

# FORAGER CAPITAL MANAGEMENT, LLC FIRM BROCHURE (PART 2A OF FORM ADV)

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March 28, 2023

This brochure provides information about the qualifications and business practices of Forager Capital Management, LLC. If you have any questions about the contents of this brochure, please contact us at: (205) 383-4763 or by email at: [info@foragercap.com](mailto:info@foragercap.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. Registration with the SEC or a state securities authority does not imply a certain level of skill or training.

Additional information about Forager Capital Management, LLC also is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov)

## **ITEM 2: MATERIAL CHANGES**

Forager Capital Management, LLC ("Forager") is providing this annual update to the "Brochure" since its last update dated March 28, 2022. A summary of the material changes since the last update is as follows:

- Item 4 reflects an update to Forager's Principal Owners and regulatory assets under management.
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## **ITEM 4: ADVISORY BUSINESS**

### ***Firm Description and Principal Owners***

Forager is a Delaware limited liability company with its principal office at 2025 3<sup>rd</sup> Ave N Suite 350; Birmingham, AL 35203. Forager is registered as an investment adviser with the Securities and Exchange Commission ("SEC") under the U.S. Investment Advisers Act of 1940, as amended (the "Advisers Act"). Forager was formed in July of 2011.

The principal owners of Forager are Robert Symmes MacArthur, Edward Urban Kissel IV, and Jonathan N Wilhelm (the "Principals"). Mr. MacArthur's ownership of Forager is indirect via Macarthur LLC, of which he is the sole owner. Mr. Kissel's ownership of Forager is indirect via Bad Dog Enterprises, LLC, of which he is the sole owner. Mr. Wilhelm's ownership of Forager is indirect via Beaumont Capital, LLC, of which he is the sole owner.

### ***Types of Advisory Services***

Forager provides security selection and portfolio management services focusing on small market capitalization common equities but with a broad mandate for investments in securities regardless of size or type. Forager will offer its investment advisory services through a pooled investment vehicle, Forager Fund, L.P. (individually, the "Private Fund"), FCM Homebuilder, LLC (individually, the "Homebuilder Fund") (collectively, the "Private Funds"), and through separately managed accounts.

### ***Tailored Relationships***

Investors will be advised of Forager's investment strategy for the Private Funds before they make their investment subscription. Forager will make all investment decisions on behalf of the Private Funds. Investors in the Private Funds will not participate in the decision of whether or not the Private Funds make any particular investment. Generally, investors in the Private Funds will not have the ability to individually tailor their investment or impose unique investment restrictions, however, in certain circumstances, the Private Funds may create a special class of interests to accommodate a particular investor's or group of investors' unique investment restrictions.

Investors in separately managed accounts will be advised of Forager's investment strategy for separately managed accounts before they make their investment subscription. Forager will make investment decisions on behalf of the separately managed accounts, and in some cases investors in separately managed accounts will make decisions on behalf of the separately managed accounts. Generally, investors in the separately managed accounts will not have the ability to individually tailor their investment or impose unique investment restrictions, however, in certain circumstances, the separately

managed accounts may create a special class of interests to accommodate a particular investor's or group of investors' unique investment restrictions.

### ***Wrap Fee Programs***

Forager does not participate in any wrap fee programs.

### ***Assets Under Discretionary and Non-Discretionary Management***

As of the date of this Brochure, Forager has \$311,826,604 assets under management on a discretionary basis and \$0 on a non-discretionary basis.

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## **ITEM 5: FEES AND COMPENSATION**

### ***Description and Fee Billing***

Forager will generally charge the portfolios that it manages both performance-based fees and asset-based management fees. Performance-based fees will be charged in compliance with Rule 205-3 of the Advisers Act.

With respect to the Private Fund, Forager will receive a monthly management fee in advance in an amount equal to 0.125% (1.5% annually) of each Class A and Class C limited partner's capital account at the start of the month and 0.167% (2.0% annually) of each Class B limited partner's capital account at the start of the month. Forager will also receive an annual performance fee equal to 15% of the net appreciation in each Class A and Class C limited partner's capital account and 20% of the net appreciation in each Class B limited partner's capital account, subject to a "loss carry forward" or "high water mark" provision.

With respect to the Homebuilder Fund, Forager will receive an asset management fee equal to 1.00% per annum of the aggregate amount of the investors' capital commitments. The fee will be payable annually in advance of the date of the closing and each anniversary thereof. Forager will also receive a performance fee equal to 20% of the net appreciation of the Homebuilder Fund at the conclusion of the investment.

Monthly management fees will be pro rated if Forager provides management services for less than a full month.

Forager's standard fees with respect to the Private Funds are set forth above, however, Forager retains the right to negotiate different fees with an investor in the Private Funds.

Fees will be deducted from the Private Fund's assets.

With respect to some separately managed accounts, management fees will be based on a percentage of net liquidation value calculated quarterly and paid in advance. Any amount of prepaid fee will be returned to the client in the event of a termination.

