

*This Amended and Restated Confidential Offering Memorandum (“Offering Memorandum”) constitutes an offering of securities only in those jurisdictions and to those persons where and to whom they may be lawfully offered for sale. This Offering Memorandum is not, and under no circumstances is to be construed as, a prospectus or advertisement or a public offering of these securities. No securities commission or similar authority in Canada has reviewed or in any way passed upon this document or the merits of the securities offered hereby, and any representation to the contrary is an offence.*

*This Offering Memorandum is personal to each prospective purchaser and does not constitute an offer to any other person or to the public generally to subscribe for or otherwise acquire the securities offered hereby. Distribution of this Offering Memorandum to any person other than the prospective purchaser and any person retained to advise such prospective purchaser with respect to its purchase is unauthorized, and any disclosure of any of its contents without the Fund Manager’s prior written consent is prohibited. Each prospective purchaser, by accepting delivery of this Offering Memorandum, agrees to the foregoing and to make no photocopies of this Offering Memorandum or any documents referred to in, or incorporated into, this Offering Memorandum.*



## **CLASS A UNITS AND CLASS F UNITS OF THE POLAR MICRO-CAP FUND**

### **AMENDED AND RESTATED CONFIDENTIAL OFFERING MEMORANDUM**

Polar Micro-Cap Fund (the “Fund”) is an open-ended investment trust governed by the laws of Ontario pursuant to a trust agreement dated as of January 31, 2014, as the same may be amended, supplemented or amended and restated from time to time (the “Trust Agreement”). The policies and objectives of the Fund are described in this Offering Memorandum.

The Fund is offering an unlimited number of Class A Units and Class F Units of the Fund (collectively, the “Units”) issuable in series on a continuous basis under this Offering Memorandum pursuant to exemptions from the prospectus requirements of applicable securities legislation (the “Offering”). Units are offered at a minimum subscription of \$25,000 to “accredited investors” (as such term is defined in National Instrument 45-106 – *Prospectus Exemptions*) resident in, or otherwise subject to the securities laws of, any province or territory of Canada (the “Offering Jurisdictions”). See “Details of the Offering”.

If there is a misrepresentation in this Offering Memorandum, purchasers resident in the Offering Jurisdictions may, in certain circumstances, be provided with a remedy for rescission or damages. See “Purchasers’ Rights of Action for Damages and Rescission”.

**The Fund is a related and connected issuer of Polar Asset Management Partners Inc. See “Conflicts of Interest – Statement of Related and Connected Issuers”.**

**All Units purchased pursuant to this Offering Memorandum are subject to restrictions on resale unless a further statutory exemption may be relied upon by the investor or an appropriate discretionary order is obtained pursuant to applicable securities laws. Therefore, all potential purchasers under this Offering should consult with their legal advisors prior to seeking to sell or otherwise transfer any Units purchased hereunder. As there is no market for the Units, it may be difficult or even impossible for a Unitholder to sell them. However, Units may be redeemed in accordance with the provisions of this Offering Memorandum.**

**Potential purchasers should carefully review the Section entitled “Risk Factors” in this Offering Memorandum before making any decision to invest in the Units.**

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### **Cautionary Note Regarding Forward-Looking Statements**

This Offering Memorandum contains forward-looking statements. All statements, other than statements of historical fact, are forward-looking statements and may include statements that address activities, events or developments that the Fund Manager believes, expects or anticipates will or may occur in the future (including, without limitation, statements regarding any objectives and strategies of the Fund). These forward-looking statements reflect the current expectations, assumptions or beliefs of the Fund Manager based on information currently available to such persons. Forward-looking statements are subject to a number of risks and uncertainties that may cause the actual results of the Fund to differ materially from those discussed in the forward-looking statements, and even if such actual results are realized or substantially realized, there can be no assurance that they will have the expected consequences to, or effects on, the Fund. Factors that could cause actual results or events to differ materially from current expectations include, among other things, volatility in financial markets, fluctuations in currency exchange rates and interest rates, tax consequences, changes in applicable laws and other risks associated with investing in securities and those factors discussed under the section entitled “Risk Factors” in this Offering Memorandum. Any forward-looking statement speaks only as of the date on which it is made and, except as may be required by applicable securities laws, the Fund Manager disclaims any intent or obligation to update any forward-looking statement, whether as a result of new information, future events or results or otherwise. Although the Fund Manager believes that the assumptions inherent in the forward-looking statements are reasonable, forward-looking statements are not guarantees of future performance and accordingly undue reliance should not be put on such statements due to the inherent uncertainty therein.

## SUMMARY

*Prospective purchasers are encouraged to consult their own professional advisors as to the tax and legal consequences of investing in the Fund. The following is a summary only and is qualified by the more detailed information contained in this Offering Memorandum.*

**The Fund:** Polar Micro-Cap Fund is an open-ended investment trust governed by the laws of the Province of Ontario pursuant to the terms of a trust agreement dated as of January 31, 2014 between Polar Asset Management Partners Inc. (as settlor, fund manager and investment advisor) (“**Polar**”) and TSX Trust Company (as trustee, the “**Trustee**”) as the same may be amended, supplemented or amended and restated from time to time (the “**Trust Agreement**”). See “The Fund”.

**The Offering:** An unlimited number of Class A Units and Class F Units of the Fund (collectively, the “**Units**”) issuable in series with a minimum subscription of \$25,000 to an unlimited number of subscribers who are “accredited investors” (as such term is defined in National Instrument 45-106 – *Prospectus Exemptions*) resident in, or otherwise subject to the securities laws of, any province or territory in Canada (the “**Offering Jurisdictions**”) under this Offering Memorandum (the “**Offering**”). The Fund Manager (as hereinafter defined) reserves the right to accept or reject subscriptions for Units, to change the minimum amounts for investment in the Fund and/or to discontinue the offering of Units at any time and from time to time. See “Details of the Offering”. Each subscriber must satisfy applicable regulatory requirements.

At the discretion of the Fund Manager, subscriptions for lesser amounts which comply with other available exemptions from prospectus requirements under applicable securities legislation may be accepted.

