

**A00542**

Name of Offeree \_\_\_\_\_

Memorandum No. \_\_\_\_\_

**CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM**

Relating to Class A Shares

of Par Value U.S. \$0.01 Per Share

of

**THE OMNIFUND, LTD.**

(A British Virgin Islands International Business Company)

Investment Manager:

**LANCER MANAGEMENT GROUP, LLC**

Administrator:

**CITCO FUND SERVICES (CURAÇAO) N.V.**

To be effective April 1, 2002

THIS IS NOT AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO BUY THE SHARES DESCRIBED HEREIN IN ANY JURISDICTION TO ANY PERSON OR ENTITY TO WHOM IT IS UNLAWFUL TO MAKE SUCH AN OFFER OR SALE.

### THE OMNIFUND, LTD.

The OmniFund, Ltd. (the "Fund") is an international business company incorporated under the laws of the British Virgin Islands in January 1999 as The Orbiter Fund, Ltd. The Fund is the successor fund to the merger with The Viator Fund, Ltd., an international business company incorporated under the laws of the British Virgin Islands. The Fund was formed to pool investment funds of non-U.S. Persons and Permitted U.S. Persons (as such terms are defined below) for the purpose of investing, trading and dealing in securities of public and non-public companies, traded in the United States of America and elsewhere, of all kinds and descriptions, including but not limited to, equity, debt, convertible securities, preferred stock, options, warrants, trade claims, monetary and other instruments, all as determined by the Fund's Investment Manager (as defined below) in its sole and absolute discretion. The Fund's objective is to maximize capital growth while attempting to control risk. The Investment Manager pursues the Fund's objective by engaging in an aggressive investment program that will include, but not be limited to, (i) investing, trading and dealing in securities of micro and small capitalized companies and other companies that "fly beneath the radar screens" of the large institutional oriented research entities, (ii) participating in initial public offerings, (iii) engaging in late stage private equity transactions, and (iv) providing bridge financing to public and non-public companies. It is intended that the Fund will be all-encompassing in its approach and that it will be opportunistic by nature with the potential for high-volatility and reduced liquidity. It is expected that substantially all of the companies that the Fund invests in, whether public or private, will have small to micro market capitalizations and that the Fund's investments will be concentrated. The Fund may employ leverage as part of its strategy although, historically, both the Fund's and the Investment Manager's use of leverage has been minimal. See "INVESTMENT PROGRAM". **There is no assurance that the Fund's objective will be achieved, and investment results may vary substantially on a monthly, quarterly and annual basis.**

The Fund's assets are managed by Lancer Management Group, LLC (the "Investment Manager"), a limited liability company formed under the laws of the State of Connecticut, United States of America. Michael Lauer is the sole manager and principal owner of the Investment Manager and, as such, he controls the operations and activities of the Investment Manager. The Investment Manager also serves as the sole investment manager of Lancer Offshore, Inc., ("LOI"), a British Virgin Islands company. Mr. Lauer is also the sole manager and principal owner of Lancer Management Group II, LLC ("LMG II"), a Connecticut limited liability company, which is the sole general partner of Lancer Partners, Limited Partnership, a Connecticut investment limited partnership ("LPLP").

The Fund is offering (the "Offering") Class A shares, par value \$0.01 per share (the "Shares"; all "S" references herein are to U.S. dollars), to non-U.S. Persons and to a limited number of Permitted U.S. Persons, each of which must meet certain suitability requirements, including being a Professional Investor (as defined below) under the laws of the British Virgin Islands (collectively, the "Offerees"). The minimum initial subscription for Shares is \$1,000,000, subject to the right of the Fund's board of directors (the "Board"), in its sole and absolute discretion, to accept lesser amounts (but not less than \$100,000). The minimum subscription for additional Shares is \$100,000. Generally, Shares may be purchased on a monthly basis and shareholders (individually, "Shareholder" and collectively, "Shareholders") may redeem Shares upon at least six (6) months' prior written notice to the Fund on a quarterly basis, subject to the Redemption Charge (as defined below) for redemptions of Shares that have been outstanding for less than three (3) years.

Citco Fund Services (Curaçao) N.V. (the "Administrator") will make available to each Offeree or an Offeree's authorized representative, prior to subscribing for Shares in this Offering, the opportunity to ask questions of, and receive answers from, the Administrator or a person acting on its behalf, concerning the terms and conditions of this Offering, and to obtain any additional information, to the extent that the Administrator possesses such information or can acquire it without unreasonable effort or expense, necessary to verify the accuracy of the information set forth herein. Please direct inquiries to the Administrator at Tel. No. (599-9) 732-2222.

There is no public market for the Shares and none is expected to develop.

The Board of Directors of the Company (the "Board"), whose details appear on Page (v) herein, accepts responsibility for the information contained in this document. To the best of the knowledge and belief of the Board (who has taken all reasonable care to ensure that such is the case), the information contained in this

Memorandum is in accordance with the facts and does not omit anything likely to affect the import of such information. The Board accepts responsibility accordingly.

THE SHARES BEING OFFERED HEREBY HAVE NOT BEEN APPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION ("SEC") OR BY ANY OTHER GOVERNMENTAL AUTHORITY AND NEITHER THE SEC NOR ANY SUCH OTHER AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. IT IS ANTICIPATED THAT THE OFFERING AND SALE WILL BE EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT") AND THAT THE FUND WILL NOT BE REGISTERED AS AN INVESTMENT COMPANY UNDER THE UNITED STATES INVESTMENT COMPANY ACT OF 1940, AS AMENDED ("ICA"), IN RELIANCE UPON SECTION 3(c)(1) THEREUNDER.

PURCHASE OF THE SHARES INVOLVES A HIGH DEGREE OF RISK. SEE "*CERTAIN RISK FACTORS*". CONFLICTS OF INTEREST BETWEEN THE INVESTMENT MANAGER AND THE FUND MAY ARISE IN VARIOUS CIRCUMSTANCES. SEE "*CONFLICTS OF INTEREST*".

OFFEREEES ARE NOT TO CONSTRUE THE CONTENTS OF THIS MEMORANDUM AS LEGAL, TAX, INVESTMENT OR OTHER ADVICE. OFFEREEES SHOULD REVIEW THIS MEMORANDUM AND ALL OTHER DOCUMENTS RECEIVED IN CONNECTION WITH THE OFFERING WITH THEIR LEGAL COUNSEL, ACCOUNTANT, BUSINESS AND TAX ADVISOR ON WHOSE OPINIONS THEY SHOULD RELY AS TO ALL LEGAL, TAX, REGULATORY, FINANCIAL AND RELATED MATTERS CONCERNING AN INVESTMENT IN SHARES. OFFEREEES MUST INFORM THEMSELVES AS TO THE LEGAL REQUIREMENTS AND TAX CONSEQUENCES WITHIN THE COUNTRIES OF THEIR CITIZENSHIP, RESIDENCE, DOMICILE AND PLACE OF BUSINESS WITH RESPECT TO THE ACQUISITION, HOLDING AND DISPOSAL OF SHARES, AND ANY FOREIGN EXCHANGE OR OTHER RESTRICTIONS THAT MAY BE RELEVANT THERETO. A REPRESENTATION TO THAT EFFECT IS REQUIRED TO BE MADE BY EACH OFFEREE ACQUIRING SHARES.

THE DISTRIBUTION OF THIS MEMORANDUM AND THE OFFER AND SALE OF THE SHARES IN CERTAIN JURISDICTIONS MAY BE RESTRICTED BY LAW. NO ACTION HAS BEEN OR WILL BE TAKEN TO PERMIT AN OFFERING IN ANY JURISDICTION WHERE ACTION WOULD BE REQUIRED FOR THAT PURPOSE. ACCORDINGLY, SHARES MAY NOT BE OFFERED OR SOLD, DIRECTLY OR INDIRECTLY, AND THIS MEMORANDUM MAY NOT BE DISTRIBUTED, IN ANY JURISDICTION, EXCEPT IN ACCORDANCE WITH THE LEGAL REQUIREMENTS APPLICABLE IN SUCH JURISDICTION. SHARES THAT ARE ACQUIRED BY OFFEREEES NOT ENTITLED TO HOLD THEM WILL BE COMPULSORILY REDEEMED. THE BOARD RESERVES THE RIGHT TO REFUSE ANY SUBSCRIPTION ON THE BASIS OF ANY OFFEREE'S FAILURE TO MEET THE SUITABILITY CRITERIA DESCRIBED HEREIN OR FOR ANY OTHER REASON.

THIS IS A PRIVATE OFFERING, MADE ONLY BY DELIVERY OF A COPY OF THIS MEMORANDUM TO THE OFFEREE WHOSE NAME APPEARS HEREON AND THIS MEMORANDUM MAY NOT BE REPRODUCED OR USED FOR ANY OTHER PURPOSE. ANY DISTRIBUTION OF THIS MEMORANDUM IN WHOLE OR IN PART, OR THE DIVULGENCE OF ANY OF ITS CONTENTS, IS UNAUTHORIZED. THE OFFEREE, BY ACCEPTING DELIVERY OF THIS MEMORANDUM, AGREES TO RETURN THIS MEMORANDUM TO THE ADMINISTRATOR IF THE OFFEREE DOES NOT PURCHASE SHARES.

NO OFFERING LITERATURE OR ADVERTISING IN WHATEVER FORM SHALL BE EMPLOYED IN THE OFFERING OF SHARES EXCEPT FOR THIS MEMORANDUM AND THE SUBSCRIPTION DOCUMENTS BOOKLET WHICH WILL BE DELIVERED TO OFFEREEES THAT ARE INTERESTED IN ACQUIRING SHARES. NO PERSON HAS BEEN AUTHORIZED TO MAKE ANY REPRESENTATIONS, OR FURNISH ANY INFORMATION, WITH RESPECT TO THE FUND OR SHARES, OTHER THAN THE REPRESENTATIONS AND INFORMATION SET FORTH IN THIS

**MEMORANDUM, THE SUBSCRIPTION DOCUMENTS BOOKLET AND THE DOCUMENTS AND INFORMATION FURNISHED BY THE FUND UPON REQUEST, AS DESCRIBED BELOW AND ANY REPRESENTATION OR INFORMATION NOT CONTAINED IN ANY OF THE FOREGOING DOCUMENTS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE FUND OR INVESTMENT MANAGER.**

**THE DELIVERY OF THIS MEMORANDUM DOES NOT IMPLY THAT THE INFORMATION HEREIN IS CORRECT AS OF ANY TIME SUBSEQUENT TO THE DATE ON THE COVER HEREOF. EACH OFFEREE IS INVITED TO ASK QUESTIONS AND OBTAIN ADDITIONAL INFORMATION FROM THE FUND, OUTSIDE OF THE UNITED STATES, CONCERNING THE TERMS AND CONDITIONS OF THE OFFERING AND ANY OTHER RELEVANT MATTERS (INCLUDING BUT NOT LIMITED TO, ADDITIONAL INFORMATION TO VERIFY THE ACCURACY OF THE INFORMATION SET FORTH HEREIN) TO THE EXTENT THE FUND POSSESSES SUCH INFORMATION OR CAN ACQUIRE IT WITHOUT UNREASONABLE EFFORT OR EXPENSE.**

**THIS MEMORANDUM CONTAINS SUMMARIES, BELIEVED BY THE BOARD AND INVESTMENT MANAGER TO BE ACCURATE, OF CERTAIN TERMS OF CERTAIN DOCUMENTS, BUT REFERENCE IS HEREBY MADE TO THE ACTUAL DOCUMENTS (COPIES OF WHICH ARE AVAILABLE FROM THE FUND) FOR COMPLETE INFORMATION CONCERNING THE RIGHTS AND OBLIGATIONS OF THE PARTIES THERETO, AND ALL SUCH SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THIS REFERENCE.**

**THE SHARES ARE SUITABLE ONLY FOR OFFEREEES WHO ARE EITHER NOT U.S. PERSONS OR PERMITTED U.S. PERSONS, WHO DO NOT REQUIRE IMMEDIATE LIQUIDITY OF THEIR INVESTMENT, FOR WHOM AN INVESTMENT IN THE FUND DOES NOT CONSTITUTE A COMPLETE INVESTMENT PROGRAM AND WHO FULLY UNDERSTAND AND ARE WILLING TO ASSUME THE RISKS INVOLVED IN THE FUND'S INVESTMENT PROGRAM. OFFEREEES THAT SUBSCRIBE FOR SHARES MUST REPRESENT THAT THEY ARE ACQUIRING THE SHARES FOR INVESTMENT PURPOSES ONLY. THE TRANSFER OF SHARES IS SUBJECT TO LIMITATIONS IMPOSED BY THE FUND'S MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION (COLLECTIVELY, THE "ARTICLES").**

This Memorandum has been prepared for investments denominated in United States dollars. The Board may accept, in its sole and absolute discretion, investments in other currencies under the following conditions: (i) each currency will be converted to \$, at the sole cost and expense of the Offeree making the investment (and the cost will be deducted from the Offeree's gross subscription amount); (ii) each Shareholder will bear all currency fluctuation risks between \$ and their base currency; and (iii) all distributions will be made in \$, unless the Shareholder requests in writing in advance that distributions to such Shareholder be made in a different currency, in which event the shareholder will bear the cost of converting the distribution to their base currency and such cost shall be deducted from such Shareholder's distribution.

**IMPORTANT INFORMATION REQUIRED BY UNITED STATES FEDERAL AND STATE LAWS AND THE LAWS OF OTHER JURISDICTIONS IS ATTACHED TO THIS MEMORANDUM AS APPENDIX A. YOU ARE URGED TO READ THIS INFORMATION CAREFULLY.**

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**DIRECTORY**

**Registered Office**

Citco Building  
Wickams Cay  
Road Town, Tortola  
British Virgin Islands

**Investment Manager**

Lancer Management Group, LLC  
475 Steamboat Road  
Greenwich, CT 06930  
Telephone: (203) 629-0300  
Telecopier: (203) 629-5325

**Director of the Fund**

John W. Bendall, Jr.  
Dr. Richard Geist

**Prime Broker**

Banc of America Securities, LLC  
9 West 57<sup>th</sup> Street - 17<sup>th</sup> Floor  
New York, NY 10019

**Administrator, Registrar and Transfer Agent**

Citco Fund Services (Curaçao) N.V.  
Kaya Flamboyen 9  
P.O. Box 812  
Curaçao, Netherlands Antilles  
Telephone: (599-9) 732-2222  
Telecopier: (599-9) 732-2225

**Auditor for the Fund**

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Julianaplein 38  
P.O. Box 360  
Curaçao, Netherlands Antilles

**Fund U.S. Legal Counsel**

Robinson Silverman Pearce Aronsohn  
& Berman LLP  
1290 Avenue of the Americas  
New York, NY 10104  
United States of America

**Fund British Virgin Islands Special Counsel**

Conyers Dill & Pearman  
Romasco Place  
Wickhams Cay I  
P.O. Box 3140  
Road Town, Tortola  
British Virgin Islands

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### SUMMARY

The following is a summary of certain information set forth more fully elsewhere in this Memorandum and is qualified by other information contained in this Memorandum and by the Fund's Articles, copies of which are available from the Administrator.

**Offerees should read the entire Memorandum and the Articles carefully before making any investment decision regarding the Fund and should pay particular attention to the information in this Memorandum under the heading "*CERTAIN RISK FACTORS*". In addition, Offerees should consult their own advisers in order to understand fully the consequences of an investment in the Fund.**

#### **The Fund**

The OmniFund, Ltd. (the "Fund") is a British Virgin Islands international business company formed in January 1999 as The Orbiter Fund, Ltd. The Fund is the successor fund to the merger with The Viator Fund, Ltd., a British Virgin Islands international business company.

#### **Investment Objective**

The Fund's objective is to maximize capital growth while attempting to control risk. The Investment Manager pursues the Fund's objective by engaging in an aggressive investment program that will include, but not be limited to, (i) investing, trading and dealing in securities of micro and small capitalized companies and other companies that "fly beneath the radar screens" of the large institutional oriented research entities, (ii) participating in initial public offerings, (iii) engaging in late stage private equity transactions, and (iv) providing bridge financing to public and non-public companies. It is intended that the Fund will be all-encompassing in its approach and that it will be opportunistic by nature with the potential for high-volatility and reduced liquidity. It is expected that substantially all of the companies that the Fund invests in, whether public or private, will have small to micro market capitalizations and that the Fund's investments will be concentrated. The Fund may employ leverage as part of its strategy although, historically, both the Fund's and the Investment Manager's use of leverage has been minimal. See "*INVESTMENT PROGRAM*".