With respect to some separately managed accounts, Forager will receive a performance fee equal to a percentage of the net liquidation value of the account for the year as of the end of the day December 31.

Fees are negotiable. Management fees are not to exceed 2% annually. Forager retains the right to negotiate different fees with different investors.

### ***Other Fees or Expenses***

Generally, clients will pay or reimburse Forager for all legal, accounting and other expenses in connection with the organization of client accounts. Clients will also be responsible for their ongoing operating expenses, including, but not limited to, legal, accounting and audit expenses.

Clients will also incur custodial, brokerage and other transaction costs. For more information regarding Forager's brokerage arrangements see Item 12 below.

### ***Participation or Interest in Client Transaction***

Neither Forager nor any of its supervised persons accepts compensation for the sale of securities or other investment products, including asset-based sales charges or service fees from the sale of mutual funds. The advisor and the advisor's principals are invested in the Fund, and they own securities also owned by the fund.

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## **ITEM 6: PERFORMANCE-BASED FEES AND SIDE-BY-SIDE MANAGEMENT**

As described above under Item 5, Forager will receive both asset-based management fees and performance-based compensation from the Private Funds and separately managed accounts.

Performance-based fees, in general, may create an incentive for an adviser or its supervised persons to make investments that are riskier and more speculative than would be the case in the absence of a performance-based fee. Such fee arrangements may also create an incentive to favor higher fee-paying clients over other clients in the allocation of investment opportunities. To address these conflicts of interest with respect to any future clients, the Adviser implements policies and procedures to ensure that

all clients receive equitable and fair treatment with respect to the allocation of investment opportunities.

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## **ITEM 7: TYPES OF CLIENTS**

Forager will provide its services solely to the Private Funds and separately managed accounts. Investors in the Private Funds and separately managed accounts may include:

- Individuals, including high net worth individuals
- Trusts, estates or charitable organizations
- Banks or other thrift institutions
- Corporations or other business entities
- Private and public pension and profit-sharing plans
- Foundations and endowments
- Funds of funds
- Government or political subdivisions

The minimum investment required to invest in client accounts will be \$1,000,000, however, Forager reserves the right to reduce this minimum on a case-by-case basis.

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## **ITEM 8: METHODS OF ANALYSIS, INVESTMENT STRATEGIES AND RISK OF LOSS**

### ***Methods of Analysis and Investment Strategies***

Through client accounts, Forager will seek to generate capital gains and income by investing in securities which Forager believes (i) are deeply



undervalued, (ii) offer downside protection, and (iii) are accompanied by some long or short term catalyst for higher valuation.

Forager believes that such opportunities may arise from lack of analyst coverage, cyclical or secular stress, spinoffs, asset price volatility, unexciting business models, small size, limited liquidity, or other special situations or fact patterns where a company is perceived as undervalued.

Client investments will not be limited with regard to an issuer's market capitalization, industry, domicile, security or instrument type, but initially will generally focus on public equities of issuers that are under \$500 million in market capitalization.

Investments by clients may be made in both long and short positions of equity and debt securities, or in other instruments, and in both U.S. and non-U.S. securities markets. Client investment portfolios typically will consist of investments made in securities of issuers primarily traded in developed country markets, although investments in other markets are not precluded. Forager may cause client accounts to invest a limited portion of their assets in instruments such as put and call options, futures, swaps, and private companies.

Homebuilder Fund maintains an investment strategy of seeking to generate long-term capital appreciation by investing in a sole corporation.

### ***Risk of Loss***

Investing in securities involves risk of loss that clients should be prepared to bear. An investment in client accounts may be deemed to be a speculative investment and is not intended as a complete investment program. Investment in client accounts is suitable only for persons who can bear the economic risk of the loss of their entire investment, who have limited need for liquidity in their investment and who meet the conditions set forth in the client accounts offering documents. There can be no assurances that the client accounts will achieve their investment objectives. Investment in client accounts involve significant risks. While the following summary of certain of these risks should be carefully evaluated before making an investment in client accounts, the following does not intend to describe all possible risks of such an investment:

Equity Investments. Client accounts may be subject to the risks associated with any equity investment strategy. Sharp downward market moves may adversely impact the client accounts' positions and result in losses. Losses may also be incurred on individual positions as a result of issuer-specific matters such as unexpectedly disappointing earnings, lawsuits, analyst action or other matters. Equity returns are volatile and may fluctuate substantially over time.

Investing in Fixed Income Securities. Client accounts may invest in fixed-income securities. Issuers of fixed income securities have a contractual obligation to pay interest at a specified rate (coupon rate) on specified dates and to repay principal (face value or par value) on a specified maturity date. Certain bonds (usually intermediate- and long-term bonds) have provisions that allow the issuer to redeem or "call" a bond before its maturity. Issuers are most likely to call such bonds during periods of falling interest rates. As a result, client accounts may be required to invest the unanticipated proceeds of the called security at lower interest rates, which may cause client accounts income to decline.