Each Unit of the same Class (as hereinafter defined) or Series (as hereinafter defined) will represent an equal undivided interest in the net assets of the Fund attributable to that Class or Series of Units. The Fund is authorized to issue an unlimited number of Classes and/or Series of Units and an unlimited number of Units in each such Class or Series, subject to any determination to the contrary made by the Fund Manager in its sole discretion. The Fund may issue fractional Units so that subscription funds may be fully invested. Each whole Unit of a particular Class or Series has equal rights to each other Unit of the same Class and Series with respect to all matters, including voting, receipt of distributions from the Fund, liquidation and other events in connection with the Fund. See “Units of the Fund”.

**The Units:** There are two classes (“**Classes**”) of Units currently offered by the Fund pursuant to this Offering Memorandum: Class A and Class F. Each Class is issued in series (each, a “**Series**”). The Units have the same investment objective, strategy and restrictions but the Classes differ in respect of one or more of their features, such as management fees, sales commissions and servicing fees. Class A Units of the Fund carry a front-end sales commission of up to 2.0%. Class F Units of the Fund may be purchased by investors who are enrolled in a dealer sponsored fee-for-service or ‘wrap’ program and who are subject to an annual asset-based fee.

The Fund may issue additional classes of units from time to time without notification to Unitholders.

**Fund Manager:** Polar Asset Management Partners Inc.  
401 Bay Street, Suite 1900, P.O. Box 19  
Toronto, Ontario M5H 2Y4

Investment Advisor: Polar Asset Management Partners Inc.  
401 Bay Street, Suite 1900, P.O. Box 19  
Toronto, Ontario M5H 2Y4

Investment Objective of the Fund: The Fund seeks to achieve long-term capital growth by investing primarily in the equity securities of small-sized Canadian and U.S. companies, which may, from time to time, include investments in private businesses.

The Unitholders recently approved, and the Fund amended, the Fund's investment objective to expand its investment universe to include U.S. companies. Prior to the amendment, the Fund invested primarily in the equity securities of small-sized Canadian companies.

Investment Strategies of the Fund: In seeking to achieve its investment objective, the Fund invests in a diversified portfolio of equity securities chosen according to a bottom-up, fundamentals driven investment approach. Specifically, the Investment Advisor examines, but is not limited to, the following factors in determining security selection:

1. **Business Model:** Detailed business plan and income statement analysis to determine the nature and sustainability of a company's competitive advantage. The Investment Advisor favours proven business models that have exhibited a measurable history of stability and sustainability.
2. **Sources of Capital:** Detailed cash flow statement analysis to determine the ability of the company to internally generate capital equal to or in excess of its operational requirements. The Investment Advisor favours companies that generate excess capital that can be deployed in a discretionary manner by management teams into opportunities designed to increase shareholder value.
3. **Capital Structure:** Detailed balance sheet analysis to determine the nature and extent of indebtedness utilized by a company. The Investment Advisor favours companies with conservative capital structures that allow for opportunistic deployment of resources irrespective of capital markets conditions.
4. **Valuation:** Multi-faceted valuation analysis to determine if the market value of a company's securities, in the opinion of the Investment Advisor, is equal to or below their intrinsic value. The Investment Advisor favours companies with below market average valuation multiples.
5. **Management Alignment:** Routine review of levels, and changes in, equity ownership by key decision makers within a company. The Investment Advisor favours companies where there is significant economic alignment of interests between internal and external stakeholders.

The investment activities of the Fund will be conducted within a disciplined set of investment guidelines, including, without limitation, those discussed below.

1. **Types of Investments:** The Fund primarily invests in equity and equity derivative securities, including stocks, warrants, instalment receipts and options, subject to the investment restrictions discussed herein. From time to time, the Investment Advisor may determine that certain investment opportunities are best executed using debt securities, either directly or as part of a hedge, or using commodity, index or other futures or options as part of a hedge.
2. **Diversification:** The Fund will ordinarily maintain a diversified portfolio of

not less than 20 securities.

3. **Gross Market Exposure:** The Fund may employ leverage. The gross amount of dollar exposure (i.e. dollars invested long plus dollars invested short) shall not ordinarily exceed 150% of the Fund's Net Asset Value (as defined herein). See "Leverage" under "Risk Factors".
4. **Net Market Exposure:** The Fund may maintain both long positions and short positions at any time, such that ordinarily the net amount of dollar exposure (dollars invested long minus dollars invested short) is within a range of +100% to -20% of the Fund's Net Asset Value.
5. **Foreign Investment:** The Fund invests primarily in Canadian and U.S. securities which are consistent with its investment objective.
6. **Currency Exposure:** The Fund's functional and reporting currency is Canadian dollars. The Fund will endeavour to hedge any significant non-Canadian dollar exposure back to the Canadian dollar.

The Fund is also subject to certain investment restrictions. See "Investment Strategies of the Fund – Investment Restrictions".

Price:

Class A Units and Class F Units are offered for sale in Series on a continuous basis under this Offering Memorandum at the applicable Series Net Asset Value (as defined herein) per Unit ("**Series Net Asset Value per Unit**"), with such calculation being determined as at the last day of each month on which commercial banks in Toronto, Ontario are open for business ("**Business Day**") and as at any other day as the Fund Manager may determine (each, a "**Valuation Date**"). Fractional Units will be issued up to a maximum of four decimal places. All subscriptions for Units will initially be made through the purchase of interim subscription receipts at a fixed net asset value of \$100 per subscription receipt ("**Subscription Receipt**"). See "Purchase Procedure".

Purchase Procedure:

Subscribers may purchase Units by delivering a completed Investment Application (as defined herein), together with full payment for the Units, to the subscriber's Registered Dealer (as defined herein). The Fund Manager must receive payment in addition to the duly completed Investment Application and any other required documents by the third Business Day following the date the subscription order is received. If the subscription order request is received by the Fund Manager on or before the last Business Day of the current month (each, a "**Subscription Deadline**"), such subscriber will be admitted at the applicable Series Net Asset Value per Unit for the current month-end. If the subscription order request is received after the Subscription Deadline for a month, such subscriber will then be admitted at the Series Net Asset Value per Unit for the end of the following month (*i.e.*, the order will be processed on the last Business Day of the following month).

The Fund Manager reserves the right to accept or reject subscription orders, provided that any decision to reject an order is made within two Business Days after receipt by the Fund Manager of all required documents. Any monies received with a rejected order will be refunded without interest or deduction.