#### **Investment Manager**

The Investment Manager is Lancer Management Group, LLC, a limited liability company formed in 1997 under the laws of the State of Connecticut, United States of America (the "Investment Manager"). The Investment Manager is the successor by merger to Lancer Management Group, LLC, a New York limited liability company. The Investment Manager also serves as the sole investment manager of LOI. The Investment Manager has entered into an amended and restated investment management agreement to be effective April 1, 2002 (the "Investment Management Agreement") with the Fund and is responsible for the investment of the Fund's assets, subject to the policies and control of the Board. Michael Lauer is the sole manager and principal owner of the Investment Manager and, as such, he controls the operations and activities of the Investment Manager. The Investment Management Agreement is effective through December 31, 2020, and is automatically extended for additional five (5) year terms thereafter, except that it may be terminated upon ninety (90) days' written notice by either of the parties at any time. See "*INVESTMENT MANAGEMENT AGREEMENT, FEES AND EXPENSES*".



**Eligibility Requirements**

Shares will be sold to non-U.S. Persons and to a limited number of Permitted U.S. Persons, each of which must meet certain suitability requirements, including being a Professional Investor. At no time will: (i) Benefit Plan Investors (as defined below) be allowed to own twenty-five (25%) percent or more of the outstanding Shares; or (ii) Permitted U.S. Persons be allowed to own fifty (50%) percent or more of the outstanding Shares. All Permitted U.S. Persons must be Accredited Investors (as defined below). In addition, no Offeree that is described in IM-2110-1 (the "Hot Issue Rule") of the rules adopted by the National Association of Securities Dealers, Inc. ("NASD") or any successor rules may purchase or own Shares. The Board, in its sole and absolute discretion, may decline to accept the subscription of any prospective Shareholder for any reason or no reason. See *"THE OFFERING-Suitability"*.

**Minimum Subscription**

The minimum initial subscription is \$1,000,000; however, the Board, in its sole and absolute discretion, may accept subscriptions of lesser amounts (but not less than \$100,000). Thereafter, the minimum subscription for additional Shares is \$100,000. See *"THE OFFERING"*.

**The Shares**

The Class A Shares have a par value of \$0.01 per share (the "Shares") and have equal voting, dividend, distribution and liquidation rights as to the separate account maintained by the Fund for the Shares. See *"THE FUND"*.

**Offering of Shares**

The Fund may offer Shares on the first Business Day (for purposes hereof, the term "Business Day" shall mean any day on which securities are traded on the New York Stock Exchange) of each month or at such other times as the Board, in its sole and absolute discretion, may allow, at a purchase price per Share equal to the Offering Price (as defined below) per Share as of the close of business on the preceding Business Day. As at January 31, 2002 the Offering Price was \$207.04 per Share. To the extent that it determines to do so, the Investment Manager, in its sole and absolute discretion, may pay referral fees to unaffiliated eligible persons who introduce prospective Shareholders to the Fund. No referral fees will be paid by the Fund. See *"INVESTMENT MANAGEMENT AGREEMENT, FEES AND EXPENSES"*, *"THE OFFERING"* and *"ADMINISTRATION-Brokerage Commissions"*.

**Use of Proceeds and Distributions**

Proceeds received by the Fund from the sale of Shares will be used by the Fund in its investment program and for the payment of fees and expenses described elsewhere in this Memorandum. See *"INVESTMENT PROGRAM"*. The Fund does not expect to make distributions or pay dividends on the Shares.

**Transfer Restrictions**

Without the prior written consent of the Board, which consent may be given or withheld in its sole and absolute discretion, any sale, assignment, transfer, conveyance, pledge, hypothecation or other disposition or encumbrance or any attempt to do any of the foregoing (collectively, "Transfer") shall not be recognized by the Fund. Further, the transferee must complete a subscription document in a form that is acceptable to the Fund before such transfer will be accepted. The Board will not consent to the Transfer of Shares to a U.S. Person. Any attempt to Transfer Shares without the prior written consent of the



Board may subject such Shares to compulsory redemption at the sole and absolute discretion of the Board. There is no independent market for the purchase or Transfer of Shares and none is expected to develop. Offerees must represent that they are purchasing Shares for investment purposes only.

#### **Redemption**

Generally, Shares may be redeemed by a Shareholder on at least six (6) months' prior written notice to the Fund, on the last Business Day of each fiscal quarter of the Fund, and at such other times with the consent of, and upon such terms of payment as may be approved by, the Board, in its sole and absolute discretion (each date being referred to as a "Redemption Date"). Shares will be redeemed at the Redemption Price (as defined below). Payment of ninety-five (95%) percent of the aggregate Redemption Price for redeemed Shares (calculated on the basis of unaudited data) normally will be made within thirty (30) days following the Redemption Date. Payment of the balance of the aggregate Redemption Price will be made within thirty (30) days after completion of (i) unaudited quarterly financial statements for redemptions on the last Business Day of the first three (3) fiscal quarters of the Fund, or (ii) audited financial statements for redemptions on the last Business Day of the Fund's fiscal year. Redemption proceeds generally will be paid in U.S. \$. Any redemption of a Share within one (1) year, two (2) years or three (3) years after a Shareholder's purchase of such Share (whether the Share is acquired directly from the Fund or by way of Transfer) will be subject to a redemption charge of fifteen (15%) percent, ten (10%) percent or five (5%) percent, respectively, of the value of such Share on the date redeemed (each, as applicable, the "Redemption Charge"). There are no Redemption Charges for Shares redeemed after three (3) years from the date of issuance. All Redemption Charges assessed against a redeeming Shareholder will become assets of the Fund. Other than the Redemption Charge, there are no redemption charges. The Board, in its sole and absolute discretion, may shorten or waive any notice requirement and/or reduce or waive the Redemption Charge. See "*TRANSFER AND REDEMPTION-Redemption*".

If a redemption would cause the value of Shares held by a Shareholder to fall below \$1,000,000, or such lesser amount as determined by the Board, in its sole and absolute discretion, then the Board shall have the right, in its sole and absolute discretion, to compel redemption of all Shares held by such Shareholder. The Board, in its sole and absolute discretion, upon not less than five (5) days' prior written notice to a Shareholder, may compel redemption of all or part of such Shareholder's Shares at any time for any reason or no reason. In certain limited circumstances, the Board may suspend redemption rights for all Shareholders. See "*TRANSFER AND REDEMPTION-Redemption*".

#### **Management and Incentive Fees**

As set forth in the Investment Management Agreement, the Fund is obligated to pay the Investment Manager (i) a fixed advisory fee (the "Management Fee") payable at the beginning of each fiscal quarter equal to 0.50% of the Net Asset Value of the Shares as of the beginning of such fiscal quarter (approximately 2.0% on an annualized basis), and (ii) an annual incentive fee (the "Incentive Fee"), determined as of the last Business Day of the Fund's fiscal year, equal to twenty-five (25%) percent of the net profits (including net realized and unrealized gain,

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other income and net of Management Fees and any other Fund expenses) (hereinafter, "Net Profits"), if any, during a fiscal year allocable to each Share; provided, however, that if a Share is redeemed at any time other than at the end of a fiscal year, the Incentive Fee with respect to such redeemed Share shall be calculated through the Redemption Date; and further provided, however, that if a Share is purchased by a Shareholder during a fiscal year, the Incentive Fee with respect to such purchased Share for such fiscal year shall be calculated commencing on the date of purchase. See "*DETERMINATION OF OFFERING PRICE*". The Management Fee will be prorated for any fiscal quarter in which the Investment Manager does not act as Investment Manager for the entire quarter; however, no Management Fees will be repaid if a Share is redeemed during a fiscal quarter. See "*INVESTMENT MANAGEMENT AGREEMENT, FEES AND EXPENSES*".

The Investment Manager and the Fund have entered into a deferred incentive fee agreement pursuant to which the Investment Manager may elect to defer payment of all or a portion of its Incentive Fee. See "*INVESTMENT MANAGEMENT AGREEMENT, FEES AND EXPENSES*".

**Loss Carry-Forward**

The Incentive Fee is subject to a loss carry-forward limitation, which means that if a Share has a loss chargeable to it during any fiscal year (collectively, the "Unrecouped Loss") and during any succeeding fiscal year or years there are Net Profits allocable to the Share, there will be no Incentive Fee payable with respect to such Net Profits until the amount of the aggregate Unrecouped Loss allocated to such Share has been recouped by allocations of Net Profits.

**Expenses**

The Fund pays all of its accounting, legal, administrative and other operating expenses, including the expenses of the offering and sale of Shares to Shareholders (collectively, "Administrative Expenses") for each fiscal year. The Fund also pays all investment expenses (e.g., expenses related to the investment of the Fund's assets, such as brokerage commissions and other trading and investment charges and fees), corporate licensing expenses, interest, custodial fees, prime broker charges and taxes. All organizational expenses have been paid by the Investment Manager.

**Hot Issues**

The Fund may invest in "hot issues". Hot issues result when the price in the secondary market of a new offering of securities rises to a premium over the initial offering price immediately or very soon after the securities are first distributed to the public.

**Administrator, Registrar and Transfer Agent**

Citco Fund Services (Curaçao) N.V. (the "Administrator") has been retained by the Fund to perform administrative services.

**Risk Factors**

An investment in the Fund involves significant risks. See "*CERTAIN RISK FACTORS*".

**Conflicts of Interest**

Certain inherent conflicts of interest arise from the fact that the Investment Manager, Mr. Lauer and their affiliates carry on substantial investment activities for other clients, including LPLP and LOI, in which the Fund will have no interest. While the investment objectives

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and strategies of certain of such clients are different from those of the Fund, such clients may invest in certain securities in which the Fund has invested or may invest and/or take opposite positions from the Fund in the market. Investments in which more than one client account participates will be allocated among the accounts in a manner that the Investment Manager believes in good faith to be equitable. The Investment Manager will devote to the Fund so much of its time as it deems necessary in its sole and absolute discretion. See "*CONFLICTS OF INTEREST*".

**Brokerage Commissions**

Portfolio transactions for the Fund will be allocated to brokers as selected by the Investment Manager on the basis of best execution and in consideration of such broker's provision or payment of the costs of research and other services and/or property which are of benefit to the Fund, the Investment Manager and/or its affiliates. The Investment Manager may also direct commissions to brokers who refer clients to the Fund and certain broker/dealers which may furnish other services to the Fund and/or the Investment Manager. See "*ADMINISTRATION-Brokerage Commissions*".

**Shareholder Reports**

An annual audited financial report will be made available to Shareholders within six (6) months after the Fund's fiscal year end. Unaudited performance reports will be made available to Shareholders periodically.

**Fiscal Year**

The fiscal year end of the Fund is September 30 of each calendar year.

**Taxes**

Based upon the Fund's organizational structure and methods of operation as described herein, it is anticipated that the Fund generally will not be subject to U.S. Federal income tax on gains from trading in securities and instruments. In addition, interest from U.S. sources earned on bank deposits, "portfolio interest" as defined under the Code and interest from certain short term obligations generally would not be subject to withholding for U.S. Federal income tax. However, dividend income and certain other interest from U.S. sources would be subject to thirty (30%) percent withholding. Permitted U.S. Persons should not be subject to U.S. Federal income tax on any dividends received from the Fund, or on any gain recognized on the sale or other disposition of Shares, provided that such Permitted U.S. Person does not utilize leverage in acquiring or holding Shares in the Fund.

At the date of this Memorandum, the Fund is exempt from all provisions of the Income Tax Act of the British Virgin Islands with respect to all dividends, interests, rents, royalties, compensation and other amounts payable by the Fund to persons who are not persons resident in the British Virgin Islands and is also exempt from any capital gains realized with respect to any Share debt obligations or other securities of the Fund by persons who are not persons resident in the British Virgin Islands. No estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by persons who are not persons resident in the British Virgin Islands with respect to any Shares, debt obligations or other securities of the Fund.

There can be no assurance that the U.S. or British Virgin Islands tax laws will not be changed adversely with respect to the Fund and its

Shareholders or that the Fund's income tax status will not be successfully challenged by such authorities.

Potential Shareholders should consult their own advisors regarding tax treatment by the local and other jurisdictions applicable to them. Shareholders should rely only upon advice received from their own tax advisors based upon their own individual circumstances and the laws applicable to them.

#### **Subscription Procedures**

Offerees interested in subscribing for Shares will be furnished a Subscription Documents Booklet, which contains Instructions For Subscribers and a Subscription Agreement. The Subscription Agreement must be completed for a specified dollar amount. The original completed and executed copy of the Subscription Agreement should be sent by fax and courier delivery service to: The OmniFund, Ltd., c/o Citco Fund Services (Curaçao) N.V., Kaya Flamboyen 9, P.O. Box 812, Curaçao, Netherlands Antilles. Fax no. (5-999) 732-2225. The original executed and completed Subscription Agreement must be received by the Fund at least three (3) Business Days prior to the applicable Closing Date (as defined in this Memorandum), unless waived by the Board.

All payments are to be made in United States dollars, via wire transfer, in immediately available funds to JP Morgan Chase Bank, One New York Plaza, New York, NY 10081, ABA # 021-000021, for Account of Citco Banking Corporation N.V., Account # 001-1-627502, for further credit to The OmniFund, Ltd., Account # 0012.519915.200. See "*SUBSCRIPTION PROCEDURES*".

#### **Other Classes**

The Board of Directors, in its sole and absolute discretion, may amend the Memorandum of Association of the Fund to create one or more additional classes of shares with different rights and privileges. The owners of such other classes may or may not be required to invest different minimum amounts, pay different fees to the Investment Manager, be charged for different expenses and have certain other items applicable to them that are different than those that are applicable to the shareholders of the Shares described in this Memorandum, all as determined by the Board of Directors in its sole and absolute discretion.

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**THE INVESTMENT MANAGER**

The Fund's Investment Manager is Lancer Management Group, LLC ("Investment Manager"), a limited liability company formed in 1997 under the laws of the State of Connecticut. The Investment Manager is the successor by merger to Lancer Management Group, LLC, a New York limited liability company formed in 1995. Michael Lauer is the sole manager and principal owner of the Investment Manager and, as such, he controls the operations and activities of the Investment Manager. The Investment Manager is responsible for the management of the Fund. The Investment Manager is solely responsible for researching, selecting and monitoring investments by the Fund and determining when and how much to invest with or withdraw from a particular investment.

Michael Lauer began his investment career with Oppenheimer & Co. in 1980 as a technology analyst. His other professional affiliations include: Cyrus J. Lawrence and Kidder Peabody (both as senior diversified technology and defense electronics analyst). Mr. Lauer became a portfolio manager in 1993. On numerous occasions, the annual Greenwich Associates survey of sell-side analysts distinguished Mr. Lauer as the premier source for stock purchase recommendations in his discipline of industry coverage. Likewise, Mr. Lauer was selected to the Institutional Investor's All Star analyst team for seven consecutive years. The Wall Street Journal's first ever survey also rated Mr. Lauer among the top three analysts in his group. Mr. Lauer holds a BA degree in International Relations and an MBA in Finance.

From December 1994 to December 1997, Mr. Lauer served as the general partner of LPLP. Mr. Lauer serves as the sole manager and principal owner of LMG II which became the sole general partner of LPLP on January 1, 1998. The Investment Manager also serves as the sole investment manager of LOI and had served as the sole investment manager of The Viator Fund, Ltd. until the time that such fund merged with and into the Fund. It is possible that in certain circumstances, the Fund, on the one hand, and LPLP and/or LOI on the other hand, could own securities of the same company and/or take opposite positions in the market.

Mr. Lauer, as sole manager of the Investment Manager and, as the sole manager of LMG II, the general partner of LPLP, devotes a substantial amount of his time to the business of running the Fund, LOI and LPLP although, Mr. Lauer may devote such time to the Investment Manager and Fund as he determines in his sole and absolute discretion. The Investment Manager, LMG II and/or Mr. Lauer may also manage accounts for certain parties and/or provide consulting and/or advisory services to others.

There have never been any administrative, civil or criminal actions, whether pending, on appeal or concluded, against the Fund, the Investment Manager or Mr. Lauer.

## **INVESTMENT PROGRAM**

### **Purpose**

The Fund was organized for the purpose of investing, trading and dealing in securities of public and non-public companies, traded in the United States of America and elsewhere, of all kinds and descriptions, including but not limited to, equity, debt, convertible securities, preferred stock, options, warrants, trade claims and monetary instruments. The Fund may invest in arbitrage and special situations, both long and short securities positions, option arbitrage, international arbitrage and other financial instruments. The descriptions contained in this Memorandum of the specific activities in which the Fund may engage should not be understood to limit in any way the types of investment activities or the allocation of Fund capital among such investments which the Fund may make. The Fund may engage in any investment activities not described herein which the Investment Manager considers appropriate and consistent with the Fund's objective.