General Risks of Investing in Debt Instruments. The risks of debt investments include (among others): (i) limited liquidity and secondary market support, (ii) the possibility that earnings of the obligor may be insufficient to meet its debt service, (iii) the declining creditworthiness and potential for insolvency of the borrower during periods of economic downturn, (iv) spread compression over the reference interest rate available for reinvestment during any period in which prepayments are received and (v) if the investment is subordinated, subordination to the prior claims of other loans or senior lenders. Debt investments are generally subject to market value volatility that may not be apparent from historical volatility studies and that could be significant at times. An economic downturn could severely disrupt the market for loans and high yield bonds and adversely affect the value of outstanding holdings and the ability of the borrowers thereof to repay principal and interest. Moreover, defaults may prove to be greater than indicated by historical data and the timing of defaults may vary significantly from historical observations. Client accounts may hold a junior position in the capital structure of an issuer which is not secured by collateral.

Debt instruments may become non-performing for a variety of reasons. Non-performing instruments may require substantial workout negotiations or restructuring that may entail, among other things, a substantial reduction in the interest rate and/or a substantial write-down of the principal. Client accounts may incur additional expenses to the extent it is required to seek recovery upon a default or to participate in the restructuring of a debt instrument. Although client accounts may have voting rights with respect to an individual holding, there can be no certainty that the client accounts will be able to exercise votes in respect of a sufficient percentage of voting rights with respect to such holding to determine the outcome of such vote.

Investing in Foreign Securities and Emerging Markets. Forager expects that the client accounts' investments may include securities of issuers in global markets, including emerging markets, some of which may be particularly sensitive to economic, market, industry and other variable conditions. In addition, there may be limited information available about investment targets and the targets may have limited internal reporting and accounting systems. Client accounts are subject to various risks incidental to investing in

businesses abroad, including nationalization, expropriation or confiscatory taxation, political and economic instability and diplomatic developments, which could affect investments in those countries. The economies of emerging market countries may differ favorably or unfavorably from the economies of more industrialized countries, in such respects as growth of domestic product, rate of inflation, currency depreciation, capital reinvestment, resource self-sufficiency and balance of payments position. Moreover, economic factors in various global markets can affect demand for the goods and services of issuers of securities held by client accounts. In addition, there is greater difficulty in monitoring business abroad.

Non-controlling Investments. Forager anticipates that client accounts will hold minority equity, debt obligations and other non-controlling interests in portfolio companies and, therefore, will have a limited ability to protect the client accounts position in such portfolio companies. In such cases, client accounts will be significantly reliant on the existing management and board of directors of such companies, which may include representation of other financial investors with whom client accounts are not affiliated and whose interests may conflict with the interests of the client accounts.

Investments in Undervalued Assets. Client accounts may seek to invest in undervalued assets. The identification of investment opportunities in undervalued assets is a difficult task, and there is no assurance that such opportunities will be successfully recognized or acquired. While investments in undervalued assets theoretically offer the opportunity for above-average capital appreciation, these investments may involve a high degree of financial risk and can result in substantial losses. Client accounts may be forced to sell, at a substantial loss, assets which Forager believed to be undervalued, if they are not in fact undervalued. In addition, client accounts may be required to hold such assets for a substantial period of time before realizing their anticipated value. During this period, a portion of client accounts' funds would be committed to the assets purchased, thus possibly preventing client accounts from investing in other opportunities.

Hedging. Forager may attempt to structure its investments, and/or use various investment strategies and instruments, in a manner intended to hedge client accounts' exposure to market movements or other risks or limit losses. No assurance can be given that any hedging strategies or techniques employed by Forager will be successful or will operate as intended. The use of hedging instruments or strategies may reduce the profit realized by clients in some cases, and may cause clients to incur additional expenses. Although some risk management and capital management strategies are described in clients' offering documents, Forager is not obligated to adopt or maintain any particular hedging or risk management procedures.

Small Cap Issuers. At any given time, clients may have significant investments in smaller-to-medium sized companies of a less seasoned nature. Securities of such issuers often involve significantly greater risks

than the securities of larger, better-known companies. While smaller companies may offer substantial opportunities for capital growth, they also involve substantial risks and should be considered speculative. Historically, smaller company securities have been more volatile in price than larger company securities, especially over the short term. Among the reasons for the greater price volatility are the less certain growth prospects of smaller companies, the lower degree of liquidity in the markets for such securities, and the greater sensitivity of smaller companies to changing economic conditions.

In addition, smaller companies may lack depth of management, be unable to generate funds necessary for growth or development, have limited product lines or be developing or marketing new products or services for which markets are not yet established and may never become established. Smaller companies may be particularly affected by interest rate increases, as they may find it more difficult to borrow money to continue or expand operations, or may have difficulty in repaying any loans which are floating rate.