All subscriptions for Units will initially be made through the purchase of Subscription Receipts at a fixed net asset value of \$100 per Subscription Receipt. Following the calculation of the Series Net Asset Value (as defined herein) of each Series of Units, the interim Subscription Receipts will be automatically converted, without any further action on the part of the subscriber, into the appropriate number of Units of the applicable Class as per each subscriber's Investment Application. The number of Units

of the applicable Series will be the net subscription proceeds divided by the month-end Series Net Asset Value per Unit of such Series determined as at the applicable Valuation Date. Consequently, the initial purchase confirmation will confirm the purchase of the Subscription Receipts while a subsequent confirmation will confirm the final number of Units purchased by the subscriber. The number of Subscription Receipts will be different from the final number of Units so purchased. These Subscription Receipts are not redeemable and do not carry any voting rights. See “Purchase Procedure”.

Redemption:

Subject to certain requirements, a Unitholder may, at any time, request that the Fund redeem his or her Units at the applicable Series Net Asset Value per Unit of such Units as at the last calendar day of any month or any other day as the Fund Manager may determine (each a “**Redemption Date**”), provided that a written or electronic request for redemption (a “**Redemption Request**”) is received by the Fund Manager no later than 4:00 p.m. (Toronto time) on a date which is not less than 30 calendar days prior to the applicable Redemption Date. Payment of the redemption proceeds (net of any Redemption Charge, as defined below) will be paid to the redeeming Unitholder on or about the tenth (10<sup>th</sup>) Business Day of the month following the Redemption Date.

The investment objective of the Fund is designed for investors with medium to long-term investment horizons and is not intended as a short-term investment. Therefore, the Fund may charge a 10% short-term trading redemption charge (a “**Redemption Charge**”), based on the Net Asset Value attributable to the redeemed Units, to any Unitholder who redeems Units within the first year of the purchase of such Units.

The Fund Manager may in its absolute discretion decide to satisfy any Redemption Request in full or in part by instructing the Trustee to transfer *in specie* such securities or other property of the Fund, which together with payments in cash (if any), shall in the aggregate have a value not less than the redemption amount payable to the Unitholder (i.e. the Net Asset Value attributable to such redeemed Units) provided that the value of all securities and other property of the Fund shall be determined as at the relevant Valuation Date. The Fund Manager does not anticipate instructing the Trustee to satisfy redemption requests *in specie* other than in exceptional circumstances.

The Fund Manager may defer or suspend redemption rights in certain circumstances, including where the Fund has received Redemption Requests in respect of 10% or more of the outstanding Units and the Fund Manager determines that the redemption of such Units would materially prejudice the interests of the other Unitholders or otherwise materially and adversely affect the Fund. See “Redemption of Units – Suspension of Redemptions”.

The Fund Manager has the right, upon not less than 10 days’ notice, to compulsorily redeem all or any portion of the Units of any Unitholder at any time under certain circumstances. See “Redemption of Units – Mandatory Redemptions”.

Management Fee:

The Fund pays the Fund Manager a management fee based upon the Series Net Asset Value of each Series of a Class of Units (before taking into account the accrual of any performance fee payable by the Fund (as described below)). The Fund Manager will receive a monthly fee equal to 1/12 of 2% of the aggregate Series Net Asset Value of the Class A Units (including an amount equal to the 1% annual servicing fee payable by the Fund Manager to brokers, dealers and advisors) and a monthly fee equal to 1/12 of 1% of the aggregate Series Net Asset Value of the Class F Units. The management fee is calculated and paid monthly as at the last calendar day of each month and as at any other day as the Fund Manager may determine.

Performance Fees:

The Investment Advisor is entitled to an annual performance fee in respect of the outstanding Units of each Series of each Class equal to 20% of the net appreciation in the Series Net Asset Value of each Series of a Class of Units in excess of such Series' High Water Mark (as defined below) before taking into account the accrual of any performance fee and after deduction of an annualized 5% return threshold (the "**Hurdle Rate**"). A performance fee is also determined and paid in respect of any redemption of Units during a year where the Series Net Asset Value of such Series is above the High Water Mark and the Hurdle Rate for such Series.

Utilizing the "series accounting methodology" described below, the "High Water Mark" for each Series of a Class of Units shall be: (i) in respect of an initial subscription for a Series of a Class of Units during the then-current fiscal year, the aggregate subscription proceeds in respect of such Series of a Class of Units; or (ii) in any year following the year in which the initial subscription is made, the Series Net Asset Value of such Series of a Class of Units at the end of the immediately preceding fiscal year in which a performance fee with respect to such Series of a Class of Units was calculated and subsequently paid and, in each case, adjusted on a *pro rata* basis for redemptions or distributions made in respect of such Series of a Class of Units. In other words, any unrecovered net depreciation (other than as a result of redemptions) in the Series Net Asset Value of a Series of a Class of Units in any prior fiscal year will reduce the net appreciation on which a performance fee is calculated with respect to such Series in subsequent years (that is, there is a "perpetual high water mark").

In order to facilitate an equitable allocation of the performance fee payable by the Fund to the Investment Advisor amongst all Unitholders, a "series accounting methodology" will be used to track the performance fee and, therefore, the High Water Mark applicable to each Series of a Class of Units. Units issued at any point shall bear a designation which corresponds to the particular month and year in which the particular Units were issued. See "Fees and Expenses of the Fund – Performance Fees" and "Valuation of the Fund – Series Net Asset Value per Unit".

Establishment and Operating Expenses:

The Fund is responsible for the costs of its initial organization and the Offering, including, without limitation, fees and expenses of legal counsel. Such expenses are being amortized over the five-year period commencing with the payment of such expenses.

The Fund is responsible for the payment of all fees and expenses relating to its operations, including, but not limited to, brokerage commissions on portfolio transactions, all regulatory filing fees, registrar and transfer agent fees and expenses, audit fees, accounting fees, administration fees including record keeping and legal fees and expenses, custody and safekeeping charges, providing financial and other reports to Unitholders, all taxes, assessments or other governmental charges levied against the Fund and interest expense, if any.

The Fund is generally required to pay applicable sales taxes on the management fee, performance fee and on most administration expenses that it pays.

Each Class or Series of Units is responsible for the expenses specifically related to that Class or Series and a proportionate share of expenses that are common to all Classes and Series. The Fund Manager shall allocate expenses to each Class and Series of Units in its sole discretion as it deems fair and reasonable in the circumstances.