### **Investment Objective**

The Fund's objective is to maximize capital growth while attempting to control risk. The Investment Manager pursues the Fund's objective by engaging in an aggressive investment program that will include, but not be limited to, (i) investing, trading and dealing in securities of micro and small capitalized companies and other companies that "fly beneath the radar screens" of the large institutional oriented research entities, (ii) participating in initial public offerings, (iii) engaging in late stage private equity transactions, and (iv) providing bridge financing to public and non-public companies. It is intended that the Fund will be all-encompassing in its approach and that it will be opportunistic by nature with the potential for high-volatility and reduced liquidity. No assurance can be given that the Fund will achieve its objective. It is expected that substantially all of the companies that the Fund invests in, whether public or private, will have small to micro market capitalizations and that the Fund's investments will be concentrated. The Fund may employ leverage as part of its strategy although, historically, both the Fund's and the Investment Manager's use of leverage has been minimal. The Investment Manager does not follow a market timing philosophy and accordingly, it is anticipated that substantially all of the Fund's assets will be fully invested at all times.

### **Investment Program**

The following is a description of the principal types of securities in which the Investment Manager intends to cause the Fund to invest in, certain trading techniques that it intends to employ, the investment criteria that it intends to apply, and the guidelines that it has established with respect to the composition of the Fund's investment portfolio. The following description, however, is merely a summary and the Investment Manager has broad discretion to cause the Fund to invest in other types of securities and to follow other investment criteria and guidelines.

1. **Securities of Undervalued Companies.** In addition to focusing on neglected securities in which the institutional ownership is typically significantly underrepresented, the Fund will target "fallen angels" whose severe valuation decreases are caused by what the Investment Manager believes to be a transitional problem which often present timely accumulation opportunities. The Fund will buy undervalued securities at what the Investment Manager believes to be opportune prices if the Investment Manager believes that the strong underlying economics of the company remain intact. The Investment Manager's valuation disciplines focus on the net current asset values, franchise and private markets, and liquidation value analysis. The Investment Manager also applies more conventional valuation gauges, including ratios of price to cash flows, book value, working capital, forecast sales, and earnings. The Investment Manager generally expects that, when it identifies the securities of the company that are undervalued and warrant accumulation, such securities will generally be trading at half (or less) of the previous 52-week peak price. The Investment Manager also intends to identify companies that have a strong market position, a competitive cost structure, higher-than-average profitability and public valuations that are significantly lower than their estimated private market value.



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2. **Concentration of Investments.** The Investment Manager intends to concentrate holdings. When the Investment Manager discovers what it believes to be great value and potential for capital growth in a particular company, the securities of such company may become over-represented in the portfolio. The Investment Manager believes that excess diversification tends to detract from superior performance as it becomes a proxy for the overall market. Conversely, concentration can magnify a gain or a loss based on the change in value of the securities of one company.
3. **Bridge Financing.** The Investment Manager intends to cause the Fund to engage in bridge financing transactions with public companies and with non-public companies that plan to register their securities pursuant to the 1933 Act, thereby becoming public companies, within approximately eighteen (18) months after the date of the Fund's investment. In engaging in bridge financing transactions, the Investment Manager will attempt to identify companies (both public and private) that have short term cash requirements and that have one or more of the following characteristics: strong management, cash flow, increasing margins, niche markets, expect a catalyst and/or other factors that the Investment Manager determines. Bridge financing generally takes the form of a secured or unsecured loan to the company for a specified period of time. The company, in addition to issuing a promissory note to the Fund for the loan, will generally also issue some form of equity. The equity component can consist of warrants, options, preferred stock, common stock, the right to convert all or part of the loan to equity and other variations. The ability to realize upon the equity component issued by a non-public company is generally tied to the company becoming a public company, if it is not so already.
4. **Catalyst.** The Investment Manager believes that value is often concealed in a recent corporate event (restructuring, acquisition, divestiture), accelerating earnings (beyond consensus forecast), large contract awards, a successful company's market transformation (e.g., from defense to telecommunications). Moreover, the Investment Manager believes that a thorough balance sheet and cash flow analysis often yields telltale markers of an impending earnings resurgence. The Investment Manager also looks for competent and shareholder-value focused management.
5. **Cash Generating Companies.** The Investment Manager believes that convalescing balance sheets can be the precursor to a rebound in earnings. As a result, the Investment Manager expects to cause the Fund to invest in companies where the Investment Manager believes that an upswing in cash flow may serve as a precursor to an upswing in earnings.
6. **Solid Business in Attractive (Often Niche) Markets.** The Investment Manager focuses on companies with "franchise" positions, and avoids commodity market exposure. It prefers not to label its holdings as either predominantly value- or growth-oriented, even though both often apply. The Investment Manager does, however, look for strong positions in industries that offer attractive growth potential.
7. **Comprehension of Holdings.** The Investment Manager will invest only within industries where it believes it has a firm understanding of the underlying dynamics. The Investment Manager believes that greater understanding of the industries in which the Fund invests is a hedge against risk.
8. **Short Sales.** The Investment Manager will make "short sales" of securities when it believes that particular securities are vulnerable as the result of the occurrence of specific events, causing the Investment Manager to anticipate a significant decline in their market price. Such events may include arbitrage situations in which the Investment Manager believes that the proposed transaction is not likely to be consummated. The Investment Manager does not expect to make "short sales" solely because a stock is expensive.
9. **Leveraged Purchases of Securities.** The Fund may leverage its securities positions by borrowing funds up to the maximum extent permitted by law. In general, for most equity securities, the maximum initial amount that can presently be loaned by brokers and banks is fifty (50%) percent of the value of most securities positions. There are no borrowing or leverage limits in the Articles. Leverage increases the potential risk of loss on any securities position so leveraged. In addition, increases in interest rates adversely affect earnings. Furthermore, in the event of a decline in the value of the leveraged securities or a change in the percentage of the value of securities for which a margin loan may be made, the Fund may be forced to sell securities at a substantial loss in order to generate cash to reduce the Fund's margin loan.



10. **Avoidance of "Concept" Stocks.** The Investment Manager does not intend to invest in securities in which there is a flurry of investment caused by attraction to a "concept", thereby driving up the price of such security to an overvalued position, especially where the Investment Manager believes there is a likelihood that the value of such security will plummet once flaws in the "concept" are exposed.
11. **Lack of Reliance on Market Timing.** The Investment Manager believes that stock market forecasts are unreliable. The Investment Manager will focus its energies and research resources on specific investment ideas which it believes possess enough of an internal propellant so as to increase in value even in an otherwise uncooperative stock market environment. Consequently, the Investment Manager intends to be fully invested in reliance upon its ideas at most times.
12. **"Initial Public Offerings".** The Fund may participate in initial public offerings ("IPOs"). Many IPOs are considered "hot issues". Hot issues result when the price in the secondary market of a new offering of securities rises to a premium over the initial offering price immediately or very soon after the securities are first distributed to the public.

#### **Portfolio Turnover**

As a result of the investment policies described in this Memorandum, the Fund expects to engage in a substantial number of portfolio transactions. It is anticipated that the Fund's investment portfolio may be frequently traded, and, accordingly, the Fund may incur substantial brokerage commissions, expenses and other transaction costs. The Investment Manager is not, however, required to execute transactions at the lowest available commission rates. See "*ADMINISTRATION-Brokerage Commissions*".

#### **General**

The Investment Manager does not presently intend to cause the Fund to purchase or sell real estate (although it may purchase securities of companies whose businesses involve the purchase and sale of real estate), purchase participations or other direct interests in oil, gas or other minerals (except as an investor in companies in this field) or participate in the marketing of the securities of any companies.

The Investment Manager may invest Fund assets that are not currently used in the investment program in short-term U.S. Government securities, money market accounts and/or other short-term interest bearing instruments located at major financial institutions in the United States. Any income earned from such investments will be reinvested by the Fund in accordance with the Fund's investment strategies.

**THE FUND'S INVESTMENT PROGRAM ENTAILS SUBSTANTIAL RISKS AND THERE CAN BE NO ASSURANCE THAT THE OBJECTIVE OF THE FUND WILL BE ACHIEVED. THE PRACTICES OF SHORT SELLING, LEVERAGE AND OTHER INVESTMENT TECHNIQUES WHICH THE FUND MAY EMPLOY FROM TIME TO TIME CAN, IN CERTAIN CIRCUMSTANCES, MAXIMIZE THE ADVERSE IMPACT TO WHICH THE FUND'S INVESTMENT PORTFOLIO MAY BE SUBJECT.**

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## **INVESTMENT MANAGEMENT AGREEMENT, FEES AND EXPENSES**

### **Investment Management Agreement**

The Fund has entered into an amended and restated investment management agreement (the "Investment Management Agreement") with the Investment Manager to manage the Fund's portfolio investments. The Investment Management Agreement provides that the Investment Manager is responsible for investment of the Fund's assets, subject to the policies and control of the Board. The Investment Manager initiates all orders for the purchase and sale of securities on behalf of the Fund. The Investment Management Agreement will remain in effect through December 31, 2020, and is automatically extended for additional five year terms thereafter, except that it may be terminated by the Investment Manager or by the Fund upon ninety (90) days' written notice by either party at any time.

The Investment Management Agreement provides that the Fund will indemnify and hold harmless the Investment Manager and its members, and their respective affiliates from and against any loss or expense suffered or sustained by the Investment Manager or its members or their respective affiliates resulting from the performance or non-performance of the Investment Manager's duties under the Investment Management Agreement, including without limitation any judgment, settlement, reasonable attorneys' fees and other costs or expenses incurred in connection with the defense of any actual or threatened action or proceeding; provided, however, that the Fund will not indemnify and hold harmless such person against any loss or expense arising from the gross negligence, fraud or willful misconduct of such person in connection with such performance or non-performance of duties under the Investment Management Agreement.

### **Management and Incentive Fees**

Under the Investment Management Agreement, the Fund is obligated to pay the Investment Manager: (i) a fixed advisory fee (the "Management Fee") payable at the beginning of each fiscal quarter equal to 0.50% of the Net Asset Value of the Shares as of the beginning of such fiscal quarter (approximately 2.0% on an annualized basis); and (ii) an annual incentive fee (the "Incentive Fee") determined as of the last Business Day of the Fund's fiscal year, equal to twenty-five (25%) percent of the net profits (including net realized and unrealized gain, other income and net of Management Fees and any other Fund expenses) (hereinafter, "Net Profits"), if any, during a fiscal year allocable to each Share; provided, however, that if a Share is redeemed at any time other than at the end of a fiscal year, the Incentive Fee with respect to such redeemed Share shall be calculated through the Redemption Date; and further provided, however, that if a Share is purchased by a Shareholder during a fiscal year, the Incentive Fee with respect to such purchased Share for such fiscal year shall be calculated commencing on the date of purchase. If a Share has a loss chargeable to it during any fiscal year or years ("Unrecouped Loss") and during any succeeding fiscal year there are Net Profits allocable to the Share, there will be no Incentive Fee payable with respect to the Share until the amount of the Unrecouped Loss allocated to the Share has been recouped. The Management Fee will be prorated for any fiscal quarter in which the Investment Manager does not act as Investment Manager for the entire quarter; however, no Management Fees will be repaid if a Share is redeemed during a fiscal quarter.

### **Deferral**

Pursuant to the Investment Management Agreement, the Investment Manager has the right to defer all or part of the Incentive Fee. During the deferral period, deferred fee amounts will be recorded by the Fund as a liability in an unfunded book entry account that is indexed to the overall performance (whether positive or negative) of the Fund (determined without accrual of Management Fees or Incentive Fees), so that the amount ultimately payable will reflect the return that would have been earned if the Incentive Fee had been paid to the Investment Manager and simultaneously invested by the Investment Manager in a special class of Shares of the Fund at the Offering Price Per Share immediately following the close of the fiscal year in which the Incentive Fee was earned (the "Deferred Fee Liability"). Any Incentive Fee not deferred shall be paid to the Investment Manager in cash on a current basis after the close of the fiscal year. As of April 1, 2002, the Deferred Fee Liability constituted a material portion of the overall value of the Fund.

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Expenses

The Fund pays all of its accounting, legal, administrative and other operating expenses, including the expenses of the offering and sale of Shares to Shareholders (collectively, "Administrative Expenses") for each fiscal year. The Fund also pays all investment expenses (e.g., expenses related to the investment of the Fund's assets, such as brokerage commissions and other trading and investment charges and fees), corporate licensing expenses, interest, custodial fees, prime broker charges and taxes. All organizational expenses have been paid by the Investment Manager.

### **CERTAIN RISK FACTORS**

THE PURCHASE OF SHARES OFFERED HEREBY INVOLVES SUBSTANTIAL RISKS AND IS SUITABLE ONLY FOR OFFEREEES OF ADEQUATE FINANCIAL MEANS WHO HAVE NO NEED FOR LIQUIDITY IN THIS INVESTMENT. OFFEREEES SHOULD BEAR IN MIND THE RISK FACTORS SET FORTH BELOW.

Offerees should give careful consideration to the following risk factors in evaluating the merits and suitability of an investment in the Fund as they relate specifically to the Shares or to the Fund, in general, as the context requires. The following does not purport to be a comprehensive summary of all the risks associated with an investment in the Fund. Rather, the following are only certain particular risks to which the Fund is subject. The Investment Manager urges Offerees to discuss such risks and other potential risks, in detail with their professional advisors prior to making an investment decision.

#### **Market Risks**

1. **Competition.** The securities industry, and the varied strategies engaged in by the Investment Manager are extremely competitive and each involves a degree of risk. The Fund competes with firms, including many of the larger securities and investment banking firms, which have substantially greater financial resources and research staffs.
2. **Market Volatility.** The Fund's profitability substantially depends upon the Investment Manager correctly assessing the future price movements of stocks, bonds and options on stocks and other securities and the movements of interest rates. There can be no assurance that the Investment Manager will be successful in accurately predicting price and interest rate movements.
3. **The Fund's Investment Activities.** The Fund's investment activities involve a high degree of risk. The performance of any investment is subject to numerous factors which are neither within the control of nor predictable by the Investment Manager. Such factors include a wide range of economic, political, competitive and other conditions which may affect investments in general or specific industries or companies. In recent years the securities markets have become increasingly volatile, which may adversely affect the ability of the Fund to realize profits. As a result of the nature of the Fund's investing activities, it is possible that the Fund's financial performance may fluctuate substantially from period to period.
4. **Systemic Risk.** World events and/or the activities of one or more large participants in the financial markets and or other events or activities of others could result in a temporary systemic breakdown in the normal operation of financial markets. Such events could result in the Fund losing substantial value caused predominantly by liquidity and counterparty issues (as noted above) which could result in the Fund incurring substantial losses.
5. **Transaction Execution and Costs.** The Fund expects to utilize a portion of its assets in a trading strategy that is extremely short-term and will involve heavy trading, high volume and in many cases relatively narrow spreads between the prices at which the Fund will purchase and sell particular positions. The successful application of such a strategy depends significantly upon the quality of execution of transactions, such as the ability of broker-dealers to execute orders on a timely and efficient basis. Although the Investment Manager will seek to utilize brokerage firms which will afford superior execution capability to the Fund, there is no assurance that all of the Fund's transactions will be executed with optimal quality. On account of the degree of heavy trading, total commission charges and other transaction costs are expected to be very high. The level of commission charges as a cost to the Fund, may be expected to be a significant factor in determining future profitability of the Fund.
6. **Nature of Certain Investments.** There is no limitation on the size or operating experience of the companies in which the Fund may invest. Some small companies in which the Fund may invest may lack management depth or the ability to generate internally or obtain externally the funds necessary for growth. Companies

with new products or services could sustain significant losses if projected markets do not materialize. Further, such companies may have, or may develop, only a regional market for products or services and may be adversely affected by purely local events. Such companies may be small factors in their industries and may face intense competition from larger companies and entail a greater risk than investment in larger companies.

