to higher fees. In this case,

because Utah Peaks is only sub-advising a portion of the pooled investment vehicle on behalf of the Investment Manager, there is no risk of preferential treatment with respect to performance allocations. However, if Utah Peaks takes on additional clients and charges to multiple clients differing fees for the Firm's services, Utah Peaks has adopted an allocation policy to ensure that investment opportunities are allocated in a fair and equitable manner between advisory clients and to manage the risks associated with performance-based fees and side-by-side management of clients.

Item 7 - Types of Clients

The Firm sub-advises a portion of a pooled investment vehicle on behalf of the Investment Manager. The pooled investment vehicle is otherwise managed by the Investment Manager who is responsible for marketing (if any), subscriptions/redemptions, operations, risk, trading strategies, capital allocation and investment management.

Item 8 - Methods of Analysis, Investment Strategies and Risk of Loss

All references to the Client in this Brochure, including, but not limited to, their investments and management strategies, are qualified in their entirety by reference to offering documents. The following is a general discussion of the methods of analysis, investment strategies and the risk of loss associated with Utah Peaks' overall investment strategy. These risk factors may change over time. There can be no assurance that the Client will achieve their objectives or that the Client will not incur losses. Investors in any product offered by the Client must be prepared to lose all or substantially all of their investment.

THE INFORMATION BELOW IS INTENDED TO SERVE AS A SUMMARY OF THE POTENTIAL RISKS OF INVESTING. THE FOLLOWING IS NOT A SUBSTITUTE FOR THE INVESTMENT MANAGEMENT AGREEMENT OF THE SUB-ADVISED POOLED INVESTMENT VEHICLE. POTENTIAL INVESTORS MUST REVIEW OFFERING DOCUMENTS IN THEIR ENTIRETY BEFORE INVESTING. THIS INFORMATION MAY BE BOTH SUPPLEMENTED AND SUPERSEDED BY INFORMATION IN THE INVESTMENT MANAGEMENT AGREEMENT OF THE SUB-ADVISED POOLED INVESTMENT VEHICLE.

We employ a strategy to maximize long-term returns and preserve capital primarily by tracking an index fund with some relative value with the overall goal of achieving alpha. We utilize some individual U.S. and non-U.S. equity securities, but primarily focus on trading in Asia-Pacific fixed income products, and trading in Asia-Pacific futures and currencies for hedging purposes. Utah Peaks seeks to generate returns on both the long and short sides of the portfolio within a robust and analytical risk management framework for portfolio management.

The investment strategy that we employ involves significant risks. Investors must be prepared to bear the loss of their entire investment. The following summary of certain risks does not purport to be complete but includes some of the potential risks generally associated with Utah Peaks' investment strategy.

Market Risks and Lack of Liquidity

The Firm's success depends greatly upon the ability to correctly assess future price movements of various securities. There can be no assurance that we will accurately predict such movements. In addition, it may be the case that certain securities in which we may invest will have limited liquidity. This lack of liquidity, together with a failure to accurately predict market movements, may adversely affect our ability to execute trade orders at desired prices in rapidly moving markets.

Overview of General Market Risk

The success of any investment activity is influenced by general economic conditions, which may affect the level and volatility of interest rates and the extent and timing of investor participation in various financial markets. Overall market or economic conditions, which Utah Peaks cannot predict or control, may have a material adverse effect on performance. There can be no assurance that what Utah Peaks perceives as an investment opportunity will not result in substantial losses due to a variety of general market or other factors. General market conditions could materially reduce the Client's profit potential.

Short Selling Risk

Utah Peaks' investment program includes short selling. Short selling transactions expose the Client to the risk of loss in an amount greater than their initial investment, and such losses can increase rapidly and without effective limit. There is the risk that the securities borrowed by Utah Peaks in connection with a short sale would need to be returned to the securities lender on short notice. If such request for return of securities occurs at a time when other short sellers of the subject security are receiving similar requests, a "short squeeze" can occur, wherein Utah Peaks might be compelled, at the most disadvantageous time, to replace the borrowed securities previously sold short with purchases on the open market, possibly at prices significantly in excess of the proceeds received earlier.

