

## Mittleman Investment Management, LLC

### Part 2A of Form ADV

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This brochure (“**Brochure**”) provides information about the qualification and business practices of Mittleman Investment Management, LLC. If you have any questions about the contents of this Brochure, please contact us at 212-217-2340, or via email at [compliance@mittlemanbrothers.com](mailto:compliance@mittlemanbrothers.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. We are an SEC-registered investment adviser under the Investment Advisers Act of 1940, as amended. Registration as an investment adviser does not imply any level of skill or training.

Additional information about Mittleman Investment Management, LLC is available on the SEC’s website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). You can search this site by a unique identifying number, known as a CRD number. Our CRD number is 138338.

## **ITEM 2 MATERIAL CHANGES**

There have been no material changes in respect of the disclosures set forth in our brochure since our last annual Brochure update dated March 31, 2017. This Brochure, dated March 20, 2018, contains certain clarifying changes relating to the disclosures set forth herein, in addition to a change to our assets under management and certain other non-material changes.

You may request the most recent version of this Brochure by contacting our Chief Compliance Officer, Stephen G. Bondi, at 212-217-2340, or via email at [compliance@mittlemanbrothers.com](mailto:compliance@mittlemanbrothers.com).

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## **ITEM 4      ADVISORY BUSINESS**

Mittleman Investment Management (“MIM,” “we,” “our,” or “us”) is a limited liability company formed under the laws of the State of New York.

We began providing discretionary portfolio management and advisory services with a focus on domestic and foreign equity securities in 2005. We are a privately-held, wholly owned subsidiary of Mittleman Brothers, LLC (“Mittleman”), a holding company domiciled in the State of New York. 100% of the voting interests of Mittleman are owned by its three Managing Partners: Christopher P. Mittleman, Managing Partner and Chief Investment Officer (“CIO”), Philip C. Mittleman, Chief Executive Officer (“CEO”), President and Managing Partner, and David J. Mittleman, Managing Partner and Chief Client Relationship Officer. Approximately 84% of the economic interest of Mittleman is owned by the three Managing Partners and the remaining approximate 16% of the non-voting economic interest in Mittleman is owned by a small group of long-standing clients and/or investors in our Private Funds in addition to certain of our employees.

We serve as an investment adviser and provide asset management services to high-net-worth individuals and various types of institutional clients described below in “*Item 7 – Types of Clients.*” We conduct research, make investment decisions for our client accounts, and generally select the broker-dealers for the execution of client transactions. Additional details are provided below in “*Item 12 – Brokerage Discretion.*”

As of December 31, 2017, we managed approximately \$482 million in assets on a discretionary basis. We do not provide investment management services on a non-discretionary basis.

### **A. SEPARATELY MANAGED ADVISORY ACCOUNTS**

Separately Managed Accounts (“SMAs”) are managed in accordance with the terms, conditions, guidelines, and limitations contained in Investment Advisory Agreements or Investment Management Agreements (collectively, “IMAs”) between us and our corresponding client(s). In general, we do not tailor our asset management strategy to the individual requests of our clients, though allocations of investment opportunities to our clients’ accounts will typically vary as we make independent allocation decisions with respect to each client account. Under limited circumstances, if acceptable investment guidelines are requested by an institutional investor, we may approve client guidelines and restrictions on a case-by-case basis.

### **B. PRIVATE FUNDS (AFFILIATED WITH AND MANAGED BY US)**

We advise the following affiliated private investment funds: Mittleman Brothers Master Fund, Ltd. (the “**Master Fund**”) and its two feeder funds (the “**Feeder Funds**,” each a “**Feeder Fund**”), Mittleman Brothers Fund, LP (the “**Onshore Feeder**”) and Mittleman Brothers Offshore Fund, Ltd. (the “**Offshore Feeder**”); Mittleman Global Value Equity Fund (“**MGVEF**”); and Precog Capital Partners, L.P. (“**Precog**”) (Precog collectively with the Master Fund, the Feeder Funds, and MGVEF, the “**Private Funds**”). We manage the Private Funds in accordance with the objectives and investment strategies described in such Private Funds’ applicable offering documents. The terms, conditions, risks, and fees pertaining to an investment in the Private Funds, are outlined in the respective Private Fund’s Private Placement Memorandum or other applicable offering documents. Our clients are under no obligation to consider, or make, an investment in the Private Funds. The Master Fund and Offshore Feeder are controlled by a Board of Directors, which is comprised of the owners of Mittleman, who also serve as executive officers of MIM. See additional details regarding conflicts of interest below in “*Item 8 - Methods of*

*Analysis, Investment Strategies & Risk of Loss” and “Item 11 - Code of Ethics, Participation of Interest in Client Transactions and Personal Trading.”*

Investing in the Private Funds involves various risk factors, including but not limited to: the potential for complete loss of principal, liquidity constraints, and a lack of transparency. Unlike liquid investments that a client may maintain, the Private Funds may not provide daily liquidity or pricing. Each prospective investor interested in investing in a Private Fund is required to complete a Subscription Agreement (or, as applicable, an Application Form) in which the prospective investor attests to whether or not such prospective investor meets the qualifications to invest in the Private Fund and further acknowledges and accepts the various risk factors associated with such an investment.

We serve as the investment manager to the Private Funds and provide investment advice thereto in accordance with the investment objectives, policies, and guidelines set forth in the respective offering documents, and not in accordance with the individual needs or objectives of any particular investor therein. In general, investors in the Private Funds are not permitted to impose restrictions or limitations. However, we may enter into side letter agreements with one or more investors that may alter, modify, or change the terms of the interest(s) held by the investor(s). Additionally, certain early investors in the Private Funds have been issued one or more separate classes of **“Founders’ Shares,”** which provide certain preferable investment terms as compared with the interests in such Private Funds that are currently being offered.

Throughout this Brochure, discussions of the Private Funds are separated from our discussions about matters that relate to our SMA clients except where such separation is unnecessary because the Private Funds and our SMA clients are treated in the same manner, since each are advisory clients of ours.

## **ITEM 5 FEES AND COMPENSATION**

We act as the investment adviser to the Private Funds and SMAs. Generally, we are compensated for investment advisory services by our clients based upon the value of the assets in their respective SMAs. These are referred to as **“asset-based fees.”** In the case of the Private Funds, such asset-based fees are calculated based upon the value of the net assets in the Private Fund (without double counting assets in the Feeder Funds and the Master Fund).

We also may receive compensation from **“performance-based fees”** in accordance with Rule 205-3 of the Investment Advisers Act of 1940, as amended, and the rules and regulations promulgated thereunder (the **“Advisers Act”**).

Asset-based fees and performance-based fees payable by our clients are described in each Private Fund’s respective offering documents, which are provided to investors in such Private Fund, and in each SMA account holder’s IMA. A performance-based fee may create an incentive to make riskier, more speculative investments than would be the case under a solely asset-based fee arrangement. However, regardless of the fee arrangements, when we manage accounts according to the same investment strategy, we expect that those accounts will have the same investment opportunities and be invested in the same securities with similar position weightings. See **“Item 6 - Performance-Based Fees and Side-by-Side Management”** and **“Item 12 - Brokerage Practices.”**

## **A. SEPARATELY MANAGED ACCOUNTS**

Our SMA clients are billed an annual asset-based management fee, typically of 1.5% of the market value of the assets managed by us. Certain legacy clients that have account sizes below our minimum asset level of \$5,000,000 may be subject to a higher asset-based management fee. As of the date of this filing, no SMA client of ours pays less than a 1.5% annual management fee.

We may also receive a performance-based fee equal to 20% of cumulative net positive annual performance in excess of the S&P 500 Total Return Index for SMA relationships under \$10 million dollars. We have in the past waived, and may waive performance-based fees or agree to other financial arrangements.

SMA relationships of \$10 million dollars and above are not subject to performance-based fees. The minimum asset level for new SMA relationships is generally \$5,000,000. However, in our sole discretion, we have reduced, and we may in the future reduce our minimum asset requirement based upon certain criteria, including but not limited to: anticipated future additional assets inflows, the dollar amount of assets to be managed, account relationships, account composition, and individual negotiations with a client.

Generally, IMAs executed between us and our client(s), in addition to brokerage or custodial agreements, authorize the custodian to debit our management fees directly from our clients' brokerage or custodial account(s) in compliance with applicable regulations. In certain cases, based upon the specific request of our client, we bill the client directly, in which case, payment is due upon receipt. Asset-based management fees are billed quarterly, in advance, and are calculated on the value of the client's account as of last business day of the prior quarter adjusted for any contributions and withdrawals.