See "Fees and Expenses of the Fund – Establishment and Operating Expenses".

Dealer Compensation:

A sales commission of up to 2% of the purchase price may be deducted from a purchase order for Class A Units. Such commission is negotiated between the investor and the

registered dealer (a “**Registered Dealer**”) through whom the investor purchases the Class A Units and is paid by the investor to the Registered Dealer.

In respect of Class A Units, the Fund Manager will pay Registered Dealers a servicing fee based on the aggregate market value of their clients’ investment in Class A Units at an annualized rate of 1%. Servicing fees are calculated and paid on a monthly basis in arrears approximately 15 days after the determination of the applicable month-end Series Net Asset Value of the Series of Class A Units. A Registered Dealer is entitled to such fees in respect of such Class A Units for so long as its clients hold those Class A Units.

There is no sales commission or servicing fee payable in respect of an investor’s investment in Class F Units.

In respect of a purchase of any Class of Units, the Fund Manager may agree to pay an additional commission, in an amount to be negotiated on a case-by-case basis, to the Registered Dealer and/or other person legally eligible to accept a commission. Commissions may be modified or discontinued by the Fund Manager at any time. See “Dealer Compensation”.

**Eligibility for Investment:** Provided that the Fund qualifies and continues to qualify at all times as a “mutual fund trust” within the meaning of the Tax Act (as defined herein), (i) the Units will be “qualified investments” under the Tax Act for a trust governed by a TFSA, RRSP, RRIF, RESP, DPSP, or RDSP (each a “**Registered Plan**”), and (ii) provided further that neither the Fund, nor any person that does not deal at arm’s length with the Fund within the meaning of the Tax Act, is an annuitant, a beneficiary, an employer or a subscriber under, or a holder of, the Registered Plan (as applicable), the Subscription Receipts will be “qualified investments” under the Tax Act for a trust governed by a Registered Plan.

Holders of TFSAs or RDSPs, subscribers under RESPs and annuitants under RRSPs or RRIFs should consult their own tax advisors as to the status of the Units or Subscription Receipts as a “prohibited investment” for such plans for the purposes of the Tax Act, including whether such Units could be excluded property based on their particular circumstances. See “Eligibility for Investment”.

**Distributions:** The Fund Manager intends to cause the Fund to distribute annually to Unitholders sufficient income and capital gains (net of applicable losses) so that it generally will not pay any non-refundable Canadian federal income tax under Part I of the Tax Act. Distributions, if any, are paid as of the last Business Day of the calendar year, and at such other times as may be determined by the Fund Manager. Subject to the Fund Manager’s discretion to make distributions of cash, including to those Unitholders who have redeemed their Units during the applicable calendar year, distributions will automatically be reinvested in additional Units. Following such distributions, Units will be immediately consolidated such that the number of outstanding Units held by each Unitholder on such day following the distribution will equal the number of Units held by the Unitholder prior to the distribution, except to the extent that tax has to be withheld in respect of the distribution. All distributions payable in respect of a Class of Units will be made on a *pro rata* basis to Unitholders of that Class. See “Income and Capital Gains Distributions”.

**Certain Canadian Federal Income Tax Considerations:** A Unitholder who is an individual (other than a trust) resident in Canada for the purposes of the Tax Act will generally be required to include in computing income for a taxation year the amount of the Fund’s net income for the taxation year, including net realized taxable capital gains, paid or payable to the Unitholder (whether in cash or in

Units) in the taxation year. Any other amount in excess of the Fund's net income and net realized capital gains for a taxation year paid or payable to the Unitholder in the year (i.e. returns of capital) will not generally be included in the Unitholder's income. Such amount, however, will generally reduce the adjusted cost base of the Unitholder's Units. To the extent that the adjusted cost base of a Unit would otherwise be less than zero, the negative amount will be deemed to be a capital gain realized by the Unitholder from the disposition of the Unit and the Unitholder's adjusted cost base will be increased by the amount of such deemed capital gain to zero.

A Unitholder who disposes of Units held as capital property (on redemption or otherwise) will realize a capital gain (or capital loss) to the extent that the proceeds of disposition (other than any amount payable by the Fund which represents an amount that is otherwise required to be included in the Unitholder's income, as described above) exceed (or are exceeded by) the aggregate of the adjusted cost base of the Units and any reasonable costs of disposition. No gain or loss will be realized by a Unitholder on the issuance of a Unit upon exchange of a Subscription Receipt.

**Each investor should satisfy her/himself as to the tax consequences of an investment in Units by obtaining advice from her/his tax advisor.** This summary of Canadian federal income tax considerations for the Fund and for Canadian resident Unitholders is subject in its entirety to the qualifications, limitations and assumptions set out under the heading "Certain Canadian Federal Income Tax Considerations". For a detailed explanation of the Canadian federal income tax considerations generally relevant to investors, see "Certain Canadian Federal Income Tax Considerations".

Risk Factors and Conflicts of Interest:	An investment in the Units is subject to certain risks. The Fund is subject to various risk factors and conflicts of interest, more fully described under "Risk Factors" and "Conflicts of Interest". An investment in the Units should only be made after consultation with qualified sources of investment and tax advice. There can be no assurance that the Fund will achieve its investment objective.
Legal Counsel to the Fund:	Blake, Cassels & Graydon LLP Toronto, Ontario
Custodian / Prime Broker for the Fund:	The Bank of Nova Scotia is the custodian of the assets of the Fund (the " <b>Custodian</b> "). The Custodian is also the prime broker for, and receives fees from, the Fund.
Fund Administrator for the Fund:	SGGG Fund Services Inc. Toronto, Ontario
Auditors of the Fund:	Ernst & Young LLP Toronto, Ontario
Year-end of the Fund:	December 31 <sup>st</sup> .
Statutory and Contractual Rights of Action:	Purchasers of Units are entitled to the benefit of certain statutory or contractual rights of action. See "Purchasers' Rights of Action for Damages and Rescission".