Non-U.S. Securities

Utah Peaks may invest in non-U.S. securities, non-U.S. currencies, and securities issued by U.S. entities with substantial non-U.S. operations. These investments can involve additional risks relating to political, economic, or regulatory conditions in non-U.S. countries. These risks include fluctuations in non-U.S. currencies; withholding or other taxes; trading, settlement, custodial, and other operational risks; and the less stringent investor protection and disclosure standards of some non-U.S. markets. All these factors can make non-U.S. investments, especially those in emerging markets, more volatile and potentially less liquid than U.S. investments. In addition, non-U.S. markets can perform differently from the U.S. market.

Cyber Security Risks

As part of its business, Utah Peaks processes, stores, and transmits large amounts of electronic information, including information relating to the transactions of the Client. Similarly, service providers of the Client, especially its administrator, may process, store, and transmit such information. With the dependence on computer systems to perform business and operational functions, the Client and their service provider may be prone to operation and information security risks resulting from cyber-attacks and/or technological malfunctions. In general, cyber-attacks are deliberate, but unintentional events may have similar effects.

The techniques used to obtain unauthorized access to data, disable or degrade service, or sabotage systems change frequently and may be difficult to detect for long periods of time. Hardware or software acquired from third parties may contain defects in design or manufacture or other problems that could unexpectedly compromise information security. Network connected services provided by third parties to Utah Peaks may be susceptible to compromise, leading to a breach of Utah Peaks' network.

Utah Peaks and the Client rely on third-party service providers for many of their day-to-day operations and will be subject to the risk that the protections and protocols implemented by those service providers will be ineffective to protect them from cyber-attacks. If a service provider fails to adopt or adhere to adequate data security policies, or in the event of a breach of its networks, information relating to the transactions of the Client and personally identifiable information of investors may be lost or improperly accessed, used, or disclosed.

The loss or improper access, use, or disclosure of Utah Peaks' or the Client's proprietary information may cause Utah Peaks or the Client to suffer, among other things, financial loss, the disruption of its business, liability to third parties, regulatory intervention, or reputational damage. Any of the foregoing events could have a material adverse effect on Utah Peaks and such Client.

Conflicts of Interest

Although Utah Peaks will attempt to resolve such conflicts in a fair and equitable manner, there can be no assurance that these conflicts will be resolved to the benefit of the Client. At this present time, Utah Peaks has an agreement to sub-advise a pooled investment vehicle of the Investment Manager. The Firm may take on additional clients in the future that may create additional conflicts of interests with the current Client.

Social-Media-Related Trading Volatility

Several stocks and other assets have recently been targeted for trading by participants on social media platforms. Recent changes to market structures and the low cost of trading for retail clients may exacerbate the volume of trading related to social media attention. This volume may be significant and may result in dislocations of prices, which may be difficult for Utah Peaks' trading strategy to accurately predict. To the extent that Utah Peaks is on the "short side" of the trade, the Client may be subject to substantial losses or may be required to exit short positions earlier than they normally would so exit. It is possible that Congress and regulators may react to the volatility of social-media-related trading and restrict, or require the public reporting of, short interest, which may limit the Firm's ability to achieve our trading objectives.

Fluctuations of Securities

The value of equity securities fluctuates in response to issuer, political, market, and economic developments. Fluctuations can be dramatic over the short as well as long term, and different parts of the market and different types of equity securities can react differently to these developments. For example, large cap stocks can react differently from small cap stocks, and "growth" stocks can react differently from "value" stocks. Issuer, political, or economic developments can affect a single issuer, issuers within an industry or economic sector or geographic region, or the market as a whole. Changes in the financial condition of a single issuer can impact the market as a whole. Terrorism and related geo-political risks have led, and may in the future lead, to increased short-term market volatility and may have adverse long-term effects on world economies and markets generally.

Transaction Costs

The investment approach by Utah Peaks on behalf of the Client may involve a high level of trading that invests on the basis of short-term market considerations. The resulting turnover of investments may

generate substantial brokerage commissions, fees and other transaction expenses that will be borne by the Client and therefore negatively impact returns.

Dependence on Key Personnel

The Client depends on the services of Utah Peaks. If many officers become unavailable, the effect on the Client would be material and adverse and could result in the termination of the Service Agreement and/or the dissolution of the Client relationship.