IMAs between us and our clients remain in effect until each is terminated in writing by either party as set forth in the terms of the applicable agreement. Upon termination of an IMA and thus the account relationship we have with such respective client, we will refund the pro-rated portion of any advanced asset-based management fees paid by the client. Refunded fees are calculated based upon the number of calendar days remaining in the billing quarter.

Unless the client directs otherwise or the circumstances of an individual require it, we recommend that Pershing Advisor Solutions LLC (“**PAS**”) acts as the prime broker for SMAs and that its clearing firm, Pershing LLC (“**Pershing**”) serves as the custodian for those SMAs, although we may recommend one or more other broker-dealers/custodians in the future. Broker-dealers, such as PAS and Pershing, charge brokerage commissions and/or transaction fees for effecting certain securities transactions and may charge other fees, such as safekeeping and other fees attributable to non-U.S. securities positions of the account, or wire fees related to movements of monies by the client in the account. Additionally, we have entered, or may enter into arrangements for brokerage or clearing services with other broker-dealers to effect client transactions in individual equity and/or fixed-income securities and these broker-dealers may effect certain client transactions through other broker-dealers. In these instances, the client will generally incur both the transaction fee charged by the executing broker-dealer and a “trade-away” fee charged by their broker or custodian though, none of these fees are paid to us. See “*Item 12 - Brokerage Practices.*”

Neither our affiliates, nor any of our Access Persons (as defined in our Code of Ethics) accept compensation based on the purchase or sale of securities or other investment products.

## **B. PRIVATE FUNDS**

### *Mittleman Brothers Master Fund, Ltd. and the Feeder Funds*

On behalf of the Feeder Funds, we receive compensation from the Master Fund in the form of a 1.5% annual asset-based management fee. As the holder of certain Allocation Class Shares, we are also entitled to receive a performance-based fee (i.e., incentive allocation) equal to 20% of cumulative net positive annual performance in excess of the S&P 500 Total Return Index for all underlying Feeder Funds' investors with investments below \$10 million dollars. Investments in a Feeder Fund of \$10 million dollars or above are not subject to the incentive allocation. Certain of the Feeder Funds' investors may be assessed a higher/lower management fee or no management fee with our consent and the Board of Directors of the Offshore Feeder or General Partner of the Onshore Feeder, as applicable, though as of the date of this filing, no investor in the Feeder Funds pays less than the 1.5% annual management fee. The incentive allocation, to the extent applicable, is calculated on each of the following dates: (i) as of the end of each fiscal year and (ii) the effective date of a Limited Partner/Shareholder's withdrawal/redemption in respect of the applicable Feeder Fund.

Management fees are payable by the Master Fund on behalf of the Feeder Funds and their investors quarterly, in advance, as of the beginning of each calendar quarter. Management fees are refunded proportionately as of the date of withdrawal with respect to any investor permitted or required to withdraw as of any time other than the end of a performance period.

In addition to management fees and incentive allocations (as applicable), the Master Fund bears (and the Feeder Funds, and, indirectly, the underlying shareholders and limited partners of the Feeder Funds, bear their pro rata portions of) the following costs and expenses: (i) organizational and offering expenses (including travel expenses) which were reimbursed to us, and which are being amortized over a five year period from the Fund's launch date, and (ii) operating and other expenses, including, without limitation, expenses incurred in order to hold, protect, purchase, sell, deliver, receive and value assets and expenses otherwise related to or arising in connection with any assets or liabilities, brokerage commissions, borrowing charges, other indebtedness, and bank and service fees, our fees and those of any administrator, prime broker, custodian or other service provider, all external legal fees and expenses, fees and expenses for accounting services (including an annual or more frequent audit) and for tax preparation and consulting services, expenses incurred in connection with the preparation of any reports and any additional programming or research costs (including the costs of Bloomberg, live market feeds, line charges, data storage and backup, pricing and valuation data and services, on-line research and research-related travel), director and officer, errors and omissions and fidelity bond insurance premiums related to or for the benefit of the funds or us (including any allocable portion of such premiums incurred by an affiliate of ours), stamp duty and all other costs and expenses incurred for the actual or proposed acquisition or disposition of investments, including securities, all withholding or other taxes payable, expenses involved in inspecting, evaluating and monitoring investments, expenses incurred in connection with the organization, administration and maintenance of, and legal compliance by, such funds, fees and expenses with respect to any member of the Board of Directors who is independent of us, payment of liabilities for indemnification, other professional fees on behalf of such fund, travel expenses incurred in connection with investments, whether consummated or not (including, without limitation, investment-related travel expenses of consultants and experts), in the event that there is no administrator for a period of time, and only during such period of time, all direct costs of administration services provided by us including, without limitation,

the cost of facilities, equipment and personnel necessary to discharge such duties, all costs, fees and expenses in connection with liquidation, and all other costs and expenses as set forth in the applicable Private Placement Memorandum of such funds. If any such operating costs are incurred by us on behalf of one or more of the funds and any other account managed by us, such costs will be borne pro rata by such accounts based on the amounts invested by such funds and other accounts at the time such costs are incurred or in such other equitable manner as we determine. The Master Fund and the Feeder Funds as investors in the Master Fund also will be charged their pro rata share of fees and expenses if such fees and expenses are incurred by us or an affiliate thereof as part of an overall investment program that includes other client accounts. To the extent that any such fees or expenses are solely attributable to the Master Fund or one of the Feeder Funds, they will bear the entire portion of such fees and expenses.

All office management expenses incurred by us during each fiscal year are charged to and paid by us, and not by the Master Fund or any underlying Feeder Fund. Such office management expenses include, but are not limited to: our office rent, utilities (other than line charges), furniture and fixtures, office supplies, secretarial services, internal administration services, printing, stationery, premiums for standard employee insurance, payroll taxes, data processing expenses, and usual and regular legal fees and other expenses which are not payable by the funds as described above.

*Mittleman Global Value Equity Fund*

We act as the Investment Manager of MGVEF, an Australian registered managed investment scheme, whose investors are required to pay a 1.5% per annum management fee calculated an accrued daily based on the net asset value of MGVEF and, for certain classes, a performance related fee, equal to 20% of the dollar value of any outperformance of MGVEF, accrued daily and payable annually in arrears or on redemption of an investor's units of the fund. Outperformance is the return of MGVEF, attributable to such class, net of the management costs attributable to such class, above the MSCI ACWI Index Net in AUD, subject to a high water mark. MGVEF bears its own transaction related costs, which along with all other of MGVEF's respective management costs, are reflected in its unit price which is calculated daily.

The Private Funds are responsible for, and pay all their own transaction, brokerage, custodial and related fees and expenses. See "*Item 12 - Brokerage Practices.*"

In some instances, certain of the Private Funds and their investors may bear expenses that may also benefit us or our other SMA clients. For more information regarding the fees charged by, and the expenses incurred by, the Private Funds, please refer to the applicable fund offering documents.

*Precog Capital Partners, L.P.*

We receive compensation from Precog in the form of a 2% annual asset-based management fee and a performance-based fee (or "**incentive allocation**") equal to 20% of the net realized and unrealized appreciation in the value of each investor's capital account, made only with respect to the appreciation in the value of the capital account in excess of 10% annually, a "hurdle rate" that resets at the beginning of each year, and is subject to a high water mark.

Management fees are payable by investors quarterly, in advance, as of the beginning of each calendar quarter and are deducted directly from the investor's capital account. Management fees payable by a

Precog investor for any incomplete or partial fiscal quarter will be prorated over the applicable period of such fiscal quarter. The incentive allocations, to the extent applicable, will be allocated as of the close of business on the last day of each calendar year, the date of any withdrawal of capital by any investor at any time, or the date of winding-up and termination of Precog. Management fees shall be refunded proportionately as of the date of withdrawal with respect to any investor permitted or required to withdraw as of any time other than the end of a performance period.

In addition to management fees and incentive allocations (as applicable), unless otherwise determined by us, Precog may bear (and the limited partners therein will bear their pro rata share of) the following costs and expenses:

(i) all operating expenses, including, but not limited to: cost of purchasing or disposing investments (e.g. brokerage commissions), office facilities and overhead, administrative services, internet, dues and subscriptions, telephone, office supplies, postage, accounting, filing fees, registration fees and similar fees, legal fees, data processing, insurance, travel and entertainment, and investment research services, (ii) organizational expenses, tax preparation fees, auditors' fees and extraordinary expenses as well as regulatory filing fees, investment banking fees, consulting fees, travel expenses, proxy solicitation expenses and all investment related expenses incurred by it, including commissions, custodial fees, clearing fees, stock borrow fees and similar expenses, (iii) taxes and other governmental charges, (iv) all expenses (including reasonable attorneys' fees) incurred in connection with any threatened, pending or anticipated litigation, Internal Revenue Service examination or audit, or similar audit or examination by any state or local taxing authority, or other proceedings, and (v) all other expenses and liabilities incurred in connection with or arising out of the business of Precog, including legal fees, auditing and accounting expenses and other professional fees and extraordinary or non-recurring charges.