## GLOSSARY

“**Applicable Securities Laws**” means, at any time, the securities laws, regulations and rules in the Offering Jurisdictions and the requirements, rules and policies of the Canadian securities regulatory authorities that are then applicable to the Fund in the circumstances;

“**Base Series**” means in respect of a Class, the initial Series of such Class issued on the initial Subscription Date for such Class and such further Series of such Class as may be designated by the Fund Manager and includes, for greater certainty, any Units reclassified into a Base Series as of the end of each calendar year as described under “Fees and Expenses of the Fund”;

“**Business Day**” means a day on which commercial banks in Toronto, Ontario are open for business;

“**Class**” means a particular class of Units;

“**CRA**” means the Canada Revenue Agency;

“**DPSP**” means a deferred profit sharing plan within the meaning of the Tax Act;

“**Fund**” means Polar Micro-Cap Fund, an open-ended investment trust created under the laws of the Province of Ontario pursuant to the Trust Agreement;

“**Fund Administrator**” means SGGG Fund Services Inc., the administrator of the Fund;

“**Fund Manager**” means Polar, in its capacity as the manager of the Fund pursuant to the provisions of the Trust Agreement;

“**Hurdle Rate**” means an annualized 5% return threshold which is included in the determination of the annual performance fee as described under “Fees and Expenses of the Fund – Performance Fees”;

“**Investment Advisor**” means Polar, in its capacity as investment advisor to the Fund pursuant to the provisions of the Trust Agreement;

“**Investment Application**” means the purchase agreement required to be completed for a purchase of Units in the Fund in the form prescribed by the Fund Manager from time to time;

“**Net Asset Value**” means the net asset value of the Fund calculated as described under “Valuation of the Fund”;

“**Offering**” means the offering of an unlimited number of Class A Units and Class F Units of the Fund issuable in Series on a continuous basis pursuant to exemptions from the prospectus requirements of applicable securities legislation under this Offering Memorandum;

“**Offering Jurisdictions**” means, collectively, each of the provinces and territories of Canada;

“**Offering Memorandum**” means this amended and restated confidential offering memorandum;

“**Polar**” means Polar Asset Management Partners Inc., which acts as Fund Manager and Investment Advisor to the Fund pursuant to the provisions of the Trust Agreement;

“**RDSP**” means a registered disability savings plan within the meaning of the Tax Act;

“**Redemption Charge**” means the 10% short-term trading redemption charge based on the Net Asset Value attributable to the redeemed units relating to a redemption of Units within the first year of purchase;

“**Redemption Date**” means the last calendar day of any month and any other day as the Fund Manager may determine;

“**Redemption Request**” means a duly authorized written or electronic request for redemption of Units delivered to the Fund Manager;

“**Registered Dealers**” means dealers or brokers that are registered under Applicable Securities Laws to sell securities of investment funds and that are not restricted from selling the Units;

“**Registered Plan**” means an RRSP, RRIF, DPSP, RESP, RDSP or TFSA;

“**RESP**” means a registered education savings plan within the meaning of the Tax Act;

“**RRIF**” means a registered retirement income fund within the meaning of the Tax Act;

“**RRSP**” means a registered retirement savings plan within the meaning of the Tax Act;

“**Series**” means a particular series of a Class of Units;

“**Series Net Asset Value**” means the Net Asset Value attributable to any Series of a Class of Units calculated as described under “Valuation of the Fund”;

“**Series Net Asset Value per Unit**” means the Series Net Asset Value attributable to each Unit in such Series calculated as described under “Valuation of the Fund”;

“**Subscription Date**” means the last Business Day of each month and any other day as the Fund Manager may determine in its sole discretion;

“**Subscription Deadline**” means the last Business Day of the current month-end;

“**Subscription Receipt**” means the interim subscription receipts fixed at a net asset value of \$100 per subscription receipt that investors initially receive after subscribing for Units (such subscription receipts to be automatically converted into Units after the calculation of the Series Net Asset Value of each Series of Units, as further described under “Purchase Procedure”);

“**Tax Act**” means the *Income Tax Act* (Canada) as now or hereafter amended, or successor statutes and shall include all regulations promulgated thereunder;

“**Tax Proposals**” means all specific proposals to amend the Tax Act publicly announced by or on behalf of the Minister of Finance (Canada) prior to the date hereof;

“**Termination Date**” means the date on which the Fund is to be terminated;

“**TFSA**” means tax-free savings account within the meaning of the Tax Act;

“**Trust Agreement**” means the trust agreement dated as of January 31, 2014 between Polar (as settlor, fund manager and investment advisor) and TSX Trust Company (as trustee) as the same may be amended, supplemented or amended and restated from time to time;

“**Trustee**” means TSX Trust Company, in its capacity as trustee of the Fund pursuant to the provisions of the Trust Agreement;

“**Unitholders**” means the holders of Units of any Class or Series as the context may require and fractions thereof;

“**Units**” means the Class A Units and Class F Units of the Fund; and

“**Valuation Date**” means the last Business Day of any month and any other day as the Fund Manager may determine.

## **THE FUND**

Polar Micro-Cap Fund (the “**Fund**”) is an open-ended investment trust governed by the laws of the Province of Ontario pursuant to a trust agreement dated as of January 31, 2014 between Polar Asset Management Partners Inc. (in its capacity as settlor, fund manager and investment advisor) (“**Polar**”) and TSX Trust Company (as trustee), as the same may be amended, supplemented or amended and restated from time to time (the “**Trust Agreement**”). The principal address of the Fund is 401 Bay Street, Suite 1900, P.O. Box 19, Toronto, Ontario M5H 2Y4.

The only undertaking of the Fund is the investment of its funds. An investment in the Fund is represented by Units. Holders of Units are hereinafter referred to as “**Unitholders**”. See “Units of the Fund”.

### **SERVICES PROVIDED TO THE FUND BY POLAR ASSET MANAGEMENT PARTNERS INC.**

#### **Fund Manager**

Polar acts as the manager to the Fund (in such capacity, the “**Fund Manager**”) pursuant to the provisions of the Trust Agreement.

The Fund Manager is responsible for the day-to-day business of the Fund including management of the Fund’s investment portfolio. The Fund Manager is required to exercise its powers and discharge its duties honestly, in good faith, and in the best interests of the Fund and to exercise the care, diligence and skill of a reasonably prudent professional manager of an open-ended pooled trust in comparable circumstances. Among its other powers, the Fund Manager may establish the Fund’s operating expense budget and authorize the payment of operating expenses. The Trust Agreement will be terminated by the Trustee in certain circumstances, including if: (i) the Fund Manager becomes bankrupt or is insolvent; (ii) the Fund Manager’s assets otherwise become liable to seizure or confiscation by any public or government authority; or (iii) the Fund Manager is in material default of its obligations under the Trust Agreement and such default continues for a period of 120 days from the date the Fund Manager receives notice of such material default from the Trustee. Polar may resign as Fund Manager at any time on 60 days written notice to the Trustee and the Unitholders. The Trust Agreement contains provisions for the appointment of a successor fund manager in the event of the removal or resignation of the Fund Manager. If no successor fund manager is appointed, the Fund will be terminated.