Short Sales. Clients may engage in short sales by selling equity securities that it does not own at the time of sale. By doing so, clients will become obligated to purchase and deliver equity securities against the short position. In the event that the price of an equity security increases between the short sale and clients' subsequent purchase of shares of that security, the clients will suffer a loss on that transaction and the value of the Partners' investments will decrease accordingly. There can be no assurance that the clients will not suffer such losses. In theory, a short sale has the potential for unlimited loss. In connection with short sales, clients will have to deliver cash or United States Treasury securities or other securities to brokers to assure delivery of equity securities against short positions. Clients will be able to keep only a negotiated percentage of the yield of such United States Treasury or other securities.

The availability of shares to borrow to execute a short can change quite dramatically and quickly. This presents a risk not faced with long positions. Recent moves by securities regulators all over the world to ban or limit short selling creates a new dimension of the risk. Dramatic changes in the availability of borrowed securities for shorting is an event not typically addressable through fundamental security analysis. Short squeezes or short covering rallies can be quite detrimental to overall profits. Avoiding hard-to-borrow shares or illiquid names is a basic risk management discipline. Easy-to-borrow shares can become hard-to-borrow quickly. The negative "crowding out" effect is more prevalent with the rapid growth in the number of long-short funds.

Exchange Rate Risk. Although clients expect to focus on securities traded in U.S. markets, it may invest in overseas markets. Volatility in international exchange rates between the United States Dollar and other currencies may affect pricing and the profit margin on sales of non-U.S. securities held by

clients. This, in turn, could adversely affect clients' rate of return or a Limited Partner's profit.

Clients will require that payments be made and will make distributions in United States Dollars. Consequently, for investors whose local currency is not United States Dollars, an investment in the clients involves a significant exchange rate risk. Clients could recognize substantial profits but the real value of a Limited Partner's investment could decline due to a decrease in the value of United States Dollars relative to such Limited Partner's local currency.

Trading in Forward Contracts to Hedge Currency Risk. Clients may, but are not obligated to, elect to hedge their exposure to fluctuations in the United States Dollar relative to foreign currencies by entering into forward contracts with respect to such currencies. A forward contract is similar to a futures contract but unlike a futures contract the terms of a forward contract are not standardized nor are forward contracts traded on exchanges designated by the United States government. Forward contracts are subject to the credit risk of the principals or their refusal to perform and the imposition of exchange controls. Forward contracts are not guaranteed by an exchange or a clearing house and the failure of a principal with whom a forward contract is made would likely result in a default. It may be difficult to enforce the contractual obligations of a non-United States principal in the event that a principal refuses to perform under a forward contract. The United States Commodity Futures Trading Commission ("CFTC") does not regulate foreign currency forward contract trading.

Futures. Clients may invest and trade in futures. A futures contract is an agreement between two parties which obligates the purchaser of a futures contract to buy and the seller of a futures contract to sell a security or basket of securities for a set price on a future date. Unlike most other futures contracts, a stock index futures contract does not require actual delivery of securities, but results in cash settlements based upon the difference in value of the index between the time the contract was entered into and the time of its settlement. The risk of loss in trading futures can be substantial. If the clients purchase a future they may sustain a total loss of the initial margin funds and any additional funds deposited with a broker to establish and maintain their position in the future. If the market moves against the clients' position, clients may be required to deposit a substantial amount of additional margin funds in order to maintain its position. The placement of contingent or stop orders by clients will not necessarily limit their losses to the intended amounts, as market conditions may make it impossible for such orders to be executed. There can be no assurance that, at all times, a liquid market will exist for offsetting a futures contract that clients have bought or sold. This could be the case if, for example, a futures price has increased or decreased by the maximum allowable daily limit and there is no one presently willing to buy the futures contract clients want to sell or sell the

futures contract clients want to buy. The high degree of leverage that can be used in trading futures can lead to large losses.

Options. Clients may engage in options trading. Stock or index options that may be purchased or sold by clients may include options not traded on a securities exchange. Options not traded on an exchange are not issued by the Options Clearing Corporation; therefore, the risk of nonperformance by the obligor on such an option may be greater and the ease with which clients can dispose of such an option may be less than in the case of an exchange traded option issued by the Options Clearing Corporation. The trading of options is highly speculative and may entail risks that are greater than those present when investing in other securities. Prices of options are generally more volatile than prices of other securities. To the extent that the clients purchase options that it does not sell or exercise, it will suffer the loss of the premium paid in such purchase. To the extent that clients sell options and must deliver the underlying securities at the option price, clients have a theoretically unlimited risk of loss if the price of such underlying securities increases. To the extent that clients must buy the underlying securities, they risk the loss of the difference between the market price of the underlying securities and the option price. Any gain or loss derived from the sale or exercise of an option will be reduced or increased, respectively, by the amount of the premium paid. The expenses of option investing include commissions payable on the purchase and on the exercise or sale of an option. Special risks are associated with the use of options. A decision as to whether, when and how to use options involves the exercise of skill and judgment which are different from those needed to select securities, and even a well-conceived transaction may be unsuccessful to some degree because of market behavior, currency fluctuations or interest rate trends. The potential loss incurred by clients in writing uncovered options is unlimited. When options are used as a hedging technique, there can be no guaranty of a correlation between price movements in the option and in the portfolio securities being hedged. A lack of correlation could result in a loss on both the hedged securities and the hedging vehicle, so that clients return might have been better had hedging not been attempted.