7. Liquidity of Fund Investments. Some of the investments that are made by the Fund may lack liquidity. As set forth in "INVESTMENT PROGRAM", the Investment Manager intends to cause the Fund to invest a substantial portion of its assets in securities of small and micro capitalized entities. This could present a problem in realizing the prices quoted and in effectively trading the position(s). In certain situations, the Fund may invest in illiquid investments which could result in significant losses.
8. Short Sales. The Investment Manager may cause the Fund to sell securities short. Selling securities short risks losing an amount greater than the proceeds received. Theoretically, securities sold short are subject to unlimited risk of loss because there is no limit on the price that a security may appreciate before the short position is closed. The Fund may be subject to losses if a security lender demands return of the borrowed securities and an alternative lending source cannot be found.
9. Counterparty Creditworthiness. The Fund may engage in transactions in securities and financial instruments that involve counterparties. Under certain conditions, a counterparty to a transaction could default or the market for certain securities and/or financial instruments may become illiquid.
10. Risk Arbitrage. The Fund may engage in risk arbitrage transactions. Risk arbitrage involves purchasing securities which are the subject of an acquisition attempt, cash tender offer, exchange offer, corporate reorganization (such as a merger), liquidation, or an offer by an issuer to repurchase or exchange some of its own securities. Risk arbitrage investments are subject to such additional risks as the failure of the transaction to close, the failure to obtain shareholders' approval and other factors. Risk arbitrage also involves selling securities, possibly by a short sale or put option, in anticipation of the failure of a transaction to close, with the risk that the proposed transaction or another transaction will close.
11. Bridge Loan Transactions. The Fund's bridge loan financing activities involves significant risks, including the risk of loss of the Fund's entire investment. The Investment Manager expects that most bridge loan transactions will not be secured by collateral. As a result, if such company defaults on its obligations to the Fund and/or files for bankruptcy, the Fund will be an unsecured creditor. The promissory notes and the equity components issued by companies to the Fund generally are not freely transferable. In the event that a non-public company to which the Fund makes a bridge loan is not successful in engaging in a public offering, the equity component may become worthless and the ability of the Fund to collect on the loan may be impaired.
12. Late Stage Private Equity Transactions. The Fund's late state private equity financing activities involves significant risks, including the failure of the company from completing an initial public offering of securities. As a result, such company may not have enough working capital to meet its needs and may require additional rounds of private financing from investors such as the Fund. In addition, as an equity investor in a private company that may have insufficient working capital, the Fund may be required to make additional contributions to the company in order to retain its level of ownership in such company.
13. Leverage. The Investment Manager may cause the Fund to employ leverage. This includes the use of borrowed funds and investments in options, such as puts and calls, and warrants. Also, the Investment Manager will cause the Fund to engage in short selling. While such techniques increase the opportunity to achieve higher returns on the amounts invested, they also increase the risk of loss. The level of interest rates generally, and the rates at which such funds may be borrowed in particular, could affect the operating results of the Fund.

#### Regulatory Risks

1. Changes in Applicable Law. The Fund must comply with various legal requirements, including requirements imposed by the securities laws, tax laws and pension laws in various jurisdictions. Should any of those laws change, the legal requirements to which the Fund and the Shareholders may be subject could differ materially from current requirements.
2. Strategy Restrictions. Certain Offerees may be restricted from directly utilizing investment strategies of the type the Fund may engage in. These include sales of "naked" options (those in which there is no position in the underlying security) or purchases of put and call options on stocks. Such Offerees should consult their own advisors, counsel, and accountants.
3. Trading Limitations. For all securities, including options, listed on a public exchange, the exchange generally has the right to suspend or limit trading under certain circumstances. Such suspensions or limits could render certain strategies difficult to complete or continue and subject the Fund to loss.
4. No Regulatory Oversight in the United States. The Fund will not be registered as an "investment company" under the ICA, and it is not currently intended that the Investment Manager will register as an investment advisor under the United States Investment Advisors Act of 1940, as amended, nor will the Investment Manager register as a "commodity pool operator" under the United States Commodity Exchange Act. Consequently, the Shareholders of the Fund will not benefit from certain of the protections afforded by such statutes.
5. Participation Limited to Professional Investors. The Fund has been recognized as a professional fund for the purposes of the Mutual Funds Act, 1996 (British Virgin Islands). As a professional fund, investment in the Fund is restricted to Professional Investors.

#### Fund Risks

1. Limited Liquidity of Investment in the Fund. An investment in the Fund provides limited liquidity. In connection with this Offering, an Offeree must represent that the Offeree is acquiring the Shares for investment purposes only and not with a view to or for resale, distribution or fractionalization of the Shares. The Shares will not be registered under the securities or "blue sky" laws of any state in the United States or under the laws of any other jurisdiction and, therefore, are subject to restriction.
2. Concentration of Investments. The Investment Manager is not limited in the amount of capital which it may commit to any one investment. It is likely that the Investment Manager will hold a few, relatively large securities positions in relation to the Fund's capital.
3. No Current Income. The Fund's investment policies should be considered speculative, as there can be no assurance that the Investment Manager's assessments of the short-term or long-term prospects of investments will generate a profit. In view of the fact that the Fund will likely not pay dividends, an investment in the Fund is not suitable for investors seeking current income for financial or tax planning purposes.
4. Dependence on the Investment Manager. All decisions with respect to the Fund's assets and the general management of the Fund will be made by the Investment Manager which relies on the services of several key employees. Shareholders will have no right or power to take part in the management of the Fund. As a result, the success of the Fund for the foreseeable future will depend largely upon the ability of the Investment Manager. Should any of its employees leave or become incapacitated for any period of time, profitability of the Fund's investments may suffer.
5. Custodial Risks of Brokers. Various brokers will trade with the relevant exchange as a principal on behalf of the Fund, in a "debtor-creditor" relationship, unlike other clearing broker relationships where the broker is merely a facilitator of the transaction. Such broker could, therefore, have title to all of the assets of the



Fund (for example, the transactions which the broker has entered into on behalf of the Fund as principal as well as the margin payments which the Fund provides). In the event of such broker's insolvency, the transactions which the broker has entered into as principal could therefore default and the Fund's assets could become part of the insolvent broker's estate, to the detriment of the Fund.

6. Redemption. Shareholders may redeem part or all of their Shares as of the last Business Day of each fiscal quarter of the Fund, in each case upon at least six (6) months' prior written notice, and at such other times as the Board determines in its sole and absolute discretion. A Share redeemed within the first three (3) years of the date that such Share was purchased (whether the Share is acquired directly from the Fund or by way of Transfer) is subject to the Redemption Charge. The Board also has the right to compel redemption of all or part of such Shareholder's Shares at any time for any reason or no reason. In order to fund redemption requests, the Fund, in all likelihood, will be required to liquidate positions it has in publicly traded companies. As a result, the Fund's portfolio could be more heavily weighted toward bridge loan financing activities with non-public companies and such activities are generally very illiquid. The Board also has the power to suspend the payment of redemptions under certain circumstances.
7. Frequency of Trading. Some of the strategies employed by the Investment Manager require frequent trades to take place and, as a consequence, portfolio turnover and brokerage commissions may be greater than for other investment entities of similar size.
8. Fees and Expenses. The operating expenses of the Fund, including, but not limited to, the Management Fee, the Incentive Fee, and fees paid to the Administrator, accountants and attorneys, the investment expenses and the Administrative Expenses, may, in the aggregate, constitute a high percentage relative to other investment entities.
9. Conflicts of Interest. Neither the Investment Manager, Mr. Lauer, nor any of their affiliates are restricted by an agreement not to compete with the Fund, and the Investment Manager, Mr. Lauer and their affiliates may engage in other business ventures which may result in various conflicts of interest between them and the Fund. See "CONFLICTS OF INTEREST".

#### General Risks

1. Early Termination. In the event of the early termination of the Fund, the Fund would have to distribute to the Shareholders their *pro rata* interest in the assets of the Fund. Certain assets held by the Fund may be highly illiquid and might have little or no marketable value. It is possible that at the time of such sale or distribution, certain securities held by the Fund would be worth less than the initial cost of such securities, resulting in a loss to Shareholders.
2. Effect of Substantial Withdrawals. Substantial withdrawals by Shareholders within a short period of time could require the Investment Manager to liquidate positions more rapidly than would otherwise be desirable, which could adversely affect the value of the Fund's assets. The resulting reduction in the Fund's assets could make it more difficult to generate a positive rate of return or to recoup losses due to a reduced equity base.
3. Reserve for Contingent Liabilities. Under certain circumstances, the Board may find it necessary to establish a reserve for contingent liabilities or withhold a portion of the Shareholder's Redemption Price at the time of redemption, in which case, the reserved portion would remain at the risk of the Fund's activities.
4. Risk of Litigation. The Investment Manager to whom the Fund has allocated capital may accumulate substantial positions in the securities of a specific company. In some instances, the Investment Manager may engage in a proxy fight or become involved in litigation. Under such circumstances, the Fund may be named as a defendant in a lawsuit or regulatory action and be subject to the costs involved.



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5. Limited Operating History. The Fund was formed in January 1999 and has a limited operating history. The success of the Fund depends on the ability and experience of the Investment Manager, which has a limited operating history as well. There can be no assurance that the Investment Manager will generate any gains or profits for the Fund.
6. Lack of Separate Representation. Neither the Fund, the Articles of the Fund, the Investment Management Agreement nor any of the agreements, contracts and arrangements between the Fund, on the one hand, and the Investment Manager, Mr. Lauer or their affiliates, on the other hand, were or will be the result of arm's-length negotiations. The Administrator, attorneys, accountants and others who have performed services for the Fund in connection with this Offering, and who will perform services for the Fund in the future, have been and will be selected by the Board based upon the advice of the Investment Manager.
7. Non-U.S. Investments. The Fund may invest in both U.S. and non-U.S. securities and interests denominated in non-U.S. currencies and/or traded outside of the United States of America. Such investments require consideration of certain risks not typically associated with investing in securities traded in the United States of America or other assets. Such risks include unfavorable currency exchange rate developments, restrictions on repatriation of investment income and capital, imposition of exchange control regulation, confiscatory taxation, and economic or political instability in foreign nations. In addition, there may be less publicly available information about certain non-U.S. companies than would be the case for comparable companies in the United States of America, and certain non-U.S. companies may not be subject to accounting, auditing and financial reporting standards and requirements comparable to or as uniform as those of U.S. companies.
8. Incentive Fee. The payment of the Incentive Fee to the Investment Manager may create an incentive for the Investment Manager to cause the Fund to make investments that are riskier or more speculative than would be the case if this special payment was not made. In addition, since the Incentive Fee is calculated on a basis that includes unrealized appreciation of the Fund's assets, it may be greater than if such fee was based solely on realized gains.
9. Valuation of the Fund's Assets. The Board, as advised by the Investment Manager, will value the securities held by the Fund in accordance with the Articles. When no market exists for an investment or when the Board, as advised by the Investment Manager, determines that the market price does not fairly represent the value of the investment, the Board, as advised by the Investment Manager, will value such investment as it reasonably determines.

The foregoing list of certain risk factors does not purport to be a complete enumeration or explanation of the risks involved in an investment in the Fund. In addition, as the Fund's investment program develops and changes over time, an investment in the Fund may be subject to additional and different risk factors. Offerees should read the entire Memorandum and consult with their own advisors before deciding to subscribe for Shares.

**CONFLICTS OF INTEREST**

In the conduct of the Fund's business, conflicts may arise between the interests of the Investment Manager and its affiliates, on the one hand, and those of the Fund and its Shareholders, on the other hand. Among the conflicts which each Offeree should consider are the following:

- (a) Neither the Investment Manager nor Mr. Lauer is under any obligation to devote their full time to the business of the Fund; the Investment Manager is only required to devote such time and attention to the affairs of the Fund as the Investment Manager may deem appropriate in its sole and absolute discretion. The Investment Manager is also the investment manager for LOI. Mr. Lauer is also the sole manager and principal owner of LMG II which is the sole general partner of LPLP. While the investment objectives and strategies of each of LPLP and LOI are different from that of the Fund, it is possible, that under certain circumstances, the Fund, on the one hand, and LPLP and/or LOI, on the other hand, may invest in the securities of the same company and/or take opposite positions in the market. It is also possible that one or more entities could engage in transactions with the Fund. Any such transactions would be on arm's-length terms. Mr. Lauer will devote such time and attention to the Investment Manager, LMG II, the Fund, LPLP and LOI as he deems appropriate in his sole and absolute discretion. In addition, the Investment Manager, Mr. Lauer and their affiliates, either individually or collectively, may manage other accounts for which they may be compensated and may provide consulting and/or advisory services to others.
- (b) Mr. Lauer, as the sole manager of the Investment Manager and as the sole manager of LMG II, will determine the allocation of the Fund's capital, LPLP's capital, LOI's capital and such other accounts to investment strategies and techniques on whatever basis he considers appropriate or desirable in his sole and absolute discretion.
- (c) The Investment Manager, Mr. Lauer and/or their affiliates, may manage other accounts and provide investment advice to other parties, and they may decide to invest the assets of one or more other accounts or recommend the investment of funds by other parties, rather than the Fund's assets, in a particular security or strategy.
- (d) The payment of the Incentive Fee to the Investment Manager may create an incentive for the Investment Manager to make investments that are riskier or more speculative than would be the case in the absence of such an arrangement.
- (e) The Investment Management Agreement authorizes the Investment Manager to combine purchase and sale orders on behalf of the Fund together with orders for other accounts managed by the Investment Manager or its affiliates and allocate the securities or other assets so purchased or sold on an average price basis among such accounts.
- (f) To the extent the Fund's brokerage business is allocated to brokers or dealers in recognition of past or future referrals, the Investment Manager may have an incentive to cause the Fund to effect more transactions than it might otherwise in order to stimulate brokers or dealers to refer more Shareholders to the Fund.

In the event that a conflict of interest arises, the Investment Manager will endeavor to ensure that it is resolved fairly. The Investment Manager, under the Investment Management Agreement, is required to exercise its duties with care, skill, prudence and diligence. In the event of a conflict of interest between the Fund and LPLP or LOI, the Investment Manager will resolve such conflict by taking into account the investment objective of each entity, any investment restrictions applicable to each entity and the other available investment options for each entity and will resolve such conflict in a fair and equitable manner.

## THE FUND

### Capital Structure of the Fund

The Fund was incorporated as an international business company pursuant to the International Business Companies Act of the British Virgin Islands (the "IBC Act") in January 1999 as The Orbiter Fund, Ltd. The Fund's current name was adopted effective March 26, 2002. The authorized capital of the Fund is \$50,000, consisting of 5,000,000 shares, \$0.01 par value per share (the "Common Shares"). There is currently one (1) class of Common Shares, the Class A Shares (the "Shares"). Each Common Share has equal voting, dividend, distribution and liquidation rights as to the separate account maintained by the Fund for each class of Common Shares. The Fund does not anticipate paying any dividends on the Shares; however, in the event that a dividend is declared, such dividend will be paid in accordance with the Articles and applicable British Virgin Islands law and/or regulation. There are no preemptive rights associated with the Shares. Subject to the provisions of the Articles and applicable law and the rights of the Shareholders, the Fund may increase its share capital, consolidate its shares or subdivide any of them into shares of a smaller amount and may reduce its share capital or any capital redemption reserve. The Board reserves the right, without the approval of the Shareholders, to issue additional classes of shares in the future which may differ in terms of investment program, suitability requirements, fees charged, redemption and subscription rights and other aspects. There are no conversion or preemptive rights associated with the Shares. All Shares, when duly issued, will be fully paid and non-assessable.

Shares generally may be purchased on the first Business Day of each month. The proper documentation necessary to purchase Shares must be received by the Fund at least three (3) Business Days prior to the purchase date unless waived by the Fund. The Board may permit Shares to be purchased on dates other than the first Business Day of each month.

The initial Offering Price for Shares in the Fund was \$100 per Share. As at January 31, 2002, the Offering Price was \$207.04 per Share.

### Voting by Shareholders of the Fund

Subject to the exceptions set forth below and except as otherwise provided in the IBC Act, all decisions of the Shareholders will be made by the holders of a majority of outstanding Common Shares represented at a meeting, provided that a quorum of the holders of one-third of the outstanding Common Shares is present. Each Common Share is entitled to one vote. Notwithstanding the foregoing, the (i) dismissal of a member of the Board must be adopted by an affirmative vote of two-thirds of the votes cast at a general meeting of Shareholders at which more than one-half of the total number of Common Shares then issued and outstanding are represented; (ii) any investment advisory or management contract entered into by the Fund may not be terminated by the Fund unless such termination is approved by a unanimous vote cast at a meeting at which all the issued and outstanding Common Shares are represented; (iii) amendments to the Articles which have a material adverse effect on the rights of Shareholders of the Fund as a whole or a particular class, as applicable, must be approved by three-quarters of the votes cast at a meeting at which not less than one-half of the issued and outstanding Common Shares of the Fund or of the relevant class, as applicable, are represented, except that any amendment to decrease the vote required to terminate an investment advisory or investment management contract requires approval by a unanimous vote cast at a meeting at which all of the issued and outstanding Common Shares are represented; and (iv) the merger or consolidation of the Fund with another corporation or the dissolution of the Fund requires the affirmative vote of the holders of three-quarters of the Common Shares outstanding. Any matters referred to herein may also be adopted by resolution in writing of all the Shareholders of the Fund or if only affecting a particular class, the relevant class, as applicable. The Fund is not required to hold an annual meeting of Shareholders.