Leverage Concerns

Consequently, fluctuations in market value will have a significant effect in relation to the Fund's capital. Borrowing money to purchase a security may provide the Client with the opportunity for greater capital appreciation but at the same time will increase the risk of loss with respect to the security. 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 number of borrowings that may be outstanding at any time may be large in relation to the Fund's capital. In addition, the level of interest rates generally, and the rates at which funds can be borrowed, will affect operating results. Leverage may be obtained through various means. Use of margin borrowings may result in certain additional risks to the Client. In the event of a sudden precipitous drop in the value of the assets pledged to a broker as margin, Utah Peaks might not be able to liquidate assets quickly enough on behalf of a Client to pay off the margin debt and may therefore suffer additional significant losses as a result of such a default.

Options Trading

We may engage from time to time in various types of options transactions. An option gives the purchaser the right, but not the obligation, upon exercise of the option, either (i) to buy or sell a specific amount of the underlying security at a specific price (the "strike" price or "exercise" price), or (ii) in the case of a stock index option, to receive a specified cash settlement. To purchase an option, the purchaser must pay a "premium," which consists of a single, nonrefundable payment. Unless the price of the securities underlying the option changes and it becomes profitable to exercise or offset the option before it expires, the Client may lose the entire amount of the premium. The purchaser of an option runs the risk of losing the entire investment. Thus, the Client may incur significant losses in a relatively short period of time. The ability to trade in or exercise options also may be restricted if trading in the underlying securities interest becomes restricted. Options trading may also be illiquid in the event the Client's assets are invested in contracts with extended expirations. A client may purchase and write put and call options on specific securities, on stock indices or on other financial instruments and, to close out its positions in options, may make a closing purchase transaction or closing sale transaction. In theory, the exposure to loss is potentially unlimited in the case of an uncovered call writer (i.e., a call writer who does not have and maintain during the term of the call an equivalent long position in the stock or other security underlying the call), but in practice the loss is limited by the term of existence of the call. The risk for a writer of an uncovered put option (i.e., a put writer that does not have and maintain an offsetting short position in the underlying stock or other security) is that the price of the underlying security may fall below the exercise price.

Hedging Transactions

We may utilize a variety of financial instruments such as derivatives, options, swaps and forward contracts in providing investment advisory services to the Client, both for investment and risk management purposes. Hedging also involves special risks including the possible default by the other party to the transaction, illiquidity and, to the extent our assessment of certain market movements is incorrect, the risk that the use of hedging could result in losses greater than if hedging had not been used. There is the risk of the failure or default of any counterparty to such transactions. If there is a failure or default by the counterparty to such a transaction, we will have contractual remedies pursuant to the agreements related to the transaction (which may or may not be meaningful depending on the financial position of the defaulting counterparty). We may seek to minimize counterparty risk through the selection of financial institutions and types of transactions employed.

Operation Systems Risks

The Client depends on the Firm to develop and implement appropriate systems for its activities. The Firm relies heavily on computer programs and systems (and may rely on new systems and technology in the future) for various purposes in connection with its activities on behalf of the Client, including, without limitation, to trade, clear and settle transactions, to evaluate certain financial instruments, to monitor its portfolio and net capital, and to generate risk management and other reports that are critical to oversight of such activities. The failure, corruption or breach of one or more systems (including as a result of the occurrence of a disaster such as a cyberattack, a natural catastrophe, an industrial accident, a terrorist attack or war, events unanticipated in the Firm's disaster recovery systems, or a support failure from external providers) or the inability of such systems to satisfy the Firm's needs may have a material adverse effect on the Firm's ability to conduct business and thus, the Client, particularly if those events affect the Firm's computer-based data processing, transmission, storage and retrieval systems or destroy the Firm's data.

Newly Formed Entities

While the officers of the Firm have experience in the securities industry, including significant portfolio management and business experience, the Firm is a newly formed entity with no operating history.