Exchange-Traded Funds. Because ETF shares, as opposed to mutual fund shares, are exchange-traded securities, they are subject to additional risks. ETF shares are bought and sold on the secondary market at market prices. Although it is expected that the market price of an ETF share typically will approximate its net asset value ("NAV"), there may be times when the market price and the NAV vary significantly. Thus, clients may pay more than NAV when they buy ETF shares on the secondary markets, and may receive less than NAV when they sell those shares. Some ETFs may utilize leverage to enhance returns. The effect of such leverage may result in a greater increase in NAV. However, such ETFs can be extremely volatile as the NAV tends to fluctuate out of proportion to the underlying securities due to the leverage employed. Although ETF shares in which clients will invest



are listed for trading on stock exchanges, it is possible that an active trading market may not be maintained.

Swaps. Clients may invest in swaps. A swap is similar to a futures contract but unlike a futures contract the terms of many swaps are not standardized nor are such non-standardized swaps currently traded on exchanges designated by the United States government. A discussion of the risks associated with the purchase of futures is set forth above. Additional risks also exist with respect to swaps. Swaps are subject to the credit risk of the principal or its refusal to perform and the imposition of exchange controls. Non-standardized swaps are not guaranteed by an exchange or a clearing house and the failure of a principal with whom a swap is made would likely result in a default. It may be difficult to enforce the contractual obligations of a principal in the event that a principal refuses to perform under a swap. The U.S. Congress, the SEC, the CFTC and other regulators are reviewing the over-the counter swaps market. As a result of this review, the Dodd-Frank Act was recently enacted which, among other things, established a comprehensive framework for regulating the over-the counter swaps market. In particular, the Dodd-Frank Act divides regulatory authority over swaps between the SEC and the CFTC, with the SEC having authority over security-based swaps, the CFTC having authority over commodity-based swaps and the SEC and CFTC having joint authority over "mixed swaps," which are security-based swaps that also have a commodity component. Among other things, the Dodd-Frank Act authorizes the SEC and the CFTC to provide for the registration and regulation of swap dealers and major swap participants. The Dodd-Frank Act also requires (i) clearing of all standardized swaps that can be cleared, (ii) trading of all cleared swaps and (iii) reporting of all swaps to the CFTC, SEC or a registered swap data repository. For swaps that are not sufficiently standardized to be accepted by a clearinghouse, the Dodd-Frank Act does not require central clearing but requires margin to be posted as well as significant capital to be maintained by the swap dealer or major swap participant and imposes certain reporting requirements. Proposed SEC and CFTC rules would govern these capital, margin, reporting and business conduct requirements. Compliance with these requirements may make trading non-standardized swaps more costly. While these changes to the regulation of swaps are not expected to have a material adverse impact on clients or their strategy, Forager cannot currently predict the form that any final regulations may take or their impact on clients. In addition, other legislation may be passed or regulations adopted in the future with respect to the trading of swaps which could negatively impact clients and their strategies.

Frequent Trading; Increased Costs and Expenses. Clients' investment strategy may involve frequent trading due to the active nature of its portfolio. As a result, the brokerage, commissions, and other expenses may exceed those of other, less active, investment entities of comparable size.

Concentration of Investment; Lack of Diversification. Client's contribution in Homebuilder Fund will be allocated to a single investment. As a result, it will not be diversified, and the aggregate return may be substantially adversely affected by the unfavorable performance of that investment.

**The foregoing list of risk factors does not purport to be a complete enumeration or explanation of the risks involved in an investment in the Private Funds or separately managed accounts. Prospective investors should read the Private Funds' and separately managed accounts' offering documents and consult with their own legal, tax and financial advisers before deciding to invest in the Private Funds or separately managed accounts.**

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## **ITEM 9: DISCIPLINARY INFORMATION**

Registered investment advisers are required to disclose all material facts regarding any legal or disciplinary events that would be material to a client's evaluation of an adviser or the integrity of an adviser's management.

Forager has no legal or disciplinary events to report.

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## **ITEM 10: OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS**

### ***Broker-Dealer Registration***

Forager does not have a registration or an application pending to register as a broker-dealer or a registered representative of a broker-dealer.

### ***Futures, Commodity Pool Operator, Commodity Trading Advisor***

Forager does not have a registration or an application pending to register as a futures commission merchant, commodity pool operator, a commodity trading advisor, or an associated person of the foregoing entities.