The Fund's Common Shares have equal voting rights, which means that the holders of more than fifty (50%) percent of the Common Shares voting for the election of Directors can elect all of the Directors if they chose to do so, and in such event the holders of the remaining Common Shares representing less than fifty (50%) percent of the Common Shares voting for such election of Directors will not be able to elect any person or persons as Directors.

British Virgin Islands Mutual Funds Act 1996

The Fund has received recognition as a professional fund under the Mutual Funds Act, 1996 (British Virgin Islands). As such, the minimum investment in the Company is \$1,000,000 (subject to acceptance of a lesser amount in the discretion of the Board, but in no event less than \$100,000) and each investor will have to represent that it is a "Professional Investor". A Professional Investor is a person (i) whose ordinary business involves, whether for its own account or the account of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property, of the Company, or (ii) has a net worth in excess of \$1,000,000 or its equivalent in any other currency (individuals may include the worth of his or her spouse in determining his or her own worth) and consents to being treated as a professional investor.

As a professional fund, the Fund is required to pay an annual government fee and is subject to the supervision of the Registrar of Mutual Funds (British Virgin Islands) (the "Registrar"). The Registrar may direct the Fund to furnish information or provide access to any records, books or other documents relating to the business of the Fund which, in the opinion of the Registrar, are necessary to enable him to ascertain compliance with the Mutual Funds Act, 1996 and its regulations. However, recognition as a professional fund does not involve an examination of the merits of an investment in the Fund, or supervision of the investment performance or investment restrictions of the Fund by the Registrar. A certificate of recognition may be cancelled if, inter alia, the Fund is carrying on business in a manner detrimental to the interests of investors or to the public interest.

## **THE OFFERING**

### **General**

Shares will be offered for sale to non-U.S. Persons and Permitted U.S. Persons generally on the first Business Day of each month and at such other times as the Board, in its sole and absolute discretion, may determine (each such date being referred to as a "Closing Date"). The original executed and completed Subscription Agreement must be received by the Fund at least three (3) Business Days prior to the applicable Closing Date, unless waived by the Board. The minimum initial subscription for Shares is \$1,000,000; however, the Board, in its sole and absolute discretion, may accept subscriptions of lesser amounts (but not less than \$100,000). Thereafter, the minimum subscription for additional Shares is \$100,000. Subscriptions received will be segregated until such date as the sale of the subject Shares is to be effected. An Offeree acceptable to the Board will be sold that number of Shares (including fractional Shares) which the Offeree's subscription will purchase (to the extent accepted) at the Offering Price then in effect. As at January 31, 2002 the Offering Price was \$207.04 per Share. The Offeree will be notified as soon as practical of the number of Shares allotted to it.

To the extent it determines to do so, the Investment Manager may pay referral fees to unaffiliated eligible persons who introduce investors to the Fund. No referral fees will be paid by the Fund.

The Shares generally will be issued in book-entry, registered form and no share certificates representing the Shares subscribed for will be forwarded to a Shareholder unless specifically requested in writing.

The Board has the right to accept or reject any subscription, in whole or in part, for any reason or no reason.

### **Suitability**

Prospective Shareholders in the Fund must be non-U.S. Persons or Permitted U.S. Persons, each of which must meet certain suitability requirements described below and in the Subscription Agreement, including being a Professional Investor. All Permitted U.S. Persons must be Accredited Investors. The Fund, in its sole and absolute discretion, may decline to accept the subscription for Shares of any prospective Shareholder.

The Fund's Articles provide that: (i) Shares may not be owned by any U.S. Person other than a Permitted U.S. Person, (ii) Shares may not be owned by any corporation which is not a Permitted U.S. Person in which U.S. Persons hold ten (10%) percent or more of either voting power or value, (iii) Shares may not be owned by any partnership which is not a Permitted U.S. Person in which a U.S. Person is a partner, (iv) Shares may not be owned by a trust which is not a Permitted U.S. Person whose grantor or any of its beneficiaries is a U.S. Person, (v) Benefit Plan Investor Shareholders may not own twenty-five (25%) percent or more of the outstanding Shares and (vi) Permitted U.S. Persons may not own fifty (50%) percent or more of the outstanding Shares in the aggregate. See "INVESTMENT BY U.S. TAX EXEMPT ENTITIES - ERISA CONSIDERATIONS".

The Hot Issue Rule prohibits certain individuals and entities from benefitting from "hot issues". As the Investment Manager may cause the Fund to participate in "hot issues", no person or entity prohibited by the Hot Issue Rule from benefitting from "hot issues" may purchase or own Shares.

Each Offeree desiring to purchase Shares will be required to certify to the Fund, among other things: (i) the identity and nationality of the person or persons on whose behalf the Shares are being acquired; and (ii) the Shares are not being acquired by and will not at any time be held for the account or benefit, directly or indirectly, of any U.S. Person other than Permitted U.S. Persons. Shareholders will be required to notify the Fund immediately of any change in such information. **IT IS THE RESPONSIBILITY OF EACH SHAREHOLDER TO VERIFY THAT SUCH SHAREHOLDER SATISFIES THE SUITABILITY REQUIREMENTS SET FORTH HEREIN.**

Prior to acceptance of any subscription for Shares, each prospective Shareholder must represent in writing, by completing and signing the Subscription Agreement, that, among other things:

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1. Neither the proposed record owner nor beneficial owner of the Shares is a U.S. Person other than a Permitted U.S. Person;
2. The prospective Shareholder has such knowledge and experience in financial and business matters that the prospective Shareholder is capable of evaluating the merits and risks of the proposed investment, that the prospective Shareholder understands the method of compensation under the Investment Management Agreement and its risks and that the prospective Shareholder can bear the economic risk of the investment (i.e., at the time of the investment the prospective Shareholder can afford a complete loss of the investment and can afford to hold the investment for an indefinite period of time);
3. The prospective Shareholder is acquiring Shares for investment purposes only and solely for the prospective Shareholder's own account and not with a view to or present intention to Transfer them, except for the prospective Shareholder's right to redeem Shares;
4. The Fund has, during the course of the Offering and prior to the sale of Shares, afforded the prospective Shareholder the opportunity to ask questions and receive answers concerning the terms and conditions of this Offering and to obtain any additional information, to the extent the Fund possesses such information or could acquire it without unreasonable effort or expense, necessary to verify the accuracy of the information contained in this Memorandum;
5. The prospective Shareholder possesses certain other qualifications and makes certain other warranties and representations, as more fully set forth in the Subscription Agreement;
6. The prospective Shareholder will indemnify the Fund, the Investment Manager, the Administrator, the Board and each of their respective subsidiaries, affiliates, directors and other officers, shareholders, employees, agents and permitted delegates, against any liability, costs or expenses resulting from any misrepresentation or breach of warranty in connection with the offer or sale of Shares;
7. If the beneficial owner of the Shares is a publicly-held investment corporation, to the best of the knowledge of the owner, none of the beneficial interests in the shares of such corporation are owned, directly or indirectly through foreign entities, by any U.S. Person other than Permitted U.S. Persons;
8. If the beneficial owner of the Shares is a closely-held corporation, none of the beneficial interests in the shares of such corporation are owned, directly or indirectly through foreign entities, by any U.S. Person other than Permitted U.S. Persons;
9. The prospective Shareholder will not Transfer, directly or indirectly, any of the Shares or any interest therein (including without limitation any right to receive dividends or other distributions), unless the proposed transferee has made warranties similar to those contained in the Subscription Agreement, such warranties by such person have been approved by the Fund, such transfer is not to a U.S. Person and the prior written consent of the Board has been obtained. Further, the prospective Shareholder will complete a subscription document in a form acceptable to the Fund before such transfer will be accepted;
10. The prospective Shareholder has consulted with such prospective Shareholder's own legal, tax and/or investment advisors to determine the suitability of an investment in the Shares, and the relationship of such an investment to the prospective Shareholder's overall investment program and financial and tax position;
11. The prospective Shareholder has not dealt with a broker in connection with the purchase of the Shares, other than as is specifically disclosed in the Subscription Agreement;
12. The prospective Shareholder is willing and able to bear the economic risks of an investment in the Fund for an indefinite period of time; and
13. The prospective Shareholder is a Professional Investor (as hereinafter defined).



14. The prospective Shareholder is not prohibited by the Hot Issue Rule from benefiting from "hot issues" (the Subscription Agreement contains a detailed description of who is a "restricted person" under the Hot Issue Rule).

The suitability standards referred to above represent minimum suitability requirements for prospective Shareholders and the satisfaction of such standards by a prospective Shareholder does not necessarily mean that the Shares are a suitable investment for such prospective Shareholder or that the prospective Shareholder's subscription will be accepted. The Board may, in circumstances it deems appropriate, modify such requirements. In addition, the Board has the right to accept or reject a subscription, in whole or in part, for any reason or no reason whatsoever.

Anti-Money Laundering Protection

To ensure compliance with statutory and other generally accepted principles relating to anti-money laundering, the Administrator may require verification of identity from any person lodging a completed subscription agreement. Depending on the circumstances of each application, a detailed verification may not be required if:

- (a) the investor is a recognized financial institution; or
- (b) the investor makes the payment from an account held in the investor's name at a recognized financial institution.

These exceptions will only apply if the financial institution or intermediary referred to above is within a country recognized as having sufficient anti-money laundering regulations such as a member state of the European Union which is subject to the EC Money Laundering Directive or one of the countries which make up the Financial Action Task Force ("FATF") and which is subject to the FATF Recommendations.

An individual may be required to produce a copy of a passport or identification card certified by a notary public. In the case of corporate applicants, they may be required to produce a certified copy of the certificate of incorporation (and any change of name), memorandum and articles of association (or equivalent), the names, occupations, dates of birth and residential and business addresses of all directors.

The Administrator reserves the right to request such information as is necessary to verify the identity of an applicant. To ensure compliance with statutory and other requirements relating to money laundering, the Administrator may require verification of identity from any person lodging a completed subscription agreement. Pending the provisions of evidence satisfactory to the Administrator as to identity, the evidence of title in respect of Shares may be retained at the absolute discretion of the Administrator. If within a reasonable period of time following a request for verification of identity, the Administrator has not received evidence satisfactory to it as aforesaid, it may, in its absolute discretion, refuse to allot the Shares applied for in which event application moneys will be returned without interest to the account from which such moneys were originally debited.



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**DETERMINATION OF OFFERING PRICE**

When Shares are subscribed for at the beginning of the fiscal year ("Year Beginning") or at any time other than Year Beginning ("Interim Purchases") when there is a Loss Carryover (as defined below), certain adjustments to the amount of money paid for the purchase of Shares are necessary. This is done so that (i) the Incentive Fee paid to the Investment Manager is charged only to those Shares which have appreciated in value since their acquisition, (ii) all Shareholders will have the same amount per Share at risk and (iii) all Shares will have the same Net Asset Value. "Loss Carryover" shall mean, at anytime, the largest aggregate Unrecouped Loss attributable to an outstanding Share.

The number of Shares to be purchased will be based on the offering price per Share (the "Offering Price") as defined below. The Offering Price for each Share is calculated in the following manner:

(1) For Shares purchased at the Year Beginning, the Offering Price is the Year Beginning Net Asset Value ("Beginning Value") plus a depreciation deposit ("Depreciation Deposit") equal to 25% of the Loss Carryover, if any, at Year Beginning. The Depreciation Deposit is invested and paid out as described in Section 2(a) below.

(2) For Interim Purchases:

(a) When the Net Asset Value per Share is less than the sum of (i) Beginning Value and (ii) the Loss Carryover at Year Beginning, the Offering Price is the sum of the Net Asset Value per Share and the "Depreciation Deposit". The Depreciation Deposit is 25% of the amount by which (i) and (ii) above exceed the Net Asset Value per Share at the date of purchase. The Depreciation Deposit is segregated and separately invested in U.S. Treasury Bills or other high quality short term debt securities or certificates of deposit and is not at risk with the Fund. It may, in certain circumstances, be returned to the Shareholder at the time of redemption of the Shares. It is included in the Offering Price to permit the Shares purchased on the date of purchase to be charged the 25% Incentive Fee with respect to any increase in Net Asset Value up to Beginning Value and with respect to any benefit received by reason of the existence of a Loss Carryover. If at the end of any fiscal year (or at any time during the fiscal year when the Shares of a Shareholder are redeemed), the losses which gave rise to the Depreciation Deposit are recouped, then, to the extent that the losses which gave rise to all or a portion of the Depreciation Deposit are recouped, the Depreciation Deposit will be paid to the Investment Manager as a part of the Incentive Fee. Any portion of the Depreciation Deposit not paid to the Investment Manager will be paid to the Shareholder upon redemption. Promptly after the end of each fiscal year in which a Depreciation Deposit is held, the interest (net of the income taxes payable thereon, if any) earned thereon will be paid to the Shareholder who made such Depreciation Deposit.

(b) When the Net Asset Value per Share is more than the sum of (i) Beginning Value and (ii) the Loss Carryover at Year Beginning, the Offering Price is the sum of the Net Asset Value per Share and the "Equalization Factor" as defined below. The term "Equalization Factor" means an amount which the Shares outstanding since Year Beginning should be charged (i.e. 25% of the increase in Net Asset Value since Year Beginning in excess of the Loss Carryover at Year Beginning), and which the Shares subscribed for at the date of the Interim Purchase ("Interim Purchase Date") should not be charged. To the extent that the increase in value of the Shares that cause the payment of the Equalization Factor is not lost in the current fiscal year, the Equalization Factor attributable to such increase becomes payable to the Shareholder at the end of the current fiscal year. To the extent that the increase in value of the Shares that cause the payment of the Equalization Factor is lost in the fiscal year the Shares are purchased but is recovered in a subsequent fiscal year, the Equalization Factor attributable to such recovery will become payable to the Shareholder at the end of the fiscal year in which the recovery occurs. Upon redemption by a Shareholder of his Shares, the same amount of the Equalization Factor will be paid to him as if the date of redemption were the last day of the fiscal year in which the Shares are redeemed. Any Equalization Factor, or portion thereof, which is due to a Shareholder not

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redeeming his Shares will be used to purchase additional full Shares on behalf of such Shareholder as of the first day of the next succeeding fiscal year.

The following tables have been provided to illustrate the manner in which the adjustments set forth above operate. Table I illustrates the manner in which the adjustments described above operate with respect to Shares subscribed for at the beginning and during a hypothetical fiscal year where there is no Loss Carryover at the beginning of the fiscal year. Table II illustrates the manner in which the adjustments described above operate with respect to Shares subscribed for, prior to, at the beginning and during a hypothetical fiscal year where there is a Loss Carryover of \$20 per Share at the end of the first year.

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TABLE I

Shareholder	Shareholder Subscribes for Shares at	NAV on Date of Purchase	Equalization Factor Paid	Depreciation Deposit Amount Paid	Offering Price	NAV at Year End (before 25% Incentive Fee)	25% Incentive Fee Accrued at Year End	Depreciation Deposit Paid to Investment Manager	Equalization Factor Returned to Shareholder	NAV at Year End (after 25% Incentive Fee)
A	Year Beginning July 1 NAV = \$100 Interim Purchase Date Jan. 1 NAV = \$92	\$100	\$0	\$0	\$100	\$132	\$8	\$0	\$0	\$124
B	Interim Purchase Date Jan. 1 NAV = \$92									
C	Interim Purchase Date April 1 NAV = \$108 (before 25% Incentive Fee)	106	2	0	108**	132**	6	0	2	124

\* Includes Depreciation Deposit  
 \*\* Includes Equalization Factor

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TABLE II

Shareholder	Shareholder Subscribes for Shares at	NAV on Date of Purchase	Equalization Factor Paid	Depreciation Deposit Paid	Offering Price	NAV at Year End (before 25% Incentive Fee)	25% Incentive Fee Accrued at End of Year 2	Depreciation Deposit Paid to Investment Manager	Equalization Factor Returned to Shareholder	NAV at Year End (after 25% Incentive Fee)
A	Beginning of Year 1 NAV = 100	\$100	\$0	\$0	\$100	\$116	\$4	\$0	\$0	\$112
B	Beginning of Year 2 NAV = 80	80	0	5	85*	116	4	5	0	112
C	Interim Purchase Date Oct. 1 Year 2 NAV = 108 (before 25% Incentive Fee)	106	2	0	108**	116**	2	0	2	112

\* Includes Depreciation Deposit

\*\* Includes Equalization Factor

Shareholder B in Table I, purchasing Shares on an Interim Purchase Date when the Net Asset Value has decreased since Year Beginning, pays an Offering Price of \$94 per Share (which includes a Depreciation Deposit of \$2) since the Incentive Fee which would accrue to his Shares would be \$2 more than the Incentive Fee which would accrue for Shares purchased by Shareholder A at Year Beginning.