All of the aforementioned expenses, if incurred, would be borne by Precog separate and apart from the Management Fee. Precog's General Partner shall be entitled to obtain reimbursement from Precog for all such costs and expenses borne by it or its affiliates on behalf of Precog. Precog also generally will pay any other fees and expenses of Precog deemed appropriate by Precog's General Partner. Precog will also be charged its pro rata share of fees and expenses if such fees and expenses are incurred by us or an affiliate thereof as part of an overall investment program that includes other client accounts. To the extent that any such fees or expenses are solely attributable to Precog, it will bear the entire portion of such fees and expenses.

## **ITEM 6 PERFORMANCE-BASED FEES & SIDE-BY-SIDE MANAGEMENT**

We receive performance-based fees and incentive allocations, as applicable, from certain of our SMA clients and Private Fund investors.

Performance-based fees and incentive allocations could motivate us to make investment decisions that are riskier or more speculative than would be the case if these arrangements were not in place. In addition, because performance-based fees and incentive allocations with respect to the Private Funds may be calculated on a basis that includes both realized and unrealized appreciation in portfolios based upon values that in certain circumstances may be assigned by us, we face a conflict of interest in valuing those portfolios. Both us and our Access Persons may have an incentive to favor and devote more time and effort to managing investments where we would receive

performance-based fees or incentive allocations or to favor accounts where we would receive higher performance-based fees, incentive allocations, or higher management or related fees over accounts in respect of which we would receive lower or no performance-based fees, incentive allocations, or management or similar fees. Such Access Persons who may be compensated to some extent based upon investment profits for which they are responsible, face the same potential conflict. We address these conflicts through: disclosures in this Brochure; disclosures in the applicable governing account and/or Private Fund offering documents; as well as through our Trade Allocation Policy, Code of Ethics and the policies and procedures contained in our Compliance Manual which govern our conduct and the conduct of our Access Persons.

We may simultaneously manage the Private Funds and SMAs according to the same or a similar investment strategy (i.e., side-by-side management). The simultaneous management of these different investment products creates certain conflicts of interest, as the fees for the management of certain types of products may be higher than others. When managing the assets of our client accounts, we have an affirmative duty to treat all such client accounts fairly and equitably over time, and we have adopted policies and procedures that are designed and implemented to satisfy this duty. Allocations of investment opportunities are not necessarily made on a pro rata basis as our clients may pursue distinct investment strategies. Rather, we make independent allocation decisions with respect to each client. Allocations of investment opportunities among our clients are based on a variety of considerations, including: potentially different or conflicting investment objectives and strategies, the life cycle of various portfolios, risk parameters (including, without limitation, the use of leverage), cash and liquidity availability (e.g., allocation size may vary depending on a client's cash availability, the other liquidity obligations of the applicable client or commitments made to other investments), follow-on investments (e.g., such investments may be allocated in accordance with the allocation of the original investment), investment time frames, and legal, tax, and regulatory considerations.

## **ITEM 7      TYPES OF CLIENTS**

- A. SMAS** - Generally, our clients include high-net-worth individuals and various institutional clients including, but not limited to: corporations, partnerships, small businesses, endowments (public and private), ERISA plans & retirement accounts, foundations, accounts of other investment advisers, and pooled investment vehicles. We may elect to provide investment advisory and asset management services to other types of clients. We generally require a minimum asset level of \$5,000,000 to open new SMA relationships, although we have accepted, and have the discretion to accept on an exception basis, investable assets below such amount.
  
- B. PRIVATE FUNDS** - The Private Funds are not registered under the Investment Company Act of 1940, as amended, in reliance on the exemptions provided in Sections 3(c)(1) and 3(c)(7) thereunder, as applicable. Additionally, the interests, shares or units (as applicable) are not registered under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the "Securities Act") pursuant to an exemption from registration under Regulation D of the Securities Act.

**Onshore Feeder** – The minimum initial capital contribution for an investment in partnership interests of the Onshore Feeder is \$1,000,000, subject to waiver at our discretion. Capital contributions of lesser amounts may be accepted. To invest in the Onshore Feeder, investors must be, among other things, "accredited investors" as defined in Rule 501(a) of Regulation D under the Securities Act and "qualified clients" as defined in Rule 205-3 under the Advisers Act.

**Offshore Feeder** – The minimum initial investment required for an investor in shares of the Offshore Feeder is \$1,000,000. Nevertheless, capital contributions of lesser amounts may be accepted at our discretion and with approval of the Offshore Feeder’s Board of Directors. To invest in the Offshore Feeder, investors must be, among other things, “accredited investors” as defined in Rule 501(a) of Regulation D under the Securities Act and a “qualified purchaser” as defined in Section 2(a)(51) of the Investment Company Act.

**MGVEF** – The minimum initial investment required for an investor in units of MGVEF varies depending on the Class of units. Investors must be is considered “wholesale investors” as defined in Australia’s Financial Markets Conduct Act of 2013. Only Australian and New Zealand persons may invest in MGVEF, an Australian registered managed investment scheme.

**Precog** – The minimum initial capital contribution for an investment in Precog is \$500,000, subject to waiver at our discretion. To invest in Precog, investors must be, among other things, “accredited investors” as defined in Rule 501(a) of Regulation D under the Securities Act and “qualified clients” as defined in Rule 205-3 under the Advisers Act, as amended.

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

We pursue superior returns through long-term investments in what we deem to be extremely undervalued securities, while maintaining a focus on limiting risk. We seek to mitigate risk, which we define as the probability of the long-term loss of capital, by investing in businesses that we believe are proven franchises with durable economic advantages, evidenced by a well-established track record of substantial free cash flow generation over complete business cycles, and only when we believe the very low valuation at which the investment is made provides a significant “margin of safety.” We employ a concentrated, long-term investment approach, typically holding between 10 and 20 securities. Investments are made globally, with foreign holdings historically representing an average of approximately 40% of our portfolios, although this percentage could be higher or lower, depending on the investment opportunities we deem attractive. Unconstrained by capitalization parameters, we tend to gravitate towards smaller market capitalization companies where we have identified the greatest disparities between market price and our estimate of fair value. We buy stock in large capitalization companies as well, but only when we believe those companies are priced attractively enough to warrant inclusion in our portfolios. We believe that our ability to go wherever the best risk/reward ratios appear to be available, in companies small and large, domestic and international, gives us an advantage over other investment managers, who we believe often operate within a more constrained investment universe.

Precog offers its limited partners investment strategies that are similar to those employed by us for our SMA clients, but generally more concentrated and thus potentially more volatile than the average portfolio that we would administer in respect of most of our SMA clients.

We have full discretion in respect of the types of securities in which the Private Funds invest. We generally utilize the fundamental method of security analysis, performing analyses on historical and present data, with the goal of making financial forecasts. We follow a long-term value-oriented investment strategy when giving investment advice to our clients. Typically, positions are held for a least one year, often times much longer though trading around a position (selling down a position weighting into strength or buying more of the position on weakness) may also occur. Positions may be held for less than one-year depending on events and our perceived valuation of the security. Margin transactions may occur for certain SMAs or the Private Funds depending on the respective

SMA client's preference or the terms of the offering documents for the respective Private Fund though we typically do not frequently enter into such transactions. For a more detailed description of the investment strategies applicable to each of the Private Funds, please refer to the offering documents of the applicable Private Fund.

Different types of investments involve varying degrees of risk that our clients should be prepared to bear, and it should not be assumed that future performance of any specific investment or investment strategy (including the investments and/or investment strategies recommended or undertaken by us) will be profitable or equal any specific performance level.

There can be no assurance that our clients or investors will achieve their investment objectives or that investments made by us will be successful. Our investment strategies involve a substantial degree of risk, including the complete loss of capital. Nothing in this Brochure is intended to imply, and no one is or will be authorized to represent, that our investment strategies are either low risk or risk free. Our investment strategies are appropriate only for sophisticated persons who fully understand and are capable of bearing the risks of our investment strategy. The various risks outlined below are not the only risks associated with our investment strategies and processes and may not necessarily apply to each client or investor. With respect to the Private Funds, the following risks are qualified in their entirety by the risks set forth in the applicable offering documents.