### ***Related Person Arrangements***

Neither Forager nor any of its management persons have any relationship or arrangement with a related person that is material to Forager's advisory business or to its clients that it has not otherwise disclosed.

### ***Arrangements With Other Investment Advisers***



Forager does not recommend or select other investment advisers for its clients nor does it have any other business relationships with any other advisers that create a material conflict of interest.

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## **ITEM 11: CODE OF ETHICS, PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS AND PERSONAL TRADING**

### ***Code of Ethics***

Forager has adopted a Code of Ethics (the "Code") in accordance with Rule 204A-1 of the Advisers Act. A copy of the Code is available to clients and prospective clients upon request without charge. The purpose of the Code is to set forth certain key guidelines that have been adopted by Forager as office policy for the guidance of all personnel and to specify the responsibility of all employees of Forager to act in accordance with their fiduciary duty to Forager's clients and to comply with applicable federal and state laws and regulations. The Code requires that all employees conduct themselves in accordance with high ethical standards, which should be premised on the concepts of integrity, honesty and trust, and in full compliance with all applicable federal and state laws and regulations concerning the securities industry.

The following is a summary of certain provisions of the Code:

Confidential Information. As an investment adviser, Forager has a fiduciary duty to its clients not to divulge or misuse information obtained in connection with its services as an adviser. Therefore, all information, whether of a personal or business nature, that an employee obtains about a client's affairs in the course of employment with Forager should be treated as confidential and used only to provide services to or otherwise for the benefit of the client. Such information may sometimes include information about non-clients, and that information should likewise be held in confidence. Even the fact that Forager advises a particular client should ordinarily be treated as confidential.

The Code sets forth steps employees should take to help preserve confidential information including the following: avoiding inadvertent or accidental disclosure through careless conversation or describing details of a current or proposed trade, investment or transaction in a public place; employing physical safeguards, such as locking file cabinets and using password protected computer files or disks; and careful use of email.

A copy of Forager's privacy policy is distributed to investors in clients on an annual basis.

Material Non-Public Information. All employees of Forager (in any capacity) and all persons - friends, relatives, business associates and others - who receive material nonpublic information concerning an issuer of securities (whether such issuer is a client or not) are subject to these rules. Generally speaking, material non-public information is material information about an issuer's business or operations (past, present or prospective) that becomes known to an employee and which is not otherwise available to the public.

Although the exact meaning of "material" is unclear, if a person knows information about an issuer which the person believes would influence an investor in any investment decision concerning that issuer's securities and which has not been disclosed to the public, the person should not buy or sell that issuer's securities. The Code sets forth an extensive list of examples of types of information which are likely to constitute material non-public information. The Code also explicitly forbids disclosing material non-public information to another person ("tipping") who subsequently uses that information for his or her profit.

All personnel receiving material, non-public information have the same duty not to disclose or use information about persons or issuers who are not clients of Forager in connection with securities transactions as they have with respect to client securities. In other words, employees may not purchase or sell any securities with respect to which they have material non-public information for their own, Forager's or for a client's account or cause clients to trade on such information until such information becomes public. The foregoing prohibition applies whether or not the material non-public information is the basis for the trade. Whenever employees come into possession of what they believe may be material non-public information about an issuer, they must immediately notify Forager's Chief Compliance Officer. The Chief Compliance Officer shall maintain a list of all issuers about which Forager has material non-public information and shall circulate such list to the appropriate personnel at Forager so as to prevent any trading in securities of such issuers.

Fiduciary Duty and Conflicts of Interest. Forager and its employees have a fiduciary duty to Forager's clients to act for the benefit of the clients and to take action on the clients' behalf before taking action in the interest of any employee or Forager. Forager and its employees must act for the clients' benefit and treat the clients fairly. The manner in which any employee discharges its fiduciary duty and addresses a conflict of interest depends on the circumstances. Sometimes general disclosure of common conflicts of interest may suffice. In other circumstances, explicit consent of the client to the particular transaction giving rise to a conflict of interest may be required or an employee may be prohibited from engaging in the transaction regardless of whether the client consents. The duty to disclose and obtain a client's consent to a conflict of interest must always be undertaken in a manner consistent with the employee's duty to deal fairly with the client. Therefore, even when taking action with a client's consent, each employee

must always seek to ensure that the action taken is fair to the client.

The Code sets forth several common examples of situations in which conflicts of interest may arise, including selection of broker-dealers, receipt of gifts, and service as a director of a public company, as well as the ways in which such conflicts may be avoided.

Scalping or Front-Running. Subject to Forager's personal trading policy (as further described below), if any employee knows of a pending "buy" recommendation or is aware of a pending "sell" recommendation, then that employee may not engage in the practice of purchasing or selling such security. Such activities may put Forager and its employees in a conflict of interest and give the employee an advantage at the client's expense. Any trades undertaken for an employee's own account, for the account of the Company, for the account of any non-Company client or for another related person must be done so as not to disadvantage a Forager client in any way.