Shareholder C in Table I, purchasing Shares on an Interim Purchase Date when the Net Asset Value has increased since Year Beginning, pays an Offering Price of \$108 per Share (which includes an Equalization Factor of \$2). The Equalization Factor is returned to him at Year End and applied to the purchase of additional Shares since the Incentive Fee which would accrue to his Shares would be \$2 less than the Incentive Fee which would accrue to the Shares purchased by Shareholder A.

Shareholder B in Table II, purchasing Shares at the beginning of Year 2 when the Net Asset Value has decreased since the beginning of Year 1, pays an Offering Price of \$85 per Share (which includes a Depreciation Deposit of \$5) since the Incentive Fee which would accrue to his Shares would be \$5 more than the Incentive Fee which would accrue for Shares purchased by Shareholder A at Year 1. The Depreciation Deposit is paid to the Investment Manager at the end of Year 2 when the Net Asset Value for Shareholder B's Shares has increased by more than the loss carryover.

Shareholder C in Table II, purchasing Shares on an Interim Purchase Date during Year 2 when the Net Asset Value has increased since the beginning of Year 1, pays an Offering Price of \$108 per Share (which includes an Equalization Factor of \$2) since the amount of funds he would otherwise have at risk would be \$2 less than the amount of funds at risk of Shareholder A. The Equalization Factor is returned to him and applied to the purchase of additional Shares at the end of Year 2 since the Incentive Fee which would accrue to his Shares would be \$2 less than the Incentive Fee which accrues to Shareholder A.

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**DETERMINATION OF NET ASSET VALUE**

The net asset value of the Fund ("Net Asset Value") is equivalent to its gross assets less its gross liabilities as of any Valuation Date (as defined below) or Redemption Date.

The initial Net Asset Value of a class shall equal the aggregate subscription price of the Common Share of such class issued at the initial offering price of such class. Thereafter, on each Valuation Date, the Net Asset Value of each class shall be calculated by crediting or debiting, as the case may be, to each class (apportioned between each class by reference to the percentage that the Net Asset Value of each class as at the previous Valuation Date, bore to the aggregate Net Asset Value of all classes as at that Valuation Date) the profits and gains or losses (realized and unrealized) of the Fund and debited the expenses and liabilities (other than the management and incentive fees then accruing) of the Fund (apportioned in the manner aforesaid). The Net Asset Value per share of a class shall be determined by dividing the Net Asset Value of such class by the number of outstanding shares of such class.

The total net assets of the Fund at any date shall be determined on an accrual basis of accounting in accordance with generally accepted accounting principles and in accordance with the following:

- (a) no value will be assigned to goodwill;
- (b) the Deferred Fee Liability and the accrued Incentive Fee and Management Fee payable to the Investment Manager, estimated Administrative Expenses and investment expenses of the Fund and such reserves for contingent liabilities of the Fund, if any, as the Board, as advised by the Investment Manager, shall determine, will be treated as liabilities;
- (c) securities and instruments which are listed or quoted on a securities or other exchange market (including the National Association of Securities Dealers National Market System), other than securities and instruments which are in the form of put or call options, shall be valued at their last sales prices on the date of determination, or, if no sales occurred on such date, at the mean between the "bid" and "asked" prices on the most immediate prior date on which such prices were quoted, or if no such prices were quoted during the 15 Business Days prior to the date of such determination, at the value assigned to such securities and instruments by the Board, as advised by the Investment Manager;
- (d) securities and instruments which are in the form of put and call options and are listed or quoted on a securities or other exchange or market shall be valued at the mean between the "bid" and "asked" prices on the date of determination, or if no such prices were quoted on such date, at the mean between the "bid" and "asked" prices on the most immediate prior date on which such prices were quoted, or if no such prices were quoted during the 15 Business Days prior to the date of such determination, at the value assigned to such securities and instruments by the Board, as advised by the Investment Manager;
- (e) securities and instruments which are not listed or quoted on a securities or other market shall be valued at the mean between the "bid" and "asked" prices on the date of determination, or if no such prices were quoted on such date, on the most immediate prior date on which such prices were quoted, or if no such prices were quoted during the 15 Business Days prior to the date of such determination, at the value assigned to such securities and instruments by the Board, as advised by the Investment Manager;
- (f) securities and instruments which are in the form of put and call options and are not listed or quoted on a securities, commodities or futures exchange or market shall be valued at their parity value, except when the Board, as advised by the Investment Manager, has assigned some other value to such securities and instruments;
- (g) the value of any shares of stock held by the Fund in an investment company which is, or which is similar to those companies which are, registered as investment companies under the ICA, shall be valued in accordance with the manner in which such shares are valued by such investment company;

provided, however, that the Board, as advised by the Investment Manager, may make such adjustments in such valuation as the it may from time to time consider appropriate;

(h) securities and instruments of a non-public company will be valued at cost until the non-public company becomes a public company or some other material event involving the company occurs (e.g., it raises additional capital, enters into a joint venture, etc.), all as determined by the Board, as advised by the Investment Manager; and

(i) all other assets of the Fund shall be valued in the manner determined by the Board, as advised by the Investment Manager, to reflect their market value.

All such valuations shall be made as of the last Business Day of a month and at such other times as the Board shall determine in its sole and absolute discretion (each, a "Valuation Date"). If the Board determines, in its sole and absolute discretion, that the valuation of any security or instrument pursuant to the foregoing does not fairly represent its market value, the Board shall value such security or instrument, after consultation with and as advised by the Investment Manager, and shall set forth the basis of such valuation in writing in the Fund's records. The value of any investment, security or instrument as aforesaid or other property for which no price quotations are available as above provided shall be determined by the Board, after consultation with and as advised by the Investment Manager, and the basis of such valuation shall be set forth in writing in the Fund's records. Notwithstanding the foregoing, where on any Valuation Date or Redemption Date, any cash or other asset of the Fund has been realized or contracted to be realized, there shall be included in the assets of the Fund, in place of such cash or other asset, the assets receivable by the Fund in respect thereof, provided that if the value of such assets is not then known exactly, then the value shall be determined by the Board, after consultation with and as advised by the Investment Manager, and provided that if the net amount receivable is not payable until some future time after the Valuation Date or Redemption Date, the Board may make such allowance (discounting of claims) as it considers appropriate, after consultation with and as advised by the Investment Manager, to reflect the true current value thereof.

In connection with the determination of the Net Asset Value of Shares, the Board will consult with and is entitled to rely upon the advice of the Investment Manager, Prime Broker and/or any other reputable brokerage firm or pricing service. In no event and under no circumstances shall the Board, the Investment Manager or Prime Broker incur any individual liability or responsibility for any determination made or other action taken or omitted by them in good faith.

To the extent that Citco relies on information supplied by the Board, the Investment Manager, or any brokers engaged by the Fund, in connection with making any of the aforementioned calculations, Citco's liability for the accuracy of such calculations is limited to the accuracy of its computations. Citco shall not be liable for the accuracy of the underlying data provided to it.



## **TRANSFER AND REDEMPTION**

### **Transfer**

The Articles provide that, without the prior written consent of the Board, which consent may be given or withheld in its sole and absolute discretion, any sale, assignment, transfer, conveyance or other disposition of Shares or any attempt to do any of the foregoing (collectively, "Transfer") will not be recognized by the Fund. Any attempt to Transfer Shares without such consent may subject such Shares to a compulsory redemption. In addition, the transferee must complete a subscription document in a form that is acceptable to the Fund before such transfer will be accepted. There is no independent market for the Transfer of Shares, and none is expected to develop. Offerees desiring to purchase Shares must represent that they are purchasing the Shares for investment purposes only, solely for their own account and not with a view to or present intention to Transfer the Shares. The Shares are not being, and will not be, offered in the United States or its territories or possessions or to U.S. Persons other than Permitted U.S. Persons, and no Transfer of the Shares may be made to or held for the benefit of U.S. Persons.

THE TRANSFER OF SHARES TO U.S. PERSONS IS PROHIBITED. THE FUND SHALL HAVE THE RIGHT TO COMPULSORILY REDEEM IN ACCORDANCE WITH THE ARTICLES ANY SHARES TRANSFERRED TO A U.S. PERSON.

### **Redemption**

Shareholders may, in accordance with and subject to the applicable provisions of the Articles and the laws of the British Virgin Islands, redeem their Shares as of the last Business Day of each fiscal quarter, in each case upon at least six (6) months' prior written notice, and at such other times, with the consent of, and upon such terms of payment as may be approved by, the Board, in its sole and absolute discretion (each such date being referred to as a "Redemption Date"). If a redemption would cause the value of a Shareholder's Shares to fall below \$1,000,000, or such lesser amount as determined by the Board, in its sole and absolute discretion, then the Board will have the right to compel redemption of all Shares held by such Shareholder. The Board, in its sole and absolute discretion, may shorten or waive any notice requirement. Shares will be redeemed at the Redemption Price as of the close of business on such Redemption Date. The "Redemption Price" shall equal (1) the Net Asset Value of the Shares being redeemed on the Redemption Date, plus (2) all or a portion of the Depreciation Deposit to the extent it is not paid to the Investment Manager as an Incentive Fee, plus (3) all or a portion of the Equalization Factor to the extent that the increase in value of the Shares that caused the payment of the Equalization Factor has not been lost or has not been paid previously to the redeeming Shareholder, less (4) the Incentive Fee, if any, and less (5) the Redemption Charge, if applicable. Redemption proceeds generally will be paid in U.S. \$. See "DETERMINATION OF OFFERING PRICE".

Redemption requests must be on the Fund's Form of Request for Redemption of Shares ("Redemption Form") and must be sent by fax initially with two original copies to follow by courier delivery service. The Redemption Price will not be paid until an original executed copy of the Redemption Form is received by the Fund. If the Shareholder has elected to have share certificates issued and sent to such Shareholder, the Redemption Form must be accompanied by delivery to the Fund of the original certificates, if any, for the Shares to be redeemed. The original executed copy of the Redemption Form should be sent to The OmniFund, Ltd., c/o Citco Fund Services (Curaçao) N.V., Kaya Flamboyen 9, P.O. Box 812, Curaçao, Netherlands Antilles. Fax no.: (5-999) 732-2225.

Payment of ninety-five (95%) percent of the aggregate Redemption Price for redeemed Shares normally will be made within thirty (30) days after an authorized Redemption Date. Payment of the balance of the aggregate Redemption Price will be made thirty (30) days after completion of (i) unaudited quarterly financial statements for redemptions on the last Business Day of the first three (3) fiscal quarters of the Fund, or (ii) audited financial statements for redemptions on the last Business Day of a fiscal year.

In accordance with the Articles, any redemption of a Share within one (1) year, two (2) years or three (3) years after a Shareholder's purchase of such Share (whether the Share is acquired directly from the Fund or by way of Transfer) will be subject to a redemption charge of fifteen (15%) percent, ten (10%) percent or five (5%) percent,

respectively, of the value of such Share on the date redeemed (each, as applicable, the "Redemption Charge"). There are no Redemption Charges for Shares redeemed after three (3) years from the date of issuance. All Redemption Charges assessed against a redeeming Shareholder will become assets of the Fund. Other than the Redemption Charge, there are no redemption charges.

The Board, in its sole and absolute discretion, upon not less than five (5) days' prior written notice to a Shareholder, may compel redemption of all of such Shareholder's Shares at any time for any reason or for no reason whatsoever. Under such circumstances, the Board will have the irrevocable power to act in the name of such Shareholder to redeem such Shareholder's Shares. In the event of any compulsory redemption, the Redemption Price will be determined as set forth above. Such Shareholder will have no Shareholder rights with respect to the Shares to be redeemed after the close of business on the date as of which the Redemption Price was calculated, except the right to receive the Redemption Price therefor, without interest.

The Board may suspend calculation of the Net Asset Value, Share redemptions, subscriptions and payment of redemption proceeds (a) in the event that Shareholders, in the aggregate, request redemption of twenty-five (25%) percent or more of the Fund's outstanding Shares of any class as of a Redemption Date; (b) during any period when any stock exchange or over-the-counter market on which a substantial position of the Fund's investments are quoted, traded, listed or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended; (c) when circumstances exist as a result of which in the opinion of the Board it is not reasonably practicable for the Fund to dispose of investments or as a result of which any such disposal would be materially prejudicial to Shareholders; (d) when a breakdown occurs in any of the means normally employed in ascertaining the value of investments or when for any other reason the value of any of the investments or other assets cannot reasonably or fairly be ascertained; or (e) during which the Fund is unable to repatriate funds required for the purpose of making payments due on redemption of Shares or during which any transfer of funds involved in the realization or acquisition of investments or payments due on redemptions of Shares cannot in the opinion of the Board be effected at normal rates of exchange. During the suspension period, requests for redemption of Shares may be withdrawn. To the extent that a request for redemption of Shares is not withdrawn, the redemption shall be effected as of the first Redemption Date following the recommencement of redemptions. Where possible, all reasonable efforts will be taken to bring any period of suspension to an end as soon as possible. The Fund will notify Shareholders of suspensions and recommencements of calculations and redemptions by e-mail, fax and/or regular mail.

### **CERTAIN TAX CONSIDERATIONS**

THE DISCUSSION HEREIN IS FOR INFORMATIONAL PURPOSES ONLY AND IS A DISCUSSION PRIMARILY OF THE U.S. TAX CONSEQUENCES TO PROSPECTIVE SHAREHOLDERS. EACH PROSPECTIVE SHAREHOLDER SHOULD CONSULT HIS PROFESSIONAL TAX ADVISER WITH RESPECT TO THE TAX ASPECTS OF AN INVESTMENT IN THE FUND. TAX CONSEQUENCES MAY VARY DEPENDING ON THE STATUS OF A PARTICULAR SHAREHOLDER. THE TAX AND OTHER MATTERS DESCRIBED IN THIS MEMORANDUM DO NOT CONSTITUTE AND SHOULD NOT BE CONSIDERED AS, LEGAL OR TAX ADVICE TO PROSPECTIVE SHAREHOLDERS.

The Fund has not sought a ruling from the U.S. Internal Revenue Service or any other U.S., Federal, state or local agency with respect to any of the tax issues affecting the Fund, nor has it obtained an opinion of counsel with respect to any tax issues.

The following is a summary of certain material U.S. Federal tax issues which may be relevant to prospective Shareholders. The discussion contained herein is not a full description of the complex tax rules involved and is based upon existing laws, judicial decisions and administrative regulations, rulings and practice, all of which are subject to change, retroactively as well as prospectively. A decision to invest in the Fund should be based upon an evaluation of the merits of the trading program, and not upon any anticipated U.S. tax benefits.

BASED ON THE STRUCTURE AND PROPOSED OPERATIONS OF THE FUND, THE FUND GENERALLY SHOULD NOT BE SUBJECT TO U.S. INCOME TAX, EXCEPT AS PROVIDED BELOW.

#### **Non-U.S. Shareholders**

A "Non-U.S. Shareholder" is any Shareholder other than (i) a citizen or resident of the United States; (ii) a corporation, partnership, or other entity created or organized in the United States, under the laws of the United States or of any state or political subdivision thereof, (iii) an estate whose income is includible in gross income for United States Federal income tax purposes, regardless of its source, or (iv) a trust if (a) a court within the United States is able to exercise primary supervision over the administration of the trust and (b) one or more U.S. persons have the authority to control all substantial decisions of the trust.

#### **U.S. Trade or Business**

In general, a foreign corporation is subject to U.S. income tax on its income from United States sources under two separate sets of rules. Under the first set of rules, if a foreign corporation is deemed to be engaged in a United States trade or business, such foreign corporation will be subject to U.S. income taxation at the graduated rates generally applicable to U.S. corporations and may also be subject to a 30% branch profits tax. Section 864(b)(2) of the United States Internal Revenue Code of 1986, as amended (the "IRC"), sets forth a safe harbor (the "Safe Harbor") which provides that a foreign corporation that trades securities for its own account (other than a dealer in securities) or a foreign corporation that trades commodities for its own account (other than a dealer in commodities) is not deemed to be engaged in a U.S. trade or business by reason of such activity. A proposed regulation (the "Proposed Regulation") creates a similar safe harbor provision applicable to foreign corporations trading certain derivative instruments such as options, forward contracts, short positions and similar financial instruments in commodities, currencies, stocks, partnership or beneficial interests in publicly traded partnerships or trusts, notes, bonds, debentures and other evidences of indebtedness, and notional principal contracts. Furthermore, the Proposed Regulation applies only to foreign persons other than (i) dealers in stocks and securities, (ii) dealers in commodities, and (iii) persons who regularly offer to enter into, assume, offset or otherwise terminate positions in derivatives with customers in the ordinary course of a trade or business (including regularly holding oneself out, in the ordinary course of a trade or business, as being willing and able to enter into either side of a derivative transaction). The Preamble to the Proposed Regulation provides that until the final regulations are issued, taxpayers may take any reasonable position, including that set forth in the Proposed Regulation. The Fund intends to conduct its business operations in a manner so as to meet the requirements of the Safe Harbor and the Proposed Regulation.