## **KEY RISK AREAS ASSOCIATED WITH OUR INVESTMENT PROCESSES AND STRATEGIES**

### General Economic and Market Conditions

Our success in investment activities will be affected by general economic and market conditions, such as changes in interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws (including laws relating to taxation of our clients' investments), trade barriers, currency exchange controls, and national and international political circumstances (including wars, terrorist acts or security operations). These factors may affect the level and volatility of securities prices and the liquidity of our clients' investments. Volatility and/or illiquidity could impair the profitability of our clients' assets or result in losses. Our clients could incur material losses even if we react quickly to difficult market conditions, and there is no guarantee that our clients will be protected from suffering material losses and other adverse effects from broad and rapid changes in market conditions in the future. Our clients should realize that markets for the financial instruments in which we seek to invest can, at times, correlate strongly with each other or in ways that are difficult to predict. Even a well-analyzed approach may not protect our clients from significant losses under certain market conditions.

### Market Analysis Limitations

Every method of analysis has its own inherent risks. To perform an accurate market analysis, we must have access to current and new market information. We have no control over the dissemination rate of market information; therefore, unbeknownst to us, certain analyses may be compiled with outdated market information, severely limiting the value of our analysis. Furthermore, an accurate market analysis can only produce a forecast of the direction of market values. There is no guarantee that a forecasted change in market value(s) will materialize into actionable and/or profitable investment opportunities.

### Data Sources

We subscribe to external data sources used to screen for compliance with investment restrictions and to assist in making investment decisions. We also use external software and systems to analyze performance attribution and, in various situations, for trading purposes, to assist in investment decision making and for investment research. As a result, if information that we receive from a third party data source is incorrect, the desired result(s) may not be

achieved. Although the third party data sources are generally reliable, we typically receive these services on an “as is” basis and cannot guarantee that the data received from these sources is accurate.

#### *Risks Associated with Our Primary Investment Strategy*

Our long-term value-oriented investment strategy is a fundamental investment strategy. Every investment strategy has its own inherent risks and limitations. For example, longer term investment strategies require a longer investment time period to allow for the strategy to potentially develop. Shorter term investment strategies require a shorter investment time period to potentially develop but, as a result of more frequent trading, may incur higher transactional costs when compared to a longer term investment strategy. Trading, an investment strategy that requires the purchase and sale of securities within a given investment time period, involves a very short investment time period, but will incur higher transaction costs when compared to a short term investment strategy and substantially higher transaction costs than a longer term investment strategy. We may employ varying combinations of investment strategies detailed above, but our long-term value-oriented investment strategy is utilized most often.

#### *Margin Risks*

We may also implement the use of leverage through margin loans in certain client accounts that have authorized us to use margin. Margin entails a higher level of risk. A margin transaction occurs when an investor uses borrowed funds to purchase financial instruments, or withdraws funds from a previously unleveraged investment account in excess of actual, non-margin cash available. The investor obtains the borrowed funds from its custodian brokerage firm by using other securities in the account as collateral for the borrowed sum. The effect of utilizing margin is to magnify any gains or losses in the portfolio holdings in relation to the net equity value of the account, or to provide for liquidity needs of our client. Our use of leverage in an attempt to enhance account returns is extremely limited, and on the occasions when margin is used, it is primarily employed on a transitory basis to provide funds to satisfy our client’s withdrawal demands that would otherwise result in the premature liquidation of longer term investments.

#### *Potential for Fraud*

In spite of our desire to invest in reputable and trustworthy companies, there is a risk that we may invest our clients’ assets in an issuer that engages in fraud. As cases have shown, instances of fraud can be particularly difficult to detect and prevent. To the extent that we invest in a company that engages in fraud, a client or an investor could lose all or a substantial portion of its investment in such company and such fraud could have a materially adverse effect on our client’s financial condition and profit or loss.

#### *Investment and Trading Risks - Generally*

All investments risk the loss of capital. No guarantees or representations are made that our investment strategies will be successful. Our investment strategies involve, without limitation, risks associated with limited diversification, equity risks, interest rates, currencies, illiquidity, volatility, credit deterioration or default risks, systems risks and other risks inherent in such activities. Certain investment techniques may, in certain circumstances, substantially increase the impact of adverse market movements to which our clients’ investments may be subject. In addition, our clients’ investments may be materially affected by conditions in the financial markets and overall economic conditions occurring globally or in markets where we invest our clients’ assets.

Our methods of minimizing such risks may not accurately predict future risk exposures. Risk management techniques are based, in part, on the observation of historical market behavior, which may not predict market divergences that are larger than historical indicators. Also, information used to manage risks may not be accurate, complete or current, and such information may be misinterpreted.

### Equity Risks

As noted above, we invest primarily in equity and equity-linked securities for our clients' accounts. The value of these securities generally varies with the performance of the issuer and movements in the broader equity markets. As a result, our clients may suffer losses if we invest in equity securities of issuers whose performance diverges from its expectations or if equity markets generally move in a single direction and we have not hedged against such a general move. Our clients 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. In some cases, the issuers of equity securities may be highly leveraged or subject to other risks such as limited product lines, markets or financial resources. Some of the small and mid-cap issuers of equity securities in which we invest may be more vulnerable than larger capitalization issuers to adverse business or market developments, have limited markets or financial resources and lack experienced management. In addition, some equity securities for micro-cap and small-cap companies could have substantially less liquidity. We may acquire a significant portion of the outstanding public float of a particular company, creating additional illiquidity, especially in the event that we wish to entirely dispose of, or reduce our position in such company by selling shares into the market over a relatively short period of time. Due to perceived or actual illiquidity or investor concerns regarding leveraged capitalization, certain equity securities often trade at significant discounts to otherwise comparable investments, or are not readily tradable. Such securities generally do not produce current income for our clients and may also be speculative. In addition, actual and perceived accounting irregularities may cause dramatic price declines in the equity securities of companies reporting such irregularities or that are rumored to be subject to accounting irregularities.

### Relative Value and Directional Investments

Our investment strategies depend on our ability to accurately predict future price movements of securities or the convergence of market prices toward the theoretical values expected by it. Any such attempts to predict future price movements are inherently risky and inaccurate. Often, price movements will be determined by unanticipated factors, and our analysis of known factors may prove incorrect, in each case potentially leading to substantial losses for our clients.

### Market Capitalization Risks

For our clients' accounts, we invest in the securities of companies with market capitalizations (“**cap**”) ranging from small to large. While we believe such securities provide significant potential for appreciation, securities of certain companies, particularly small-cap companies, involve higher risks in some respects than investments in large-cap securities. For example, prices of small-cap and mid-cap securities are often more volatile than prices of large-cap securities, and the risk of bankruptcy or insolvency of small/mid-cap companies (which could result in client losses) may be higher than for large-cap or so-called “blue-chip” companies. In addition, due to thin trading in the securities of some small-cap companies, an investment in those companies may be illiquid.

### Short Selling

Our clients' investment portfolios do not currently, but may potentially in the future, include short positions, unless the client has specifically restricted the use of short-selling in an IMA. Short selling involves selling securities which may or may not be owned and borrowing the same securities for delivery to the purchaser, with an obligation to replace the borrowed securities at a later date. Short selling allows the investor to profit from a decline in the price of a particular security to the extent that such decline exceeds the transaction costs and the costs of borrowing the securities. In the event we elect to engage in short selling, the extent to which we engage in short sales would depend upon our investment strategy and opportunities. A short sale creates the risk of a theoretically unlimited loss, in that the price of the underlying security could theoretically increase without limit, thus increasing the cost to our clients

of buying those securities to cover the short position. There can be no assurance that we would be able to maintain the ability to borrow securities sold short. In such cases, our clients can be “bought in” (i.e., forced to repurchase securities in the open market to return to the lender).

There also can be no assurance that the security necessary to cover a short position would be available for purchase at or near prices quoted in the market. Purchasing securities to close out the short position can itself cause the price of the securities to rise further, thereby exacerbating the loss.

#### Market Volatility

The prices of financial instruments in which we invest may be volatile. Price movements of the financial instruments in which we invest are influenced by, among other things: interest rates, changing supply and demand relationships, trade, fiscal, monetary and exchange control programs and policies of governments, and national and international political and economic events and policies. Our clients are subject to the risk of failure of any of the exchanges on which their positions trade or of their clearing houses. In addition, governments from time-to-time may intervene in certain markets, both directly and by regulation, particularly in currencies, futures and options. Such intervention is often intended to directly influence prices and may, together with other factors, cause some or all of these markets to move rapidly in the same direction. The effect of such intervention is often heightened by a group of governments acting in concert.

#### Investments in Unlisted Securities

We may invest a portion of our clients’ assets in unlisted securities of companies. Because of the absence of any trading market for these investments, it may take longer to liquidate, or it may not be possible to liquidate, these positions than would be the case for publicly-traded securities. Although these securities may be resold in privately negotiated transactions, the prices realized on these sales could be less than those originally paid by our clients. Further, companies whose securities are not publicly-traded may not be subject to public disclosure and other investor protection requirements applicable to publicly-traded securities. In the event there is no trading market for these investments, we value such investments in accordance with our Valuation Policy.