#### **Investment Advisor**

Polar has also been appointed by the Trustee as investment advisor (in such capacity, the “**Investment Advisor**”) under the terms of the Trust Agreement to provide investment advisory services to the Fund. Under the Trust Agreement, Polar is solely responsible for all investment decisions made on behalf of the Fund. The Investment Advisor is required to exercise its powers and discharge its duties honestly, in good faith, and in the best interests of the Fund and to exercise the care, diligence and skill of a reasonably prudent portfolio manager of an open-ended pooled trust in comparable circumstances. The Trust Agreement will be terminated by the Trustee if the Investment Advisor is in material default of its obligations under the Trust Agreement and such default continues for a period of 120 days from the date the Investment Advisor receives notice of such material default from the Trustee. Polar may resign as Investment Advisor at any time on 60 days’ written notice to the Trustee and the Unitholders.

#### **Indemnification of Fund Manager and Investment Advisor**

The Trust Agreement provides that certain persons, including the Fund Manager, Investment Advisor and certain affiliated parties, along with their past and current directors and officers, have a right of indemnification from the Fund for legal fees, judgments and amounts paid in settlement, actually and reasonably incurred in carrying out their duties under the Trust Agreement or in respect of certain other investment funds managed by the Fund Manager from which property was acquired by the Fund, except in certain circumstances, including where there has been gross negligence, willful misconduct or bad faith on the part of the Fund Manager or Investment Advisor or the Fund Manager or Investment Advisor has failed to fulfill its respective standard of care as set out in the Trust Agreement.

### **Information Relating to Polar Asset Management Partners Inc.**

Polar, a wholly-owned subsidiary of Polar Financial Corporation, is a dealer registered in the category of Exempt Market Dealer in each of the provinces of Canada under the applicable securities legislation in each of the provinces of Canada. Polar is also registered as an Investment Fund Manager in Ontario, Québec and Newfoundland and Labrador, as a Commodity Trading Manager in Ontario and as a Portfolio Manager in Ontario and Alberta.

The investment objective of the Fund differs from the investment objectives of the other funds managed and advised by Polar, which may employ different degrees of leverage and/or have a wider diversity of investment strategies.

### **Officers, Directors and Key Investment Personnel of the Investment Advisor**

The directors and officers of Polar and its employees who have primary responsibility for providing investment advice to the Fund are set out below:

<b><u>Name</u></b>	<b><u>Position with the Investment Advisor</u></b>
<b>TOM SABOURIN, CA</b> Oakville, Ontario	Director, President and Chief Executive Officer
<b>PAUL SABOURIN, MBA</b> Mississauga, Ontario	Director, Chairman and Chief Investment Officer
<b>HERMAN GILL, CA</b> Mississauga, Ontario	Director, Chief Financial Officer and Secretary
<b>ABDALLA RUKEN, PhD, MSc</b> Toronto, Ontario	Vice-President and Chief Risk Officer
<b>GREG LEMAICH, BAsC, JD</b> Toronto, Ontario	General Counsel and Chief Compliance Officer
<b>CHRISTOPHER FERNYC, CFA</b> Calgary, Alberta	Strategy Lead, Micro-Cap Equities
<b>NAZ KAROLIA, CFA</b> Toronto, Ontario	Analyst, Micro-Cap Equities

**Tom Sabourin, CA, Director, President and Chief Executive Officer.** Mr. T. Sabourin joined the Investment Advisor as CEO and President in 2006. From 1996 through 2005, he was a Vice-President of Polar Capital Corporation, an affiliated private equity manager. Mr. T. Sabourin originally joined the Investment Advisor as CFO in 1994. Mr. T. Sabourin earned a Bachelor of Engineering degree from the University of Western Ontario and began his career with Ernst & Young in 1986. He earned his Chartered Accountant designation in 1988.

**Paul Sabourin, MBA, Director, Chairman and Chief Investment Officer.** Mr. P. Sabourin graduated from the University of Toronto in 1975 with a B.A., and the University of Western Ontario in 1980 with an MBA. He joined Burns Fry Ltd. in 1982 as a research analyst focusing on small cap equities. In 1983, he moved to the institutional trading area and worked in a number of areas including preferred shares, convertible bonds, risk arbitrage and liability trading. In 1987, Mr. P. Sabourin became a director of Burns Fry, and later became a member of the Executive Committee, responsible for managing the institutional trading area. In 1991, Mr. P. Sabourin was a founding partner of the Investment Advisor. Since that time he has variously managed convertible arbitrage, merger

arbitrage, and equity special situations strategies. Mr. P. Sabourin has been the Chief Investment Officer of the Investment Advisor since 1991.

**Herman Gill, CA, Director, Chief Financial Officer and Secretary.** Mr. Gill earned a B.A. in Chartered Accountancy Studies from the University of Waterloo in 1993 and upon graduation he continued his internship with the accounting firm BDO Dunwoody Ward Mallette. In 1994, he was admitted into membership with the Institute of Chartered Accountants of Ontario. In 1995, Mr. Gill joined Fidelity Investments Canada where he progressed through various positions across domestic and offshore fund operation areas, where his responsibilities included tax, audit, compliance and financial reporting. From 1997 to 2002, Mr. Gill directed the Canadian sales effort for a U.S. based software provider, Princeton Financial Systems, marketing to the Canadian and offshore institutional investment market. In July 2002, Mr. Gill joined the Investment Advisor as the Chief Financial Officer.

**Abdalla Ruken, PhD, MSc, Vice-President and Chief Risk Officer.** Mr. Ruken graduated from McMaster University with a Ph. D. in Theoretical Physics in 1994. He joined the Bank of Nova Scotia in 1997 as a market risk manager. In 2000, he was appointed Assistant General Manager, heading a group responsible for managing the market risk of traded products. In this capacity, he led the development of the bank's portfolio simulation engine for derivative exposure measurement. He also contributed significantly to building a framework for managing the risk of alternative assets. In 2006, he became Vice President responsible for structured transactions and hedge fund risk management. In January 2008, he joined the Investment Advisor as Chief Risk Officer.