Epidemics, Pandemics and Covid-19 Risks

Epidemics, pandemics and other widespread public health problems could adversely affect the performance of the Client. For example, in late 2019, a novel virus started causing a disease ("**COVID-19**") with severe acute respiratory syndromes in humans, at times with serious health complications that sometimes result in death. What began as a local outbreak in Wuhan, China, spread globally over the course of weeks, stressing advanced healthcare systems of Western countries and resulting in widespread financial disruptions. On March 11, 2020, the World Health Organization assessed that the outbreak can be characterized as a pandemic. Many countries imposed restrictions on travel and strict measures of social distancing. As the potential impact on global markets from COVID-19, or future epidemics, pandemics or other health crisis, is impossible to predict, the extent to which any such crisis may negatively affect Client performance, or the duration of any potential business disruption is uncertain. Precautions or restrictions imposed by governmental authorities and public health departments related to this pandemic resulted in periods of decreased economic activity throughout the U.S. and globally, including reduced or ceased business operations, decline in international trade and shortages of supplies, goods and services. An outbreak such as COVID-19, and the reactions to such an outbreak, caused

uncertainty in financial markets and businesses and adversely affected the performance of the U.S. and global economy, including due to market volatility, market and business uncertainty and closures, supply chain and travel interruptions, the need for employees to work at external locations and extensive medical absences among the workforce.

Business Continuity

Various force majeure events, including natural disasters such as fire, flood or earthquakes, wars, terrorist acts, outbreaks of infectious disease, epidemics, pandemics or other serious public health concerns, cyber-attacks, technology and/or power failures, labor strikes, or geopolitical or other extraordinary, or other unforeseen circumstances or events, may materially disrupt the Firm's business and operations, or the business and operations of any counterparty or service provider to the Firm or the Client, and the Firm and/or the Client may be adversely affected thereby. For example, if various officers and directors of the Firm were to be unavailable in a force majeure event (including but not limited to, events such as war, terror attack or an outbreak of infectious disease), the Firm's ability to effectively conduct the Clients' business could be severely compromised. In addition, the cost to the Client or its affiliates of repairing or replacing damaged assets or systems resulting from such force majeure event could be considerable. While the Firm has adopted certain policies and procedures designed to restore and/or continue its business and operations in such situations, there is no guarantee that such policies and procedures will be effective in any of such situations or will be implemented in time, and the Client may be adversely affected thereby.

INVESTING INVOLVES RISK OF LOSS THAT CLIENTS SHOULD BE PREPARED TO BEAR. UTAH PEAKS DOES NOT REPRESENT NOR GUARANTEE THAT ITS SERVICES OR METHODS OF ANALYSIS CAN OR WILL PREDICT FUTURE RESULTS, SUCCESSFULLY IDENTIFY MARKET TOPS OR BOTTOMS, OR INSULATE CLIENTS FROM LOSSES DUE TO MARKET CORRECTIONS OR DECLINES. UTAH PEAKS CANNOT OFFER ANY GUARANTEES OR PROMISES THAT FINANCIAL GOALS AND OBJECTIVES WILL BE MET. PAST PERFORMANCE IS NOT AN INDICATION OF FUTURE PERFORMANCE.

Item 9 - Disciplinary Information

There are no legal or disciplinary events to report.

Item 10 - Other Financial Industry Activities and Affiliations

Neither Utah Peaks, any of its associated persons, nor Emma Jane Worsley are registered or applying to register as broker dealers or representatives of any broker-dealer.

Neither Utah Peaks, any of its associated persons, nor Emma Jane Worsley are registered or applying to register as futures commissions merchants, commodity pool operators, or commodity trading advisors. To the extent a client trades or is deemed to trade in commodity interests, Utah Peaks will maintain certain exemptions from registration with the U.S. Commodity Futures Trading Commission as a commodity pool operator or commodity trading adviser, as applicable, with respect to such clients.

Utah Peaks does not have any arrangements with a related person who is a broker-dealer, securities dealer, government securities dealer or broker, investment company or other pooled investment vehicle, investment adviser, financial planning firm, banking or thrift institution, accountant or accounting firm, lawyer or law firm, insurance company or agency, pension consultant, real estate broker or dealer, or an

entity that creates or packages limited partnerships that are material to its advisory services. Utah Peaks does not have any formal arrangements or agreements to recommend or select other investment advisers for the Client.