#### Convertible Securities

On behalf of our clients, we may invest in convertible securities. Convertible securities are bonds, debentures, notes, preferred stocks or other securities that may be converted into or exchanged for a specified amount of common stock of the same or different issuer within a particular period of time at a specified price or formula.

The value of a convertible security is a function of its “**investment value**” (determined by its yield in comparison with the yields of other securities of comparable maturity and quality that do not have a conversion privilege) and its “**conversion value**” (the security’s worth, at market value, if converted into the underlying common stock). The investment value of a convertible security is influenced by changes in interest rates, with investment value declining as interest rates increase and increasing as interest rates decline. The credit standing of the issuer and other factors may also have an effect on the convertible security’s investment value. The conversion value of a convertible security is determined by the market price of the underlying common stock. If the conversion value is low relative to the investment value, the price of the convertible security is governed principally by its investment value. To the extent the market price of the underlying common stock approaches or exceeds the conversion price, the price of the convertible security will be increasingly influenced by its conversion value. A convertible security generally will sell at a premium over its conversion value by the extent to which investors place value on the right to acquire the underlying common stock while holding a fixed-income security. Generally, the amount of the premium decreases as the convertible security approaches maturity.

A convertible security may be subject to redemption, at the option of the issuer, based on a price established in the convertible security's governing instrument. If a convertible security held by our clients' accounts is called for redemption, we will be required to permit the issuer to redeem the security, convert it into the underlying common stock or sell it to a third party. Any of these actions could have an adverse effect on our ability to achieve our investment objective for our clients' accounts.

#### Concentration of Investments and Risk Management Failures

We typically invest our clients' funds in a limited number of small-cap, mid-cap and large-cap issuers and generally have no formal guidelines relating to the diversification of our clients' assets related to market capitalization. As a result, our clients' portfolios may be concentrated in a limited number of issuers, types of financial instruments, industries, sectors, strategies, countries, or geographic regions, and any such concentration of risk may increase losses suffered by our clients. This limited diversity could expose our clients to losses disproportionate to market movements in general. Even when we attempt to control such risks, risks associated with different assets may be correlated in unexpected ways, with the result that our clients face concentrated exposure to certain risks. In addition, many other investment managers pursue similar strategies which create the risk that many funds would be forced to liquidate positions at the same time thus reducing liquidity, increasing volatility and exacerbating losses. Although we attempt to identify, monitor and manage significant risks, these efforts cannot take all risks into account and there is no assurance that these efforts will be effective. Many risk management techniques are based upon observed historical market behavior, but future market behavior may be entirely different. Any inadequacy or failure in our risk management efforts could result in material losses for our clients.

#### Non-U.S. Investments

On behalf of our clients, we often invest in financial instruments of non-U.S. corporations and may invest in financial instruments of foreign governments. Investing in the financial instruments of companies (and, from time-to-time, governments) outside of the U.S. involves certain considerations not usually associated with investing in financial instruments of U.S. companies or the U.S. government, including: political and economic considerations, such as greater risks of expropriation, nationalization, confiscatory taxation, imposition of withholding, or other taxes on, interest, dividends, capital gains or other income limitations on the removal of assets and general social, political and economic instability, the relatively small size of the securities markets in such countries, and the low volume of trading, resulting in potential lack of liquidity, and in price volatility, the evolving and unsophisticated laws and regulations applicable to the securities and financial services industries of certain countries, fluctuations in the rate of exchange between currencies and costs associated with currency conversion, and certain government policies that may restrict our clients' investment opportunities. In addition, accounting and financial reporting standards that prevail outside of the U.S. generally are not as high as U.S. standards and, consequently, less information is typically available concerning companies located outside of the U.S. than for those located in the U.S. As a result, we may be unable to structure transactions that achieve the intended results or to mitigate all risks associated with non-U.S. markets. Finally, it could be difficult to enforce our clients' rights in non-U.S. markets.

#### Corporate Debt

On behalf of our clients, we may invest in bonds, notes and debentures issued by corporations. These instruments may pay fixed, variable or floating rates of interest, and may include zero coupon obligations. We may also invest in corporate debt instruments that have experienced or are contemplated to experience ratings downgrades, or other instruments that have low quality ratings or are unrated. Credit ratings evaluate the safety of the principal and interest payments, not the market value risk of lower-rated instruments, but do not reflect macroeconomic or systemic risk, which includes the risk of increased illiquidity in the credit markets. It is possible that rating agencies

might not change the rating of a particular issue on a timely basis and, as a result, outstanding ratings may not reflect the issuer's current credit standing. Conversely, rating agencies may re-rate an instrument which could cause substantial loss as the ratings are downgraded. Our clients' investments may experience significant credit rating volatility. In addition, our clients may be paid interest-in-kind in connection with investments in corporate debt and related financial instruments (e.g., the principal owed to our clients in connection with a debt investment may be increased by the amount of interest due on such debt investment). Such investments may experience greater market value volatility than debt obligations that provide for regular payments of interest in cash and, in the event of a default, our clients may experience substantial losses.

#### Competition

The markets in which we participate in are extremely competitive. There is no assurance that our ability to identify or successfully pursue attractive investment opportunities in this environment will continue. Our clients should expect that their investments will involve substantially more company-specific and market risk and associated volatility in the future than in the past. We compete with firms that have greater financial resources, more favorable financing arrangements, larger research staffs and more securities traders than are available to us.

#### Less Liquid Instruments

Under certain market conditions, such as during volatile markets or when trading in an instrument or market is otherwise impaired, the liquidity of our clients' portfolio positions may be reduced. In addition, our clients may hold large positions with respect to a specific type of instrument, further reducing liquidity. During such times, we may be unable to dispose of certain assets, which would adversely affect our ability to rebalance our clients' portfolio(s) or accommodate withdrawal requests. Such circumstances could force us to dispose of our clients' assets at reduced prices, thereby adversely affecting performance. If there are other market participants seeking to dispose of similar assets at the same time, we may be unable to sell such assets or prevent losses relating to such assets. Furthermore, if our clients incur substantial trading losses, the need for liquidity could rise sharply while our access to liquidity could be impaired. In conjunction with a market downturn, our clients' counterparties could incur losses of their own, thereby weakening their financial condition and increasing our clients' credit risk to them.

We may also invest in securities that are subject to legal or other restrictions on transfer. We may be contractually prohibited from disposing of such investments for a specified period of time. The sale of restricted and illiquid securities often requires more time and results in higher brokerage charges or dealer discounts and other selling expenses than does the sale of securities eligible for trading on national securities exchanges or in the over-the-counter markets. Restricted securities may sell at a price lower than similar securities that are not subject to restrictions on resale. The market prices, if any, for such investments tend to be volatile and may not be readily ascertainable and we may not be able to sell them when we desire to do so or to realize what we perceive to be the fair value in the event of a sale.

#### Default and Credit Risks

We may invest in debt obligations of both government and corporate issuers. These financial instruments involve the risk that the obligor either cannot or will not fulfill its obligations under the terms of the financial instrument. Our clients also assume the credit risk to their brokers, custodians and other counterparties in connection with brokerage arrangements, derivatives and other contractual relationships. In evaluating credit risk, we are often dependent upon information provided by the obligor, which may be materially inaccurate or fraudulent. Any actual default, or any circumstances that increase the possibility of default, could have a materially adverse effect on our clients.

### Interest Rate Risks

Our investment strategies may include investments in debt securities of government and corporate issuers. These and various other assets, as well as our clients' borrowings, subject our clients to risks associated with movements in interest rates. For example, we may be required to manage both curve risk, which is the risk that the slope of the yield curve will vary from the slope assumed in our strategy, and credit spread risk, which is the risk that the spreads between yields of differently rated issuers will change in a manner that adversely affects our clients' portfolio.

### Litigation

Our investment activities may subject our clients to the risks of becoming involved in litigation with third parties. The expense of defending against claims against our clients by third parties and the payment of any amounts pursuant to settlements or judgments may be borne by our clients and reduce the net asset value of their investment. We and our affiliates will generally be indemnified by our clients in connection with any such litigation, subject to certain conditions.