**Greg Lemaich, BASc, JD, General Counsel and Chief Compliance Officer.** Mr. Lemaich earned a BASc in Industrial Engineering from the University of Toronto in 2002 and a J.D. from the University of Toronto Faculty of Law in 2006 and became a member of the Law Society of Upper Canada in 2007. Mr. Lemaich's previous legal experience includes time spent in private practice with a focus on securities law, primarily at Goodmans LLP and as General Counsel of a Toronto-based investment fund manager. He joined the Investment Advisor in November 2012.

**Christopher Fernyc, CFA, Strategy Lead, Micro-Cap Equities.** Mr. Fernyc joined the Investment Advisor in June 2012 as Strategy Lead for Micro-Cap Equities, and is the Portfolio Manager for the Fund. Mr. Fernyc started his career in 1998 at Bissett Investment Management as an equity research analyst, focusing on Canadian smaller capitalization equities. He became a portfolio manager for several Bissett mandates from 2000 until his departure in 2007. He managed his personal portfolio of investments from 2008 until June 2012. Mr. Fernyc graduated from Lakehead University in 1997 with an Honours Bachelor of Commerce and earned his CFA designation in 2001.

**Naz Karolia, CFA, Analyst, Micro-Cap Equities.** Mr. Karolia is an Analyst for the Micro-Cap team, having joined the Investment Advisor in December 2016. Mr. Karolia is responsible for fundamental analysis of North American smaller capitalization companies. Prior to joining the Investment Advisor, Mr. Karolia was a Vice President for a Canadian small-cap equity-focused investment bank, specializing in the technology and industrial sectors. Mr. Karolia graduated from the University of Toronto with a Bachelor of Commerce in 2000, and is a CFA Charterholder.

The services of the Fund Manager and the Investment Advisor are not exclusive to the Fund, and nothing in the Trust Agreement prevents Polar or any of its affiliates from providing similar services to other investment funds and other clients or from engaging in other activities.

### **THE TRUSTEE**

TSX Trust Company acts as the trustee for the Fund pursuant to the provisions of the Trust Agreement. The Trustee may transfer, sell or assign the performance of the trust and powers vested in it under the Trust Agreement. The Fund Manager may remove the Trustee from office and appoint a successor trustee from time to time on 60 days' written notice to the Trustee and Unitholders or in certain other circumstances provided that a successor trustee is appointed or the Fund is terminated. The Trustee or any successor appointed pursuant to the terms of the Trust Agreement may resign upon 90 days' written notice to the Fund Manager during which period the Fund Manager shall use its best efforts to arrange for a successor trustee. The Fund Manager will provide written notice of the Trustee's resignation to Unitholders, not less than 60 days prior to the date when such resignation is to take effect. If no successor trustee is appointed, the Fund shall be terminated.

The Trust Agreement provides that the Trustee has a right of indemnification by the Fund in carrying out its duties under the Trust Agreement except in cases of willful misconduct, bad faith or gross negligence or in cases where the Trustee fails to act honestly and in good faith or to exercise the degree of care, diligence and skill that a reasonably prudent Canadian trust company would exercise in comparable circumstances. In addition, the Trust Agreement contains provisions limiting the liability of the Trustee.

For its services, the Trustee shall receive an annual fee which shall be paid from the Fund at such times as the Fund Manager and the Trustee may agree upon from time to time. The amount of this annual fee shall be settled by written agreement to be entered into between the Trustee and Fund Manager.

### **INVESTMENT OBJECTIVE OF THE FUND**

The Fund seeks to achieve long-term capital growth by investing primarily in the equity securities of small-sized Canadian and U.S. companies, which may, from time to time, include investments in private businesses.

### **INVESTMENT STRATEGIES OF THE FUND**

#### **Investment Strategy**

In seeking to achieve its investment objective, the Fund invests in a diversified portfolio of equity securities chosen according to a bottom-up, fundamentals driven investment approach. Specifically, the Investment Advisor examines, but is not limited to, the following factors in determining security selection:

- (a) ***Business Model:*** Detailed business plan and income statement analysis to determine the nature and sustainability of a company's competitive advantage. The Investment Advisor favours proven business models that have exhibited a measurable history of stability and sustainability.
- (b) ***Sources of Capital:*** Detailed cash flow statement analysis to determine the ability of the company to internally generate capital equal to or in excess of its operational requirements. The Investment Advisor favours companies that generate excess capital that can be deployed in a discretionary manner by management teams into opportunities designed to increase shareholder value.
- (c) ***Capital Structure:*** Detailed balance sheet analysis to determine the nature and extent of indebtedness utilized by a company. The Investment Advisor favours companies with conservative capital structures that allow for opportunistic deployment of resources irrespective of capital markets conditions.
- (d) ***Valuation:*** Multi-faceted valuation analysis to determine if the market value of a company's securities, in the opinion of the Investment Advisor, is equal to or below their intrinsic value. The Investment Advisor favours companies with below market average valuation multiples.
- (e) ***Management Alignment:*** Routine review of levels, and changes in, equity ownership by key decision makers within a company. The Investment Advisor favours companies where there is significant economic alignment of interests between internal and external stakeholders.

The investment activities of the Fund will be conducted within a disciplined set of investment guidelines, including, without limitation, those discussed below.

- (a) ***Types of Investments:*** The Fund primarily invests in equity and equity derivative securities, including stocks, warrants, instalment receipts and options, subject to the investment restrictions discussed below. From time to time, the Investment Advisor may determine that certain investment opportunities are best executed using debt securities, either directly or as part of a hedge, or using commodity, index or other futures or options as part of a hedge.
- (b) ***Diversification:*** The Fund will ordinarily maintain a diversified portfolio of not less than 20 securities.