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Accordingly, the Fund's trading activities should not constitute a trade or business and, except in the limited circumstances discussed below, the Fund should not be subject to the regular U.S. income tax on any of its profits

Even if the Fund's trading activity does not constitute a U.S. trade or business, gains realized from the sale or disposition of (i) stock or securities (other than debt instruments with no equity component) of U.S. Real Property Holding Corporations (as defined in Section 897 of the IRC) ("USRPHCs") or (ii) stock or securities (other than debt instruments with no equity component) of Real Estate Investment Trusts ("REITs"), will be generally subject to U.S. income tax on a net basis. However, certain principal exceptions to these rules of taxation would apply (i) in the case of an interest in a USRPHC, if such interest is a class of stock which is regularly traded on an established securities market and the Fund generally did not hold more than five (5%) percent of such regularly traded class of stock at any time during the five (5) year period ending on the date of disposition, or (ii) in the case of an interest in a REIT, if during the five (5) year period ending on the date of disposition (or during the life of the REIT, if shorter) less than fifty (50%) percent in value of the stock of the REIT was held directly or indirectly by foreign persons. Moreover, if the Fund were deemed to be engaged in a U.S. trade or business as a result of owning a limited partnership interest in a U.S. business partnership or a similar ownership interest, income and gain realized from that investment would be subject to U.S. income and branch profits taxes.

#### U.S. Withholding Tax

Under the second set of rules, certain types of United States source income that is not effectively connected with a United States trade or business is subject to a withholding tax of 30% (unless reduced by an applicable income tax treaty). The types of income subject to the 30% withholding tax include dividends, rents, certain interest, certain other gains (but not capital gains from the sale of securities) and original issue discount. There is presently no tax treaty between the U.S. and the British Virgin Islands.

Generally, dividends are considered to be from United States sources (and are subject to 30% withholding) where the payor is incorporated under the laws of one of the fifty states or the District of Columbia. Furthermore, where a foreign corporation is engaged in the United States trade or business, and 25% or more of such corporation's worldwide income over a specified testing period is effectively connected with such trade or business, a portion of the dividends received from such corporation (which bears the same ratio as such corporation's income which is effectively connected with the U.S. trade or business bears to the worldwide income) is treated as from U.S. sources.

Certain types of income are specifically exempted from the thirty (30%) percent tax and thus withholding is not required on payments of such income to a foreign corporation. The thirty (30%) percent tax generally does not apply to U.S. source capital gains (whether long or short-term) or to interest paid to a foreign corporation on its deposits with U.S. banks. The thirty (30%) percent tax also does not apply to interest which qualifies as portfolio interest. The term "portfolio interest" generally includes interest (including original issue discount) on an obligation in registered form which is issued after July 18, 1984 and with respect to which the person who would otherwise be required to deduct and withhold the thirty (30%) percent tax receives the required statement that the beneficial owner of the obligation is not a U.S. person and certain other requirements are met. Under certain circumstances, interest on bearer obligations may also be considered portfolio interest. Also exempt from the thirty (30%) percent tax is income from original issue discount obligations which are payable no more than 183 days from the date of issue.

#### Redemption of Shares

In general, any gain realized by a Non-U.S. Shareholder on the sale, exchange, redemption or disposition of Shares will not be subject to U.S. Federal income tax, unless (i) such gain is effectively connected with a U.S. trade or business, (ii) the Non-U.S. Shareholder is an individual who is present in the United States for 183 days or more during the taxable year of the disposition and certain other conditions are met, (iii) the Non-U.S. Shareholder is subject to tax under U.S. Federal income tax law provisions applicable to certain expatriates, including certain former citizens and residents of the United States, or (iv) the Shares are treated as a United States real property interest. Based solely on the Fund's anticipated activities, it is not expected that the conditions set forth in (i) or (iv) above will be met.

#### Permitted U.S. Persons

Permitted U.S. Persons are U.S. entities that generally are exempt from Federal income tax on their passive income (e.g., qualified pension plans and certain charitable organizations). Shares in the Fund will constitute equity in a passive foreign investment company ("PFIC") for U.S. tax purposes. Although not entirely clear, under current U.S. income tax law, a Permitted U.S. Person that holds shares as capital assets should not be subject to the unrelated business income tax ("UBIT") with respect to any dividends received in respect of its holding Shares and any gain from the disposition of Shares, provided that (i) such Permitted U.S. Person does not incur acquisition indebtedness in connection with an investment in the Fund, (ii) the Fund is not a "controlled foreign corporation," or "CFC," for U.S. Federal income tax purposes and (iii) such Permitted Person does not make a "mark-to-market" election (pursuant to Section 1296) with respect to its Shares in the Fund. The Fund could be a CFC if fifty (50%) percent or more of the Shareholders in the Fund (measured by voting power or value) were owned by U.S. Shareholders, each owning ten (10%) percent or more of the total combined voting power of such foreign corporation. To avoid being treated as a CFC (or, in addition, a foreign personal holding company, or foreign investment company) the Investment Manager will limit the Shares held by Permitted U.S. Persons to less than fifty (50%) percent of the outstanding Shares. Permitted U.S. Persons may be subject to certain United States information reporting requirements based on their ownership of the Shares. **PERMITTED U.S. PERSONS MUST CONSULT THEIR OWN TAX ADVISERS REGARDING THE TAX CONSEQUENCES AND INFORMATION REPORTING REQUIREMENTS OF AN INVESTMENT IN THE FUND.**

U.S. tax legislation has been proposed in the past that would significantly alter certain of the UBIT, CFC and PFIC rules described above. It is not possible to predict whether any similar legislation will be proposed or enacted in the future; accordingly, a Permitted U.S. Person should consult its tax adviser with respect to any proposed U.S. tax legislation that could affect the U.S. Federal income tax treatment of an investment in the Fund.

#### Estate and Gift Taxes

Individual holders of Shares who are neither present or former U.S. citizens nor U.S. residents (as determined for U.S. estate and gift tax purposes) are not subject to U.S. estate and gift taxes with respect to their ownership of such Shares.

#### Other Jurisdictions

Income realized by the Fund from non-U.S. sources may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

#### British Virgin Islands

As of the date of this Memorandum, the Fund is exempt from all provisions of the Income Tax Act of the British Virgin Islands with respect to all dividends, interests, rents, royalties, compensation and other amounts payable by the Fund to persons who are not persons resident in the British Virgin Islands and is also exempt from any capital gains realized with respect to any shares, debt obligations or other securities of the Fund by persons who are not persons resident in the British Virgin Islands. No estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by persons who are not persons resident in the British Virgin Islands with respect to any shares, debt obligations or other securities of the Fund.

There are no exchange controls in the British Virgin Islands and, accordingly, the Fund is free to acquire, hold and sell any securities without restriction under the laws of the British Virgin Islands.

#### Other Taxes

Offerees should consult their own counsel regarding tax laws and regulations of any other jurisdiction which may be applicable to them.

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Future Changes in Applicable law

The foregoing description of U.S. and the British Virgin Islands tax consequences of an investment in and the operations of the Fund is based on laws and regulations which are subject to change through legislative, judicial or administrative action. Other legislation could be proposed that, if enacted, would subject the Fund to income taxes or subject Shareholders to increased income taxes.

THE FOREGOING DISCUSSION REPRESENTS A GENERAL SUMMARY OF TAX LAW AND IS BASED ON CURRENT LAW AND INTERPRETATIONS THEREOF ON THE DATE OF THIS MEMORANDUM. NO ASSURANCE CAN BE GIVEN THAT APPLICABLE TAX LAW AND INTERPRETATIONS THEREOF WILL NOT BE CHANGED IN THE FUTURE. ADDITIONALLY, IN VIEW OF THE NUMBER OF DIFFERENT JURISDICTIONS WHERE LOCAL LAWS MAY APPLY TO A PROSPECTIVE SHAREHOLDER, THIS MEMORANDUM DOES NOT DISCUSS THE LOCAL TAX CONSEQUENCES TO A POTENTIAL SHAREHOLDER ARISING FROM THE SUBSCRIPTION, PURCHASE, HOLDING AND REDEMPTION OF SHARES. ACCORDINGLY, PROSPECTIVE SHAREHOLDERS MUST CONSULT THEIR OWN PROFESSIONAL ADVISERS AND INFORM THEMSELVES OF, AND WHERE APPROPRIATE TAKE ADVICE ON, THE LAWS AND REGULATIONS (SUCH AS TAXATION AND EXCHANGE CONTROLS) APPLICABLE TO THE SUBSCRIPTION, PURCHASE, HOLDING AND REDEMPTION OF SHARES IN THE PLACE OF THEIR CITIZENSHIP, RESIDENCE, DOMICILE OR INCORPORATION AND THE PLACES IN WHICH THEY CONDUCT BUSINESS.



**INVESTMENT BY U.S. TAX EXEMPT ENTITIES – ERISA CONSIDERATIONS****General**

In considering an investment in the Fund of a portion of the assets of employee benefit plans subject to the Employee Retirement Income Security Act of 1974, as amended, ("ERISA"), including IRAs and Keogh plans (hereinafter referred to individually as "Plan" and collectively as "Plans"), fiduciaries and their legal counsel should consider, in light of all of the matters disclosed in this Memorandum, and the Plan's funding objectives and requirements, whether: (i) the investment in the Fund is prudent and in accordance with the documents and instruments governing such Plan; (ii) the investment is consistent with the fiduciary responsibility to diversify the Plan's investments under Section 404(a)(1)(C) of ERISA, if applicable; (iii) the investment will result in unrelated business taxable income ("UBTI") to the Plan; and (iv) the investment is consistent with the Plan's cash flow needs in view of the illiquidity of an investment in the Fund as described elsewhere in this Memorandum. Plan fiduciaries must make their own determination regarding whether an investment in the Fund is prudent under ERISA, taking into consideration all of the specific facts and circumstances of the Plan and an investment in the Fund.

ERISA generally requires that the assets of employee benefit plans be held in trust and that the trustee, or a duly authorized investment manager (within the meaning of Section 3(38) of ERISA), have exclusive authority and discretion to manage and control the assets of the Plan. ERISA also imposes certain duties on persons who are fiduciaries of employee benefit plans subject to ERISA and prohibits certain transactions between an employee benefit plan and the fiduciaries of such plan. Under the IRC, similar prohibitions apply to all Plans which are not subject to ERISA. Under ERISA and the IRC, any person who exercises any discretionary authority or discretionary control respecting the management or disposition of the assets of a Plan or who renders investment advice for a fee to a Plan is considered to be a fiduciary of such Plan (subject to certain exceptions not here relevant). Each Plan Investor who so requests will be issued a certificate evidencing its Shares in the Fund. The possession of such indicia of ownership should satisfy the holding in trust requirements of ERISA.

Furthermore, ERISA and the IRC prohibit fiduciaries of a Plan from engaging in various acts of self-dealing. In order to avoid such self dealings with respect to any Plan which invests in the Fund, the Investment Adviser will not permit an investment in the Fund with assets of any Plan (including a Keogh plan or IRA) if the Investment Adviser (i) has investment discretion with respect to such assets or (ii) regularly gives individualized investment advice which serves as the primary basis for the investment decisions made with respect to such assets.

**Plan Asset Rules**

If, by virtue of a Plan's purchase of a Share in the Fund, the assets of the Fund are deemed to be "plan assets" under ERISA, then: (i) the Investment Adviser may be required to adhere to the standards of a "fiduciary" under ERISA; and (ii) certain other transactions in which the Fund may engage may constitute prohibited transactions under Section 406 of ERISA and Section 4975(a) of the IRC.

ERISA and the IRC do not explicitly define what assets are "plan assets". Regulations issued by the Department of Labor (the "Regulations") generally provide that, unless certain exemptions apply, when a Plan acquires an equity interest in a corporation, partnership or other entity, which interest is neither a "publicly offered" readily transferable security nor a security issued by an investment company registered under the ICA, the assets of such Plan will include not only the investment, but also the underlying assets of the entity in which the equity investment is made.

The Regulations provide, however, that the assets of a corporation or partnership in which an employee benefit plan invests would not be deemed to be assets of such plan if less than twenty-five (25%) percent of each class of equity interests in the corporation or partnership are held in the aggregate by "benefit plan investors" (including, for this purpose, benefit plans such as foreign plans, Keogh Plans for owner-employees and IRAs which are not subject to the general requirements of ERISA). For purposes of this "25 percent" rule, the interests of any person (other than a benefit plan investor) who has discretionary authority or control with respect to the assets of the corporation or partnership, or who provides investment advice for a fee (direct or indirect) with respect to such

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assets, or any affiliate of such person, shall be disregarded. Thus, any investment in the Fund by the Investment Adviser or its affiliates will be disregarded in determining whether this exemption is satisfied.

The Investment Adviser will not permit investments in the Fund by "benefit plan investors" to equal or exceed at any time twenty-five (25%) percent of the equity interests of the Fund. Accordingly, the above exemption will be applicable and the assets of the Fund should not be deemed to be plan assets under ERISA. In order to comply with the foregoing, the Investment Adviser has the right, in its sole discretion, to reject any proposed investment by a Shareholder or by an existing Shareholder and/or to require a mandatory redemption of all or part of the Shares of a Shareholder. Accordingly, Plan fiduciaries considering an investment in the Fund should consider the fact that neither the Investment Adviser nor its affiliates nor any of their respective officers, directors, agents, employees, affiliates, advisers or consultants will be acting as a fiduciary under ERISA or the IRC in managing the assets of the Fund.

#### Unrelated Business Taxable Income

Unless removed from the purview of IRC Section 501(a) by a relevant exception, organizations described in that provision are exempt from Federal income tax. Notwithstanding this, such organizations are subject to income taxes at the rate applicable to business corporations on their UBTI under Section 511(a) of the IRC. Generally, UBTI means the gross income (with certain exceptions) derived by an IRC Section 501(a) exempt organization from any trade or business carried on by such entity which is unrelated to the entity's exempt purposes, less certain deductions related to such trade or business. UBTI includes the income recognized by a tax exempt entity from any unrelated trade or business regularly carried on by a partnership of which such tax exempt entity is a partner. Also included in UBTI is "unrelated debt financed income". This is generally the net income from assets not related to the entity's exempt purpose, acquired with debt, to the extent of the ratio of debt on such assets to such assets' adjusted basis.

Under Section 512(b) of the IRC, certain forms of income are excluded from the definition of UBTI. These items include dividends, interest, annuities, royalties, capital gains, rents from real property and, in limited circumstances, personal property leased with real property. To the extent, however, that the Fund employs debt in its strategy, or if the Fund acquires securities of an entity that generates UBTI that flows through to the Fund (e.g., a corporation) or if Fund activities are determined to be a trade or business within the meaning of IRC Section 513, it is possible that otherwise tax-exempt investors subject to these rules would be liable for tax on part of their allocable share of Fund income.

Each tax-exempt investor is urged to consult with its own professional tax advisers concerning the suitability of this investment, taking into account the likelihood that such investment will generate UBTI, as well as whether, under the particular circumstances of its investment, its interest would constitute debt-financed property.

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## ADMINISTRATION

### Board of Directors

The Fund is managed by its Board. The Board is elected by the holders of the Shares.

The directors of the Fund are as follows:

**John W. Bendall, Jr.** founded Hermitage Capital Corporation in 1986; he is presently its Chairman and Chief Executive Officer. Mr. Bendall was Senior Vice-President and Head of Institutional Sales of Bateman, Eichler, Hill and Richards from 1977 to 1986. He was a Specialist in Mergers and Acquisitions at William E. Hill and Co. (a Division of Dunn and Bradstreet). Mr. Bendall also serves as a Director of JBC Holdings.

**Dr. Richard Geist** is President of The Institute of Psychology and Investing, Inc. Dr. Geist received his undergraduate degree and his doctorate in Psychology from Harvard University and is an Instructor in the Department of Psychiatry at Harvard Medical School. Dr. Geist has written and lectured extensively on the psychology of investing. His recommendations have been featured in various financial publications and he has appeared on numerous national television and radio programs.