### Trading Decisions

Trading decisions made by us are based on fundamental and other analysis. Any factor that would lessen the prospect of major trends occurring in the future (e.g., increased governmental control of, or participation in, the financial markets) may reduce the prospect that a particular trading method or strategy will be profitable in the future. In the past, there have been periods without discernable trends and, presumably, such periods will continue to occur in the future. Moreover, any factor that would make it more difficult to execute trades at desired prices in accordance with the signals of the trading method or strategy (e.g., significant decrease of liquidity in a particular market) would also be detrimental to profitability. Further, many advisers' trading methods utilize similar analyses in making trading decisions. Therefore, bunching of buy and sell orders can occur, which makes it more difficult for a position to be taken or liquidated. No assurance can be given that our strategies will be successful under all or any market conditions.

### "Widening" Risk

For reasons not necessarily attributable to any of the risks set forth herein (e.g., supply/demand imbalances or other market forces), the prices of the financial instruments in which we invest may decline substantially. In particular, purchasing assets at what may appear to be "undervalued" levels is no guarantee that these assets will not be trading at even more "undervalued" levels at a time of valuation or at the time of sale. It may not be possible to predict, or to hedge against, such "spread widening" risk.

### Technology and Cyber Security Risks

We depend heavily on our, and the certainty of our service providers', telecommunication, information technology and other operational systems (e.g., brokers, custodians, transfer agents and other parties to which we outsource certain services or business operations). These systems may fail to operate properly or become disabled as a result of events or circumstances wholly or partly beyond our control. Despite our best efforts to implement security measures, our information technology and other systems, and those of others, could be subject to physical or electronic break-ins, unauthorized tampering or other security breaches, resulting in a failure to maintain the security, availability, integrity and confidentiality of data assets. Technology failures or cyber security breaches, whether deliberate or unintentional, including those arising from use of third-party service providers, as well as failures or breaches suffered by the issuers of securities in which our strategy invests, could delay or disrupt our ability to do business and service our clients, harm our reputation, result in a violation of applicable privacy and other laws, require additional compliance costs, subject us to regulatory inquiries or proceedings and other claims, lead to a loss of clients and revenues or financial loss to our clients or otherwise adversely affect our business, our clients and/or investors.

### Counterparty Risks

We have established, and may establish, additional relationships to obtain prime brokerage and other brokerage or custody related services. However, there can be no assurance that we will be able to maintain such relationships or establish such relationships. An inability to establish or maintain such relationships would limit our trading activities and could create losses, precluding us from engaging in or executing certain transactions and prime brokerage services, and preventing us from trading at optimal rates and terms. Moreover, a disruption in the brokerage or other services provided by any such relationships before we establish additional relationships could have a significant impact on our business due to our reliance on such counterparties. Furthermore, there is a risk that any of our counterparties could become insolvent and/or the subject of insolvency proceedings. If one or more of our counterparties were to become insolvent or the subject of insolvency proceedings, there exists the risk that the recovery of our clients' securities and other assets from such prime broker(s), broker-dealer(s) or custodian(s) will be delayed or be of a value less than the value of the securities or assets originally entrusted to such prime broker, broker-dealer or custodian. We are not restricted from dealing with any particular counterparty or from concentrating any or all of its clients' transactions with a single counterparty. Moreover, our internal evaluation of the creditworthiness of our counterparties may prove insufficient. Our ability to transact business with any one or more counterparties, the lack of complete and "foolproof" evaluation of the financial capabilities of its counterparties, and the absence of a regulated market to facilitate settlement may increase the potential for losses by our clients.

### Dependence of Clients and Investors in Our Private Funds Where We Act as the Fund Manager

All investment and business decisions on behalf of all our clients invested in SMAs including those made on behalf of the investors of the Private Funds will be made by us, when we act as the manager of the respective Private Fund. Accordingly, no person should invest in the Private Funds unless he/she is willing to entrust all aspects of the investment management and operations of the Private Funds to us and our Chief Investment Officer, as we have full discretion in the types of securities in which the Private Funds will invest. The Private Funds are dependent upon the skill, judgment and expertise of us and our Access Persons.

### Side Letters

We have the discretion to waive or modify the application of certain provisions or grant special or more favorable rights with respect to one or more investors in the Private Funds. We may enter into side letters or similar separate agreements with one or more such investors that may alter the terms and conditions described in the applicable Private Fund documents with respect to such investors (including with regard to, without limitation, to the payment of management fees, performance fees and/or incentive allocations, or related to withdrawals, transfers and notices).

### Conflicts of Interest

Although our CIO, Christopher P. Mittleman, and our Access Persons devote a significant amount of their time to the interests of the SMAs and the Private Funds, we may engage in other business activities, including certain activities that may be competitive with those of the SMAs and the Private Funds. Christopher P. Mittleman is not subject to an employment contract, and may decide to engage in entirely separate or competing activities at some time in the future.

Various conflicts of interests may exist between us, our investment team and our affiliates with respect to our clients and the investors in the Private Funds. Certain of our Access Persons serve, and others may serve, as directors, officers or committee members of both public and private companies and their activities on behalf of those other companies may present actual and/or potential conflicts of interest, including conflicting fiduciary duties. In particular, our Access Persons could face conflicts of interest between discharging their duties as in their capacity as directors, officers or committee members, of such companies and acting in the best interest of our clients. See

*“Item 6 - Performance-Based Fees & Side-by-Side Management,” “Item 10 - Other Financial Industry Activities & Affiliations,” “Item 11 - Code of Ethics, Participation of Interest in Client Transactions and Personal Trading” and “12 - Brokerage Practices.”*

**THE FOREGOING RISK FACTORS DO NOT PURPORT TO BE A COMPLETE DESCRIPTION OF ALL OF THE RISKS ASSOCIATED WITH OUR INVESTMENT STRATEGIES. PROSPECTIVE CLIENTS AND INVESTORS SHOULD READ THIS BROCHURE AND ALL OTHER APPLICABLE DISCLOSURE MATERIALS IN THEIR ENTIRETY BEFORE MAKING ANY INVESTMENT DECISIONS.**

## **ITEM 9 DISCIPLINARY INFORMATION**

Neither we, nor any member of our management team, have been involved in any legal or disciplinary events in the past ten years (and, to the best of our knowledge and belief, in years preceding that ten-year period) that would be material to a client’s, or prospective client’s, Private Fund investor’s, or prospective Private Fund investor’s evaluation of our advisory business or the integrity of our management.

## **ITEM 10 OTHER FINANCIAL INDUSTRY ACTIVITIES & AFFILIATIONS**

Neither we, nor any of our Access Persons, are registered or have an application pending to register as a broker-dealer, a registered representative of a broker-dealer, a futures commission merchant (“**FCM**”), a commodity pool operator (“**CPO**”) or a commodity trading advisor (“**CTA**”). In addition, neither we nor any of our Access Persons are an associated person(s) of an FCM, a CPO and/or a CTA.

Mittleman Brothers Fund GP, LLC, whose sole managing member is Mittleman Brothers, LLC, is the general partner of the Onshore Feeder (Mittleman Brothers Fund, LP). In addition to MIM serving as investment manager for the Private Funds, we act as the General Partner of Precog. In addition, certain control persons or indirect owners of ours may have financial interests in the Private Funds and certain of these persons may maintain significant investments in the Private Funds. These relationships present certain potential conflicts of interest, including but not limited to, those described below:

- To the extent certain of our individual SMA clients qualify, they will be eligible to participate as members of the Private Funds. Some of our SMA clients are solicited to invest in the Private Funds where we deem such investments as suitable, but no SMA client is ever obligated to invest in the Private Funds. Since certain of our Access Persons may earn compensation from the Private Funds that may exceed the asset-based fees and performance-based fees of an SMA, as applicable, the recommendation that a client become an investor in any of the Private Funds may present a conflict of interest. We address this conflict through disclosure to clients and operating in accordance with our Code of Ethics and fiduciary duties. See *“Item 5 - Fees and Compensation”* and *“Item 11 - Code of Ethics, Participation of Interest in Client Transactions and Personal Trading.”*
- We may receive, with regard to Private Fund investors and SMA relationships below \$10 million dollars, performance-based fees. We may also receive performance-based fees from investors of MGVEF depending on the class of units in which they have invested. Since the performance-based fees for both (a) Private Fund investments equal to or greater than \$10 million and (b) our SMA clients with relationships of \$10 million dollars or more are waived, this arrangement may create a conflict of interest as our and our

representatives may have an incentive to favor and devote more time and effort to managing the investments of the Private Funds and SMAs that are subject to performance-based fees. We address this conflict of interest through disclosure to clients and operating in accordance with our Code of Ethics and fiduciary duties. See “*Item 5 - Fees and Compensation*” and “*Item 11 - Code of Ethics, Participation of Interest in Client Transactions and Personal Trading.*”

- The participation of persons related to us as investors in the Private Funds or SMAs may also create a conflict of interest, as we and our Access Persons may have an incentive to favor and devote more time and effort to managing the investments of the Private Funds or the respective SMAs. We may also have an incentive to recommend that SMA clients participate in the Private Funds if we perceive that such additional investment will benefit the Private Funds overall. We address this conflict through disclosure to clients and by operating in accordance with our Code of Ethics and fiduciary duties. See *Item 6 - Performance-Based Fees & Side-by-Side Management,*” and “*Item 11 - Code of Ethics, Participation of Interest in Client Transactions and Personal Trading.*”

Our Chief Compliance Officer (“CCO”) remains available to address any questions that a client or a prospective client may have regarding the above relationship(s) and any corresponding potential conflict of interest that any and all such relationships may create.