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

We have adopted a Code of Ethics (the “**Code of Ethics**”) that reflects our commitment to conducting our business in accordance with all applicable laws and regulations and in an ethical and professional manner. In addition, we recognize that we have a fiduciary duty to the Client and other accounts that we may manage, and that all of our employees must conduct their business on our behalf in a manner that enables us to fulfill this fiduciary duty. In this regard, we have developed policies and procedures in our Code of Ethics that are premised on fundamental principles of openness, integrity, honesty and trust. In addition, among other things, our Code of Ethics governs personal investment transactions by our employees, our policies with respect to gifts and entertainment, compliance with applicable federal securities laws, the manner in which violations of our Code of Ethics are to be reported, and certain other outside activities of our employees. With certain limited exclusions, personal securities transactions by employees require the pre-approval of the Chief Compliance Officer. We will provide a copy of our Code of Ethics to the Client or prospective clients upon request.

Item 12 - Brokerage Practices

Utah Peaks does not have the ability to unilaterally open any brokerage account or execute any brokerage account opening agreements for the benefit of the Investment Manager without advance pre-approval of the Investment Manager. The Investment Manager has a panel to determine if pre-approval is appropriate. Utah Peaks may propose to the Investment Manager the broker, dealer or issuer for certain transactions of the pooled investment vehicle that it believes is the best interest of the Client. In selecting brokers to effect portfolio transactions, the Investment Manager considers factors such as price, professionalism, and access to financial markets generally. The Investment Manager deals with all major global investment banks which helps drive competitive pricing and has attained a broad range of skill sets that the Investment Manager requires from each broker.

Utah Peaks does not enter into formal soft dollar arrangements. However, if such arrangements are created, they may only be entered with the prior pre-approval of the Investment Manager and only in compliance with the “safe harbor” provided by Section 28(e) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”). Utah Peaks will receive access to sell-side research portals from trading counterparties. Soft dollar arrangements pose a conflict of interest for an advisor in that such arrangements allow the advisor to pay with Investment Manager commissions expenses that would otherwise be borne by the advisor.

Utah Peaks buys and sells securities for only the pooled investment vehicle of the Investment Manager, which does not cause a conflict of interest related to allocation of such interests. If the Firm takes on multiple clients, the Firm has developed a trade allocation policy in order to mitigate this potential conflict of interest. Trades will be allocated on a pari passu basis between clients based on their pro-rata proportion of assets under management.

Item 13 - Review of Accounts

The Client account is reviewed on an ongoing basis for conformity with the investment objectives and guidelines set forth in the Investment Management Agreement and Service Agreement. This review is conducted by Daniel Zgodny, the Firm's Chief Compliance Officer. The Client receives reports in accordance with the terms of the applicable Investment Management Agreement and Service Agreement.

Item 14 - Client Referrals and Other Compensation

Utah Peaks does not receive any economic benefits from non-Clients for providing investment advice or other advisory services.

Item 15 - Custody

Utah Peaks does not maintain custody of Client assets.

Item 16 - Investment Discretion

Utah Peaks has discretionary authority over a portion of the pooled investment vehicle pursuant to the Service Agreement. Investors generally may not place any limits on our authority beyond the limitations set forth in the Client's Investment Management Agreement and/or Utah Peaks' internal compliance manual.

Item 17 - Voting Client Securities

Utah Peaks does not retain the power to vote or grant proxies with respect to any positions held on behalf of the Client. If Utah Peaks is granted the right to vote Client proxies, the Firm will do so in accordance with Rule 206(4)-6 of the Investment Advisers Act of 1940.

Utah Peaks has adopted proxy voting procedures in the event that it is required to vote proxies for certain investments. Rule 206(4)-6 of the Advisers Act requires a registered investment adviser that votes client securities to: (1) adopt written policies reasonably designed to ensure that the investment adviser votes in the best interest of the clients, (2) disclose to client's information about these policies and procedures, (3) provide information to clients about how their proxies were voted, and (4) retain certain records related to proxy voting practices.

Investment managers that are registered investment advisers are subject to the same requirement regarding voting client securities, and to the extent investment managers are delegated voting authority they will be required to follow their written policies regarding proxy voting, as applicable.

Upon the request of the Client, we will disclose how we voted securities owned by the Client. A copy of Utah Peaks' proxy voting policies and procedures is available upon the request of a Client. The Client may contact us via e-mail or telephone to request a copy of our proxy voting procedures or to inquire about the way in which a proxy was voted.

Item 18 - Financial Information

Utah Peaks is not required to include a balance sheet for its most recent fiscal year, is not aware of any financial condition reasonably likely to impair its ability to meet contractual commitments to the Client and has not been the subject of a bankruptcy petition at any time during the past ten years.