Under the laws of the British Virgin Islands and the Fund's Articles, each Director and officer of the Fund is entitled to be indemnified out of the assets of the Fund against all expenses (including legal fees and disbursements), losses, liabilities, judgments or fines which such Director or officer may sustain or incur in or about the execution of the duties of such office or otherwise in relation thereto. No Director or officer is liable for any loss, damage or misfortune which may happen to, or be incurred by, the Fund in the execution of the duties of such office, or in relation thereto, except for such Director's or officer's own gross negligence, willful default, fraud or dishonesty. If in the determination of the Board, such Director or officer acted honestly and in good faith with a view to the best interests of the Fund and had no reasonable cause to believe that his conduct was unlawful and that the determination of the Board is, in the absence of fraud, conclusive for purposes of indemnification.

### The Administrator

Citco Fund Services (Curacao) N.V., Curacao, Netherlands Antilles has been delegated the responsibility as administrator (the "Administrator") under the terms of an Administration Agreement to be effective April 1, 2002 between the Fund and the Administrator and registrar and transfer agent for Shares of the Fund. The Administrator is responsible for the maintenance of the Fund's corporate records and books of accounts. Net Asset Value calculation, and communication with Shareholders and the general public.

The Administration Agreement may be terminated by either party thereto upon not less than ninety (90) days' notice.

The Fund has agreed to indemnify the Administrator and its subsidiaries, affiliates, directors and other officers, shareholders, employees, agents and permitted delegates against, and hold it harmless from, any expense or liability arising out of any asserted or threatened claim in connection with the obligations of the Administrator to the Fund, except for any expense or liability caused by its gross negligence or willful misconduct or by its reckless disregard of its duties.

### Brokerage Commissions

The Investment Manager has the sole power and authority to determine the broker to be used for each securities transaction for the Fund. In selecting brokers or dealers to execute transactions, the Investment Manager need not solicit competitive bids and does not have an obligation to seek the lowest available commission cost. In selecting brokers, the Investment Manager may or may not negotiate "execution only" commission rates; thus, the Fund may be deemed to be paying for other services provided by the broker to the Fund or the Investment Manager or their affiliates which are included in the commission rate. In negotiating commission rates, the Investment

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Manager will take into account the financial stability and reputation of brokerage firms and the brokerage, research and other services provided by such brokers, although the Fund may not, in any particular instance, be the direct or indirect beneficiary of the services provided. The Investment Manager may also direct commissions to brokers who refer clients to the Fund. In addition, the Investment Manager is authorized to direct commissions to certain broker/dealers which may furnish other services to the Fund or the Investment Manager or their affiliates, such as telephone lines, news and quotation equipment, electronic office equipment, furniture, account record keeping and clerical services, financial publications, economic consulting services, office space and facilities and travel, entertainment expenses and administrative expenses.

Accordingly, the Fund may be deemed to be paying for research and other services with "soft" or commission dollars. Although the Investment Manager believes the Fund will benefit from many of the services obtained with soft dollars generated by Fund trades, the Fund will not benefit exclusively. The Investment Manager may also derive direct or indirect benefits from some or all of these services, particularly to the extent that the Investment Manager uses "soft" or commission dollars to pay for expenses it would otherwise be required to pay itself.

Section 28(e) of the United States Federal Securities Exchange Act of 1934, as amended, provides a "safe harbor" to investment managers who use commission dollars generated by their advised accounts to obtain investment research and brokerage services that provide lawful and appropriate assistance to the manager in the performance of investment decision-making responsibilities. Conduct outside of the safe harbor afforded by Section 28(e) is subject to the traditional standards of fiduciary duty under state and Federal law. Notwithstanding a good faith determination that the amount of commissions paid is reasonable in relation to the value of brokerage research services provided, to the extent that the Investment Manager determines to use commission dollars to pay for products and services that provide administrative or other nonresearch assistance to the Investment Manager, such payments may not fall within the safe harbor of Section 28(e).

The Fund's investment program will emphasize active management of the Fund's portfolio. Consequently, the Fund's portfolio turnover and brokerage commission expenses may be greater than for other types of investment vehicles.

#### Prime Broker

The Fund has appointed Banc of America Securities, LLC ("BAS"), as prime broker and custodian. As such, BAS will settle and clear all transactions executed by the Fund. Such transactions may be executed through BAS or other brokers.

The custodial functions of BAS include, among other matters, arranging for: (i) the receipt and delivery of securities purchased, sold, borrowed and loaned; (ii) the making and receiving payments therefor; (iii) custody of securities fully paid or not fully paid for and, therefore, compliance with margin and maintenance requirements; (iv) custody of all cash, dividends and exchanges, distributions and rights accruing to an account, or delivery of cash to the Fund's banks; and (v) tendering securities in connection with cash tender offers, exchange offers, mergers or other corporate reorganizations. BAS has no decision-making discretion relating to the Fund's investments.

BAS is entrusted with the safe custody of all the assets of the Fund and maintains segregated accounts in the name of and for the sole benefit of the Fund. The assets of the Fund will be separately designated in the books of BAS. These fully paid assets will be segregated from BAS' own proprietary positions in order to ensure adequate protection in the event of the bankruptcy or insolvency of BAS. Fully paid for assets refers to all assets not deposited as margin. Non-fully paid for securities held in the margin accounts with BAS need not be segregated and may be available to the creditors of BAS. The assets of the Fund may also be deposited as margin with other brokers/dealers and may not be held in segregated accounts.

The Fund is not required to pay any custody fee to BAS to act as Prime Broker and custodian. The Fund is not committed to continue its "prime brokerage" relationship or its clearing relationship with BAS for any minimum period. If the Fund uses another prime broker, it may be required to pay separate fees in cash. To the extent that securities are purchased in non-U.S. markets, BAS will transfer funds to its sub-brokers located in the country in which the securities are purchased. Such sub-brokers (sub-custodians) will maintain custody of the securities until

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such time as they are sold, at which point uninvested proceeds will be transferred back to the Fund's account at BAS. BAS shall exercise reasonable skill, care and diligence in the selection of sub-custodians. BAS will be responsible to the Fund for the duration of the sub-custody agreement for satisfying itself as to the ongoing suitability of any sub-custodian to provide custodian services to the Fund. BAS shall maintain an appropriate level of supervision over the sub-custodians and make appropriate enquiries, periodically to confirm that the obligations of the sub-custodians continue to be competently discharged. BAS remains responsible for losses arising from the acts or omissions or insolvency of such sub-custodians. A sub-custodian who holds assets of the Fund other than margin will segregate those assets in segregated accounts to ensure that they are unavailable to creditors of the sub-custodian or any other entity. The fees of any such sub-custodians shall be at normal commercial rates. The Investment Manager also expects to allocate portions of the Fund's brokerage business to BAS.

Accounting Matters

The Fund's independent accountants are PricewaterhouseCoopers which have audited the Fund's accounts for the fiscal years ended December 31, 1999 and 2000 and they are expected to audit the Fund's accounts for the fiscal year ended December 31, 2001 and the current fiscal year ending September 30, 2002. The annual accounts of the Fund have been audited since inception of the Fund.

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**SUBSCRIPTION PROCEDURES**

Offerees interested in subscribing for Shares will be furnished a Subscription Documents Booklet which contains Instructions For Subscribers and a Subscription Agreement to be completed by them for a specified dollar amount of Shares. The Fund currently has a minimum initial subscription amount of \$1,000,000 but may permit subscriptions for a lesser amount (but not less than \$100,000). Please contact the Administrator if you desire to subscribe for Shares so that a Subscription Documents Booklet can be forwarded to you. The proper documentation necessary to purchase Shares must be received by the Fund at least three (3) Business Days prior to the applicable Closing Date, unless waived by the Board.

The original executed and completed Subscription Agreement should be sent by fax initially with two original copies to follow by courier delivery service to: The OmniFund, Ltd., c/o Citco Fund Services (Curaçao) N.V., P.O. Box 812, Curaçao, Netherlands Antilles. Fax no.: (5-999) 732-2225.

All payments are to be made in U.S. dollars, via wire transfer, in immediately available funds to JP Morgan Chase Bank. One New York Plaza, New York, NY 10081, ABA # 021-000021, for Account of Citco Banking Corporation N.V., Account # 001-1-627502, for further credit to The OmniFund, Ltd., Account # 0012.519915.200.

The Subscription Agreement to be executed and delivered by prospective Shareholders contains their agreement to indemnify and hold harmless the Fund, the Investment Manager, the Administrator, Directors and each of their respective subsidiaries, affiliates, directors and other officers, shareholders, employees, agents and permitted delegates, against any loss, liability, cost or expense (including attorneys' fees, taxes and penalties) which may result, directly or indirectly, from any misrepresentation or breach of any warranty, condition, covenant or agreement set forth therein or in any other document delivered by the prospective Shareholders of the Fund.

The acceptance or non-acceptance of any subscription is solely at the discretion of the Board and no reasons need be given for the non-acceptance of any subscription.

The Shares generally will be issued in book-entry, registered form and no share certificates representing the Shares subscribed for will be forwarded to a Shareholder unless specifically requested.



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MISCELLANEOUS

- (1) A Permitted U.S. Person is an "Accredited Investor" if the U.S. Person is:
- (A) An employee benefit plan within the meaning of Title I of ERISA:
- (i) whose investment decisions are made by a plan fiduciary, as defined in Section 3(21) of ERISA, which is either a bank, insurance company or registered investment advisor;
  - (ii) having total assets in excess of \$5,000,000; or
  - (iii) if self-directed, the investment decisions are made solely by natural persons, each of whom either:
    - (1) currently has a net worth in excess of \$1 million, and/or
    - (2) has individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year; OR
- (B) A trust, which is a tax-exempt entity with assets in excess of \$5 million, not formed for the specific purpose of acquiring Shares, whose investment decisions are made by a person or persons who have such knowledge and experience in financial and business matters that such person or persons is or are capable of evaluating the merits and risks of the prospective investment; OR
- (C) A tax-exempt entity in which all of the equity owners are natural persons each of whom either (i) currently has a net worth in excess of \$1 million, and/or (ii) had individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year; OR
- (D) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefits of its employees if such plan has total assets in excess of \$5,000,000; OR
- (E) A tax-exempt organization under Section 501(c)(3) of the IRC having total assets in excess of \$5,000,000, which was not formed for the specific purpose of acquiring Shares.
- (2) The term "U.S. Person" means, with respect to individuals, any U.S. citizen (and certain former U.S. citizens) or "resident alien" within the meaning of U.S. income tax laws as in effect from time to time. Currently, the term "resident alien" is defined under U.S. income tax laws to generally include any individual who (i) holds an Alien Registration Card (a "green card") issued by the U.S. Immigration and Naturalization Service, or (ii) meets a "substantial presence" test. The "substantial presence" test is generally met with respect to any current calendar year if (i) the individual was present in the U.S. on at least thirty-one (31) days during such year, and (ii) the sum of the number of days on which such individual was present in the U.S. during the current year, 1/3 of the number of such days during the first preceding year, and 1/6 of the number of such days during the second preceding year, equals or exceeds 183 days. With respect to persons other than individuals, the term "U.S. Person" means (i) a corporation or partnership created or organized in the United States or under the laws of the United States or any state or (ii) a trust or estate which is subject to U.S. tax on its worldwide income from all sources.
- (3) The term "Permitted U.S. Persons" means any entity organized under the laws of the United States that is generally exempt from Federal income taxation.

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- (4) A "Professional Investor" is defined as a person whose ordinary business involves, whether for his own account or the account of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property, of the Fund or a person who has signed a declaration that it (in the case of a natural person, either individually or jointly with spouse) has a net worth in excess of \$1 million (or its equivalent in any other currency) and it consents to being treated as a Professional Investor.

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**APPENDIX A**

**REQUIRED DISCLOSURES**

**FOR ALL OFFEREES:**

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE PERSON OR ENTITY CREATING THE SECURITIES AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY UNITED STATES FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

EACH INVESTOR MUST REPRESENT AND WARRANT THAT THE INVESTOR HAS READ THIS MEMORANDUM AND IS AWARE OF AND CAN AFFORD THE RISKS OF AN INVESTMENT IN THE FUND FOR AN INDEFINITE PERIOD OF TIME. THIS INVESTMENT IS SUITABLE ONLY FOR INVESTORS WHO HAVE ADEQUATE MEANS OF PROVIDING FOR THEIR CURRENT AND FUTURE NEEDS AND CONTINGENCIES, AND HAVE NO NEED FOR LIQUIDITY IN THIS INVESTMENT.

**FOR PERMITTED U.S. PERSONS:**

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE 1933 ACT, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THE SHAREHOLDERS MAY ONLY REDEEM THEIR SHARES AT CERTAIN LIMITED TIMES AND UPON CERTAIN REQUIRED ADVANCE NOTICE.

THE SHARES ARE BEING OFFERED IN THE UNITED STATES UNDER SECTION 4(2) OF THE 1933 ACT AND RULE 506 OF REGULATION D PROMULGATED THEREUNDER ONLY TO PERMITTED U.S. PERSONS WHO QUALIFY AS ACCREDITED INVESTORS UNDER THE 1933 ACT. EACH PERMITTED U.S. PERSON WILL BE REQUIRED TO REPRESENT THAT THEY ARE AN ACCREDITED INVESTOR THAT SATISFIES ALL OTHER SUITABILITY CRITERIA SET FORTH IN THIS MEMORANDUM, ARE ACQUIRING THE SHARES FOR THEIR OWN ACCOUNT, AS PRINCIPAL, FOR INVESTMENT PURPOSES ONLY, AND NOT WITH ANY INTENTION TO RESELL, TRANSFER, DISTRIBUTE OR OTHERWISE DISPOSE OF OR FRACTIONALIZE THE SHARES, EITHER IN WHOLE OR IN PART, AND NO RESALE, TRANSFER OR OTHER DISPOSITION OF THE SHARES WILL BE PERMITTED EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF THE 1933 ACT, THE RULES AND REGULATIONS THEREUNDER, ANY APPLICABLE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND THE TERMS AND CONDITIONS OF THE ARTICLES.

**Special Notice to U.S. Investors Subject to ERISA**

THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED, IMPOSES CERTAIN LIMITATIONS ON THE INVESTMENT BY CERTAIN PENSION AND OTHER EMPLOYEE BENEFIT PLANS IN INVESTMENTS SUCH AS THE FUND. THEREFORE, ANY PENSION OR OTHER EMPLOYEE BENEFIT PLAN CONSIDERING AN INVESTMENT IN SHARES OF THE FUND SHOULD CONSULT ITS OWN COUNSEL AS TO THE LEGAL EFFECTS OF SUCH INVESTMENT.

**FOR BRITISH VIRGIN ISLANDS RESIDENTS:**

NO INVITATION MAY BE MADE TO THE PUBLIC IN THE BRITISH VIRGIN ISLANDS TO SUBSCRIBE FOR SHARES.

**FOR UNITED KINGDOM INVESTORS:**

THE FUND IS A COLLECTIVE INVESTMENT SCHEME WHICH WILL NOT BE AUTHORIZED OR OTHERWISE APPROVED FOR PROMOTION IN THE UNITED KINGDOM AND IS NOT REGULATED BY THE FINANCIAL SERVICES AUTHORITY OF THE UNITED KINGDOM. NOR HAS THIS OFFERING MEMORANDUM BEEN ISSUED OR APPROVED BY ANY PERSON AUTHORIZED UNDER THE FINANCIAL SERVICES AND MARKETS ACT 2000 ("FSM ACT"). CONSEQUENTLY, INVESTORS WILL NOT HAVE THE BENEFIT OF THE INVESTORS' COMPENSATION SCHEME AND OTHER PROTECTIONS AFFORDED BY THE FSM ACT OR THE RULES AND REGULATIONS MADE THEREUNDER AND THE FUND MAY ONLY BE PROMOTED IN THE UNITED KINGDOM: (A) BY PERSONS NOT AUTHORIZED UNDER THE ACT TO CERTAIN CATEGORIES OF PERSONS SPECIFIED IN THE FINANCIAL SERVICES AND MARKETS ACT 2000 (FINANCIAL PROMOTION) ORDER 2001; AND (B) BY PERSONS WHO ARE NOT AUTHORIZED UNDER THE FSM ACT TO PERSONS WHO ARE OF A KIND DESCRIBED IN THE FINANCIAL SERVICES AND MARKETS ACT 2000 (PROMOTION OF COLLECTIVE INVESTMENT SCHEMES) (EXEMPTIONS) ORDER 2001 OR WHO ARE PERSONS TO WHOM THIS DOCUMENT MAY OTHERWISE LAWFULLY BE DISTRIBUTED OR TO WHOM THE FUND MAY OTHERWISE LAWFULLY BE PROMOTED.