We do not receive, directly or indirectly, compensation from other investment advisers that we recommend or select for our clients nor do we have any other business relationships with any such advisers that could create a material conflict of interest.

## **ITEM 11 CODE OF ETHICS, PARTICIPATION OF INTEREST IN CLIENT TRANSACTIONS & PERSONAL TRADING**

We have adopted and implemented a Code of Ethics that defines the standards of business conduct for our Access Persons. Our Code of Ethics is primarily designed to educate our Access Persons about our philosophy regarding ethics and professionalism, emphasizes our fiduciary duties to our clients, and requires our Access Persons to comply with applicable laws, such as, preventing misuse of material non-public information, circulation of rumors and other forms of market abuse, and addresses conflicts of interest that could occur related to personal securities transactions. We impose certain restrictions on our Access Persons relating to the purchase or sale of securities for their own accounts and the accounts of certain affiliated persons. Our Access Persons are required to submit quarterly reports disclosing personal securities transactions and annual reports disclosing personal securities holdings. These reports are reviewed by our CCO. We also maintain certain policies and procedures designed to prevent our Access Persons from misusing material non-public information. A copy of our Code of Ethics will be provided to clients and Private Fund investors upon request.

We may recommend that our clients buy or sell securities or other investment products in which we or a person related to us has a financial interest. In particular, we may recommend that certain of our SMA clients invest in one or more of the Private Funds. In addition, certain control persons of ours may have financial interests in the Private Funds. In general, our control persons directly, or through a general partner entity, intend to maintain investments in the one or more of the Private Funds. See “*Item 10 - Other Financial Industry Activities & Affiliations.*”

In limited circumstances, we may “arrange” for and/or “facilitate” a cross-transaction between client accounts when we believe that such a transaction is beneficial to our clients. These transactions will generally occur in a situation

when a client needs to liquidate a specific position that is suitable for another client. In so doing, we will arrange for the custodian to effect the transaction between two of our client accounts. However, for any such transaction, neither we nor any person or entity associated with us, will act as a broker or receive any commission or transaction-based compensation.

Certain Access Persons of ours serve on the Board of Directors of non-profit entities and publicly traded companies and may have other outside business interests. Additionally, certain of these and other Access Persons of ours may serve on the Board of Directors of publicly traded or other types of companies provided such permission to do so has been granted by our CEO and our CCO (or the CIO in the case of either the CEO or CCO serving in such roles) pursuant to our Code of Ethics. Service by persons related to us as a director, officer or committee member, or on the Board of companies that issue securities or that could engage our advisory services, could create a direct conflict of interest. We review the activities of our Access Persons to mitigate potential conflicts. Additional relationships of this type could occur in the future.

Our Private Funds may co-invest with third parties or otherwise participate in pooled investment vehicles with others if we determine that such investments or arrangements represent the best way to access a particular investment opportunity. We or our Access Persons may also manage or have direct investments in these pooled investments. We intend to address any such conflict(s) through proper disclosure, adherence to our Code of Ethics, and as part of our fiduciary duties to our clients.

Subject to various restrictions, policies and procedures as set forth in our Code of Ethics, our Access Persons have, and may, purchase for themselves, securities purchased for, or recommended to, our clients. Allowing our Access Persons to purchase these securities may motivate them and/or our affiliates to engage in potentially manipulative practices. In order to prevent this, our CIO and CCO (or certain other designated persons in certain given situations) must pre-clear personal securities transactions by our Access Persons in these securities, as well as in any Covered Security (as defined by our Code of Ethics). In this regard, our Code of Ethics includes our Personal Trading Policy which outlines certain procedures that our Access Persons are required to follow. In certain situations, we restrict our Access Persons from trading in securities purchased for, or recommended to, our clients and investors when we believe the personal securities transactions could conflict with our Code of Ethics or our fiduciary duties to our clients. Our CCO performs certain post-trade reviews to confirm that personal securities transactions by our Access Persons are being performed in accordance with our Code of Ethics. In addition to the required pre-clearance for transactions in Covered Securities, our Access Persons are required to report and certify personal securities transactions on a quarterly basis, certify personal securities holdings (initially upon commencement of employment and annually thereafter), and report any violations of the Code of Ethics to our CCO.

From time to time, we and our Access Persons may acquire, or may be in a position to potentially acquire, material non-public and/or confidential information that may restrict by law, internal policies or otherwise us from purchasing securities or other assets, or selling securities or other assets for our clients or otherwise using or receiving such information for the benefit of our clients' accounts. For example, in certain cases, an Access Person of ours may serve as a member of the board of directors of an issuer and come into possession of material non-public and/or confidential information through such board membership.

## **ITEM 12 BROKERAGE PRACTICES**

In the event that our SMA clients request that we recommend a broker-dealer/custodian for execution and/or custodial services (exclusive of those clients that may direct us to use a specific broker-dealer/custodian), we generally recommend that SMAs be maintained as prime brokerage accounts at PAS which clears and custodies its client assets with Pershing, a wholly owned subsidiary of the Bank of New York Mellon, although we may recommend one or more other broker-dealer/custodians in the future. Prior to engaging us to provide investment advisory services, an SMA client is required to enter into a formal IMA with us setting forth the terms, conditions, guidelines and limitations under which we will manage the client's assets, and a separate account/custodial/clearing or other agreement with each designated broker-dealer/custodian.

In general, we have authority to determine the brokers and other counterparties to be used for the Private Funds' transactions and to negotiate commission rates and other monies paid by the Private Funds. Generally, the Private Funds use Pershing, although they may use one or more other broker-dealer/custodians in the future.

Factors that we consider in recommending and using Pershing or any other broker-dealer/custodian to clients include their historical relationship with us as well as their firm's financial strength, reputation, execution capabilities, pricing, research, and service. Although we have a duty to obtain best execution with respect to commissions and/or transaction fees paid by our clients, a client may pay a commission that is higher than another qualified broker-dealer might charge to effect the same transaction where we will determine, in good faith, that the commission/transaction fee is reasonable in relation to the value of the brokerage and research services received. In seeking best execution, the determinative factor is not the lowest possible cost, but whether the transaction represents the best qualitative execution, taking into consideration the full range of a broker-dealer's services, including the value of research provided, if any, execution capability, commission rates, and responsiveness. Accordingly, although we will seek competitive rates, we may not necessarily obtain the lowest possible commission rates for our clients' account transactions. The brokerage commissions or transaction fees charged by the designated broker-dealer/custodian are exclusive of, and in addition to, our investment advisory asset-based management fees and performance-based fees, as applicable. Due to SEC regulations or PAS's rules regarding prime brokerage accounts, certain smaller client accounts may not be able to participate in the allocation of trades executed outside of PAS or Pershing. Certain other regulations or rules may limit our ability to allocate trades to these accounts.

We do not currently use soft dollars generated by our clients' accounts to pay for certain research and/or related services provided by brokers described above, nor do we intend to, though this does not preclude us from doing so in the future. The term "**soft dollars**" refers to the receipt of products and services (including research) provided by brokers to an investment manager without any cash payment by the investment manager. The items provided may be provided based on the volume of revenues generated from brokerage commissions for transactions executed for clients of the investment manager. The products and services available from brokers include both internally generated items (such as research reports prepared by employees of the broker) as well as items acquired by the broker from third parties (such as quotation or data services).

Using soft dollars to obtain investment research and/or related services could create a conflict of interest between us and our clients. Soft dollars may be used to acquire products and services that are not exclusively for the benefit of our clients that paid the commissions and that may primarily or exclusively benefit us. If we are able to acquire these products and services without expending our own resources (including management fees paid by clients), the use of soft dollars would tend to increase profitability. Further, we may have an incentive to select or recommend

brokers based on our interest in receiving research or other products or services, rather than on our clients' interest in receiving most favorable execution. We could also cause our clients to pay commissions (e.g., markups or markdowns) higher than those charged by other brokers in return for soft dollar benefits.

In selecting or recommending brokers, we do not consider whether we or our related persons receive client or investor referrals from such brokers.