Unfair Treatment of Certain Clients vis-à-vis Others. An employee who handles one or more clients may be faced with situations in which it is possible to give preference to certain clients over others. Employees must be careful not to give preference to one client over another even if the preferential treatment would benefit Forager or the employee. For example, an employee should not (i) provide better advice to a large, prestigious client than is given to a smaller, less influential one, (ii) give sale advice to one client ahead of another, or (iii) direct securities of a limited supply and higher potential return to particular clients because they generate larger fees for Forager.

Dealing with Clients as Agent and Principal. In accordance with Section 206(3) of the Advisers Act, the Code requires that employees involved in situations where Forager is buying or selling securities from a client or where Forager acts as a broker-dealer for a non-client in a transaction with an advisory client disclose to the client in writing the capacity in which Forager acts, its profits (if it acts as principal) and its commissions (if it acts as agent for another) and obtain the client's consent. Forager generally does not participate in these types of transactions, but any such transaction must not be entered into without prior consultation with Forager's Chief Compliance Officer.

Personal Trading. Employees are allowed to buy and sell securities for their own accounts. Each employee must submit an initial holdings report disclosing to the Chief Compliance Officer the identities, amounts, and locations of all securities owned in all accounts in which he or she has a "beneficial ownership interest." In addition, each employee must disclose similar information within thirty (30) days after the end of each calendar year while employed by Forager. Such reports must be current as of a date not more than 45 days prior to the employee joining the company (for an initial report) or the date the report is submitted (for the annual report). Each

employee must report to the Chief Compliance Officer within 30 days after the end of each calendar quarter all securities transactions in all of the employee's covered accounts during the preceding quarter.

### ***Participation or Interest in Client Transactions***

Forager does not solicit clients to invest in funds (such as the Private Funds) in which Forager or a related person acts as general partner or investment manager. Forager Capital Management does solicit individuals to invest in Forager Fund, LP.

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## **ITEM 12: BROKERAGE PRACTICES**

### ***Selecting Brokerage Firms***

Forager assumes general supervision over placement of securities orders for the client portfolios it manages. Forager has the authority to determine pursuant to the Private Fund's limited partnership agreement the broker-dealer to be used in any securities transaction and the commission rate to be paid. While the primary criterion for all transactions in portfolio securities is the execution of orders at the most favorable net price, numerous additional factors are considered by Forager when arranging for the purchase and sale of clients' portfolio securities. These include restrictions imposed by the federal securities laws and the allocation of brokerage in return for certain services and materials described below. In determining the abilities of the broker-dealer to obtain best execution of a particular transaction, Forager will consider all relevant factors including the execution capabilities required by the transaction, the ability and willingness of the broker-dealer to facilitate the account's portfolio transactions promptly and at reasonable expense, the importance to the account of speed, efficiency or confidentiality and the broker-dealer's apparent familiarity with sources from or to whom particular securities might be purchased or sold, as well as any other matters Forager deems relevant to the selection of a broker-dealer for a particular portfolio transaction of the account.

### ***Research and Other Soft Dollar Benefits***

Forager may use broker-provided products and services that assist it in carrying out its investment decision-making responsibilities. Such services may include, but are not limited to: (i) written information and analyses concerning specific securities, companies or sectors; (ii) market, financial and economic studies and forecasts, as well as discussions with research personnel; (iii) certain financial and industry publications; and (iv) statistical

and pricing services utilized in the investment management process. Forager intends to comply with Section 28(e) of the Securities Exchange Act of 1934, as amended, in connection with its use of soft dollars. In some cases Forager may acquire a research product or service with soft dollars that also has non-research uses. In these cases Forager will make a reasonable allocation of the cost of the product or service according to its use. That portion of the product or service which provides administrative or other non-research services will be paid for by Forager in hard dollars.

When Forager uses client brokerage commissions, mark-ups or markdowns to obtain research or other products or services, Forager will receive a benefit because it will not have to produce or pay for the research, products or services that are provided. Forager may have an incentive to select a broker-dealer based on its interest in receiving the research or other products or services, rather than on clients' interest in receiving most favorable execution.

All research services received from broker-dealers to whom commissions are paid are used collectively. There is no direct relationship between commissions received by a broker-dealer from a particular client's transactions and the use of any or all of that broker-dealer's research material in relation to that client's account. Forager may pay a broker-dealer a brokerage commission in excess of that which another broker-dealer might have charged for the same transaction in recognition of research and brokerage related services provided by the broker-dealer.

On a semi-annual basis, the Chief Compliance Officer shall review the list of brokers with whom Forager does business, the commissions paid to such brokers and the soft dollar products and services provided by such brokers to Forager and assess whether Forager is achieving best execution and is complying with its brokerage policy.

### ***Brokerage for Client Referrals***

Forager does not consider whether it receives client referrals from a broker in selecting broker-dealers.

