

marketing to the public in the US, (b) participation in the Fund is limited to accredited investors or qualified eligible purchasers and (c) each of the Fund's direct or indirect investments in commodity interest positions are limited such that either (1) the aggregate initial margin, premiums and, for retail FOREX transactions (as defined in 17 CFR 5.1(m)), required minimum security deposit to establish such positions, determined at the time the most recent position is established, will not exceed 5% of the liquidation value of the portfolio after taking into account unrealised profits and unrealised losses on any such positions it has entered into or (2) the aggregate net notional value of such positions, determined at the time the most recent position is established, will not exceed 100% of the liquidation value of the portfolio, after taking into account unrealised profits and unrealised losses on any such positions it has entered into.

If the Manager relies on the exemption from CPO registration under CFTC rule 4.13(a)(3), an Investor that has a 25% or greater interest in the Fund and that owns or controls commodity futures or futures option contracts subject to CFTC position limits would be required to aggregate such positions, for CFTC position limit purposes, with any direct or indirect positions of the Fund in such contracts. In the future, similar aggregation requirements will be applicable to positions in certain swaps that are economically equivalent to commodity futures and futures options positions. Investors should consult their own legal advisors with respect to the potential application of position aggregation and reporting requirements to their ownership or control of commodity interest contracts.

## Certain ERISA considerations

ERISA governs the investment of the assets of certain employee benefit plans that may be investors in a limited partnership. ERISA and the rules and regulations of the US Department of Labor ("**DOL**") under ERISA contain provisions that should be considered by fiduciaries of those plans and their legal advisers.

This Memorandum is not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer under US federal income tax law. This Memorandum was written to support the promotion or marketing of the Fund. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax adviser.

## Fiduciary duty

In considering an investment in the Fund, plan fiduciaries should consider their basic fiduciary duty under Section 404 of ERISA, which requires them to discharge their investment duties prudently and solely in the interest of the plan participants and beneficiaries.

Before authorising an investment in the Fund, plan fiduciaries should consider, among other things: (i) the fiduciary standards under ERISA; (ii) whether the investment in the Fund satisfies the prudence and diversification requirements of ERISA, including whether the investment is prudent in light of limitations on the marketability of the Interests; (iii) whether such fiduciaries have authority to make the investment under the appropriate plan investment policies and governing instrument and under Title I of ERISA; and (iv) whether the investment will give rise to a "prohibited transaction" within the meaning of Section 406 of ERISA or Section 4975 of the US Internal Revenue Code of 1986, as amended (the "**Code**"). In analysing the prudence of an investment in the Fund, special attention should be given to the DOL regulation on investment duties (29 C.F.R. Section 2550.404a-1).

## Plan assets

Under ERISA and regulations issued by the DOL, when a plan covered by ERISA acquires an equity interest (such as the Interests) in an entity (such as the Fund) that is neither a "publicly offered security" nor a security issued by an investment company registered under the Investment Company Act, the assets of the ERISA plan generally include not only such equity interest, but also an undivided interest in each of the underlying assets of such entity, unless it is established that: (i) ownership of each class of equity interest in the entity by "**Benefit Plan Investors**" (as defined below) has a value in the aggregate of less than 25% of the total value of such class of equity interest then outstanding, determined on the date of the most recent acquisition of any equity interest in the entity in accordance with the DOL regulations as modified by Section 3(42) of ERISA (the "**25% Test**"); or (ii) the entity is an "operating company," including a "venture capital operating company". The term Benefit Plan Investor means: (i) an "employee benefit plan" within the