For client directed brokerage arrangements outside of Pershing, our client may negotiate terms and arrangements for their account with that broker-dealer. This may limit our ability to seek better execution services or prices from other broker-dealers and may preclude us from being able to "batch" our client's transactions for execution through other broker-dealers with orders for other accounts managed by us. As a result, our clients may pay higher commissions or other transaction costs or greater spreads, or receive less favorable net prices, on transactions for the account than would otherwise be the case.

We may, and generally attempt to, combine or "bunch" orders when possible to, obtain best execution, negotiate more favorable commission rates or allocate transactions equitably among our clients, reduce differences in prices and/or commissions or other transaction costs that might have been obtained had such orders been placed independently in accordance with our Trade Allocation Policy. We will not receive any additional compensation or remuneration as a result of such aggregation.

We generally allocate investment opportunities among our clients in a fair and equitable manner. Typically, if participating clients receive less than their target (full) allocation of an order, these clients will generally receive a pro rata portion of the next executed order. Under certain circumstances, we have discretion to utilize alternative allocation procedures provided that we treat all participating clients fairly and equitably. We generally prioritize the allocation of buys to accounts with the highest percentage of cash but we may prioritize orders differently, for example, based on an accounts being underweight with regard to a particular security. Generally, the allocation of sell trades are to accounts with the highest percentage weighting in the security being sold but they may also be based on other fair allocation methods, for example, based on accounts with the lowest cash percentage weighting if we anticipate soon needing cash for another investment. Trade allocations of sell orders for accounts in liquidation (due to closure or significant withdrawal) shall be done on a fair allocation basis as determined by the CIO or his designees.

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

- A. SMAS** - Our CIO completes periodic reviews of our SMAs on an ongoing basis. These reviews include, but are not limited to: trade activity, fees charged and other account activity to confirm accurate execution of trades as well as client requested transactions (i.e., contribution and withdrawals) and to monitor for potential suspicious or fraudulent activity. On a quarterly basis, the Director of Administration & Operations and certain other staff review our SMAs and test to confirm that management fees have been accurately billed to or debited from client accounts and remitted directly to us in compliance with our policies and procedures. Events that trigger a non-periodic review include, but are not limited to a market correction, a client request to update account information, a client request to terminate their IMA, and/or any suspicion of fraudulent activity.

Our clients are provided with confirmation notices corresponding to each transaction placed in their SMA as they are executed. They also may have the option to select quarterly notification of all transactions

executed during the period, if so desired. The broker-dealer/custodian and/or program sponsor for the client accounts also provide monthly account statements directly to our clients. We also provide a quarterly written report summarizing account performance which includes a disclosure that the custodial statements received from the broker-deal/custodian are the official records of their account balances.

- B. PRIVATE FUNDS** - Our CIO and certain members of our staff also conduct periodic reviews of the investment activity of our Private Funds on an ongoing basis. These reviews include, but are not limited to: trade activity, fees, charges, and other account activity to confirm accurate execution of trades as well as monitor for potential suspicious or fraudulent activity. On a monthly basis, our Trading & Operations staff will review the custodial statements issued by the broker-dealer/custodian as well as the month-end financial reports and monthly investor statements issued by the Private Funds' administrator. On a quarterly basis, the Director of Administration & Operations reviews the activity for the Private Funds to confirm that the Private Funds were billed directly for the management fees and that the management fee was directly remitted to us in compliance with our policies and procedures. Investors in the Private Funds are provided with a monthly statement from their respective administrator.

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

Except as otherwise described in this Brochure, we do not receive any economic benefit, from any person who is not a client, for providing investment advice or other services to our clients.

Certain of our Access Persons may receive compensation, in addition to their salary and other compensation, which may be partially or fully based on the asset-based and/or performance-based fees we receive from our SMA clients. Any such compensation is payable by us from any asset-based fees and/or performance-based fees received by us and shall not result in an additional charge to the client.

If a client is introduced to us by either an unaffiliated or an affiliated solicitor, we may pay that solicitor a referral fee in accordance with the requirements of Rule 206(4)-3 under the Advisers Act and/or any corresponding state securities law(s) as well as any law of any applicable foreign country. Any such referral fee is payable by us from any asset-based and/or performance-based fees received by us and shall not result in an additional charge to the client. If the client is introduced to us by an unaffiliated solicitor, with whom we have a written solicitation agreement, in accordance with Rule 206(4)-3 under the Advisers Act, the solicitor, at the time of the solicitation, shall disclose the nature of his/her/its solicitor relationship, and shall provide each prospective client with a copy of our written Brochure that contains the written disclosure statement from the solicitor to the client disclosing the terms of the solicitation arrangement between us and the solicitor, including the compensation to be received by the solicitor from us.

## **ITEM 15 CUSTODY**

- A. SMAS** - Although we do not have physical custody of our SMA client assets, we are deemed to have custody due to our ability to directly debit client fees from their custodial accounts. All of our client assets are placed with independent, qualified custodians that sends monthly statements directly to the clients. To confirm their accuracy, reports provided by us should be compared to the statements provided by the respective qualified custodian.

**B. PRIVATE FUNDS** - We are deemed to have custody for certain of the Private Funds due to our capacity as General Partner or affiliates of ours serving in the capacity as General Partner to such Private Funds or to our capacity to otherwise have authority to obtain possession of the assets of such Private Funds. The cash and securities held by the Private Funds are held with one or more qualified custodians.

- The Master Fund and the Feeder Funds undergo annual financial statement audits by an independent accounting firm which is registered with the PCAOB and is subject to regular inspection by the PCAOB.
- We are not deemed to have custody of the assets of MGVEF as we only act as the Investment Manager, and not as General Partner, of this Australian registered managed investment scheme.
- Precog undergoes annual financial statement audit by an independent accounting firm which is registered with the PCAOB but it is not subject to regular PCAOB inspection. Therefore, our Private Funds undergo an annual surprise custody examination.

## **ITEM 16 INVESTMENT DISCRETION**

**A. SMAS** - Upon execution of an IMA between us and our client, we accept discretionary authority to manage accounts on behalf of such client. We generally do not accept any restrictions/limitations our client may request to impose on the discretionary authority granted to us. However, under certain circumstances, we may approve investment restrictions and or limitations on a case-by-case basis as set forth in an IMA.

**B. PRIVATE FUNDS** - Subject to the guidelines and objectives set forth in the applicable offering documents, we have discretionary authority over the types of financial instruments to be bought or sold, as well as the amount to be bought or sold on behalf of the Private Funds. Investors are not permitted to impose restrictions/limitations on the management of the Private Funds. However, we may enter into side letter agreements with one or more investors in the Private Funds that alter, modify, or change the terms of the interests held by those investors.

## **ITEM 17 VOTING CLIENT SECURITIES**

Unless our client directs otherwise in writing, we are responsible for voting proxies, which includes voting proxies on behalf of both our SMA clients and the Private Funds. We vote on proxy proposals, amendments, consents or resolutions in a manner that we believe will serve the best, long-term economic interests of our clients, as determined under our discretion, and in accordance with our Proxy Voting Policy (copy available upon written request to our CCO).

We maintain records pertaining to proxy voting as required under Rule 204-2(c)(2) of the Advisers Act. We utilize the services of a third party vendor for voting administrative services that provides for the receipt of and tracking of ballots, the option to implement specific proxy voting guidelines, acceptance and recording of our voting instructions, recordkeeping, and reporting. Generally, we rely on either the issuer of the securities or our clients' custodians to forward any material concerning shareholder meetings directly to the vendor.

Conflicts of interest may arise related to proxy voting and if we identify any actual or potential conflict of interest between us and our clients, we will disclose that conflict in advance, in an effort to obtain our client's consent to proceed before voting the proxy.

- A. SMAS** – Other than for proxy voting, our SMA client maintains exclusive responsibility for all legal proceedings or other types of events pertaining to the account assets, including but not limited to, class action lawsuits.
- B. PRIVATE FUNDS** - We generally have the authority to vote proxies of securities owned by the Private Funds. Investors generally may not direct or otherwise influence our vote with respect to any particular proxy solicitation.

Information pertaining to how we voted specific proxies is available upon written request. All requests should be directed to our Director of Administration & Operations who oversees the administration of our proxy voting procedures.

## **ITEM 18 FINANCIAL INFORMATION**

We are unaware of any financial condition that is reasonably likely to impair our ability to meet our contractual commitments relating to our discretionary authority over our clients' accounts.

We have not been the subject of a bankruptcy petition.

## **ADDITIONAL DISCLOSURES**

We have a Disaster Recovery & Business Continuity Plan in place that is included in its Compliance Manual, a copy of which is available upon request.

A copy of our Privacy Notice is also available upon request. Please direct such request as indicated on page 2 of this Brochure.