### ***Directed Brokerage***

Forager does not recommend, request or require that a client direct Forager to execute transactions through a specified broker-dealer.

### ***Aggregation of Client Accounts***

Forager may aggregate orders for client accounts. Securities purchased or proceeds of securities sold through aggregated orders are allocated to the account of each portfolio that bought or sold such securities at the average execution price. If less than the total of the aggregated orders is executed, related party accounts owned entirely by Forager, by Employees or by such

Employees' family members will have their allocation reduced to zero before any reductions are made in the allocation to the clients. Transaction costs for any transaction are shared pro rata based on each portfolio's participation in the transaction.

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## **ITEM 13: REVIEW OF ACCOUNTS**

### ***Periodic Reviews***

Forager will initially manage two types of accounts, the Private Funds and separately managed accounts. All limited partners in the Private Funds share the same investment objective as it relates to the Private Funds. The Principals review the Private Fund's exposures and trading activity on a weekly basis. The Principals review separately managed accounts exposures and trading activity on a weekly basis.

### ***Review Triggers***

As described above, Forager reviews client accounts on a regular basis and thus this item is not applicable.

### ***Regular Reports***

Investors in the Private Funds will receive (i) unaudited reports of the performance of the Private Funds on a quarterly basis from the Private Fund's third-party administrator, and (ii) audited year-end financial statements within 120 days of the Private Fund's fiscal year end. Investors will also receive periodic updates from Forager with information about the Private Fund's portfolio and the market generally.

Investors in separately managed accounts will have direct access to their own accounts for reporting purposes. Investors will also receive periodic updates from Forager with information about separately managed accounts' portfolios.

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## **ITEM 14: CLIENT REFERRALS AND OTHER COMPENSATION**

Forager does not have any arrangements under which it or a related person compensate another for client referrals. Forager does not have any arrangements under which it receives any economic benefit, including sales awards or prizes.

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## **ITEM 15: CUSTODY**

Forager is General Partner of the Private Funds and in that capacity has access to and custody of the Private Funds assets, within the meaning of Rule 206(4)-2 under the Advisers Act. (the "Custody Rule") As such, Forager must comply with all the requirements set forth in the Custody Rule regarding advisers who have custody of client assets. All client assets are custodied with a qualified custodian.

Northern Trust Securities, Inc. serves as prime broker for the Private Fund. The Private Fund has engaged a fund administrator whose responsibilities will include sending account statements to the Private Fund investors. Since the Private Funds are commingled accounts respective to each fund, the investors will not receive prime brokerage or custodial statements. However, the Private Funds' administrator will reconcile the Private Fund's accounting records with the records of the prime broker. As described above under Item 13, investors in the Private Fund will receive quarterly unaudited reports from the Private Fund's third-party administrator. In addition, investors in the Private Fund will also receive audited year-end financial statements.

Northern Trust Securities, Inc. serves as the broker for the separately managed accounts. The separately managed account investors will receive brokerage or custodial statements directly. Investors are urged to review carefully and compare these statements with any statements provided by the Adviser.

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## **ITEM 16: INVESTMENT DISCRETION**

Forager has complete discretionary authority over the purchase and sale decisions for the Private Funds. Forager has discretionary authority with respect to the Private Funds under the agreement of limited partnership between Forager and the limited partners in the Private Funds.

Forager has discretionary authority over the purchase and sale decisions for the separately managed accounts. Forager has discretionary authority with respect to the separately managed accounts under the agreements between Forager and the separately managed accounts. The limitations on such authority are described in the Private Fund's governing documents and the separately managed accounts' investment management agreements.

## **ITEM 17: VOTING CLIENT SECURITIES**

Forager has adopted a written proxy voting policy and related procedures which are intended to assure that clients' securities are voted in the best interests of the clients, and which address material conflicts of interest that may arise between Forager and clients. Forager's proxy policy is to carefully review every proxy received. Forager reviews each situation and votes in the way that it believes will be most beneficial to clients and its investors. In some cases, Forager may determine that it is not in the best interests of clients to vote a proxy (e.g., if Forager determines that overall value to clients' investors would be better maximized if Forager focused its efforts elsewhere). Generally, Forager will not allow investors in clients to direct Forager's vote in a particular situation. If Forager believes that it has a material conflict of interest with respect to any proxy vote, it will vote the proxy in the best interests of clients or refrain from voting the proxy in such situation. Any investor in clients may request to see how proxies were voted for clients and such information will be made available to them upon request. Inquiries should be directed to Forager at the number listed on the front of this Brochure.

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## **ITEM 18: FINANCIAL INFORMATION**

Forager does not solicit prepayment of more than \$1,200 in fees per client, six months or more in advance. Please refer to Forager's fee disclosure at Item 5 of this brochure. There is no financial condition affecting Forager that is reasonably likely to impair Forager's ability to meet contractual commitments to clients. Forager has not been the subject of a bankruptcy petition at any time during the past ten years

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