- (c) **Gross Market Exposure:** The Fund may employ leverage. The gross amount of dollar exposure (i.e. dollars invested long plus dollars invested short) shall not ordinarily exceed 150% of the Fund's Net Asset Value. See "Leverage" under "Risk Factors".
- (d) **Net Market Exposure:** The Fund may maintain both long positions and short positions at any time, such that ordinarily the net amount of dollar exposure (dollars invested long minus dollars invested short) is within a range of +100% to -20% of the Fund's Net Asset Value.
- (e) **Foreign Investment:** The Fund invests primarily in Canadian and U.S. securities which are consistent with its investment objective.
- (f) **Currency Exposure:** The Fund's functional and reporting currency is Canadian dollars. The Fund will endeavour to hedge any significant non-Canadian dollar exposure back to the Canadian dollar.

### **Investment Restrictions**

The Fund will only invest in:

- (a) any share of the capital stock (including a privately placed share) of a corporation, subject to certain exceptions set out below;
- (b) any interest in a partnership, trust, entity, fund or organization, subject to certain exceptions set out below;
- (c) indebtedness; and
- (d) options, interests, and rights in respect of property described in paragraphs (a) to (c) above, and agreements under which obligations are derived from interest rates, from the price of property described in any of those paragraphs, from payments made in respect of such a property by its issuer to the holders of the property, or from an index reflecting a composite measure of such rates, prices or payments, whether or not the agreement creates any rights in or obligations regarding the referenced property itself.

The Fund will not invest in a share or interest otherwise permitted under paragraph (a) or (b) above, (i) of which more than 50% of the fair market value is derived from one or more real or immovable properties situated in Canada, "Canadian resource property" or "timber resource property" (each as defined for the purposes of the Tax Act), (ii) which is listed on a designated stock exchange and meets the condition in (i) above if the Fund, together with all persons with which the Fund does not deal at arm's length for purposes of the Tax Act, owns 25% or more of the issued shares of any class or series of the capital stock of the corporation or of the total value of the interests in the partnership, trust, entity, fund or organization; or (iii) which will otherwise constitute "taxable Canadian property" for the purposes of the Tax Act.

The Fund will also not invest in a share or interest in a non-resident entity that would be a "controlled foreign affiliate" of the Fund for the purposes of the Tax Act.

The Fund will not make or hold any investment or conduct any activity that would result in the Fund failing to qualify as a "unit trust" and a "mutual fund trust" within the meaning of the Tax Act under the then current definition of "unit trust" or "mutual fund trust" (or under any proposed amendments to such definitions that would have retroactive effect).

### **Securities Lending**

The Fund may lend securities on a collateralized and uncollateralized basis from its portfolio to creditworthy securities firms and financial institutions. While a securities loan is outstanding, the Fund will continue to receive the equivalent of the interest or dividends paid by the issuer on the securities, as well as interest on the investment of the collateral or a fee from the borrower. The risks in lending securities on a collateralized basis, as with other extensions of secured credit, consist of possible delay in receiving additional collateral, if any, or in recovery of the

securities or possible loss of rights in the collateral, if any, should the borrower fail financially. Absent collateral, the Fund would be an unsecured creditor of any such securities firms or financial institutions.

The investment program of the Fund is speculative and may entail substantial risks. Since market risks are inherent in all securities investments to varying degrees, there can be no assurance that the investment objective of the Fund will be achieved. In fact, certain investment practices described above can, in some circumstances, potentially increase the adverse impact on the Fund's investment portfolio. See "Risk Factors".

### **DETAILS OF THE OFFERING**

An unlimited number of Class A Units and Class F Units are being offered for sale, in Series, by the Fund on a continuous basis to an unlimited number of subscribers in each of the provinces and territories of Canada (the "Offering Jurisdictions") pursuant to the exemptions from prospectus requirements described herein (the "Offering") under this Offering Memorandum. Class A Units and Class F Units are offered to "accredited investors" (as such term is defined in National Instrument 45-106 – *Prospectus Exemptions*) ("NI 45-106") resident in, or otherwise subject to the securities laws of, the Offering Jurisdictions for a minimum purchase amount of \$25,000. A Unitholder may make an additional investment in Class A Units or Class F Units of not less than \$10,000, provided that at such time the Unitholder is an accredited investor. At the discretion of the Fund Manager, subscriptions for lesser amounts which comply with other available exemptions from prospectus requirements under Applicable Securities Laws may be accepted. Each subscriber must satisfy applicable regulatory requirements.

The Fund Manager reserves the right to accept or reject subscriptions for Units, to change the minimum amounts for investment in the Fund and/or discontinue the Offering at any time and from time to time.

### **FEES AND EXPENSES OF THE FUND**

#### **Management Fees**

The Fund pays the Fund Manager a management fee based upon the Series Net Asset Value of each Series of a Class of Units (before taking into account the accrual of any performance fee payable by the Fund (as described below)). The Fund Manager will receive a monthly fee equal to 1/12 of 2% of the aggregate Series Net Asset Value of the Class A Units (including an amount equal to a 1% annual servicing fee payable by the Fund Manager to brokers, dealers and advisors), and a monthly fee equal to 1/12 of 1% of the aggregate Series Net Asset Value of the Class F Units. The management fee is calculated and paid monthly as at the last calendar day of each month and as at any other day as the Fund Manager may determine.

#### **Performance Fees**

The Investment Advisor is entitled to an annual performance fee in respect of the outstanding Units of each Series of each Class equal to 20% of the net appreciation in the Series Net Asset Value of each Series of a Class of Units in excess of such Series' High Water Mark (as defined below) before taking into account the accrual of any performance fee and after deduction of an annualized 5% return threshold (the "Hurdle Rate"). A performance fee is also determined and paid in respect of any redemption of Units during a year where the Series Net Asset Value of such Series is above the High Water Mark and the Hurdle Rate for such Series.

Utilizing the "series accounting methodology" described below, the "High Water Mark" for each Series of a Class of Units shall be: (i) in respect of an initial subscription for a Series of a Class of Units during the then-current fiscal year, the aggregate subscription proceeds in respect of such Series of a Class of Units; or (ii) in any year following the year in which the initial subscription is made, the Series Net Asset Value of such Series of a Class of Units at the end of the immediately preceding fiscal year in which a performance fee with respect to such Series of a Class of Units was calculated and subsequently paid and, in each case, adjusted on a *pro rata* basis for redemptions and any distributions in respect of such Series of a Class of Units. In other words, any unrecovered net depreciation (other than as a result of redemptions) in the Series Net Asset Value of a Series of a Class of Units in any prior fiscal year will reduce the net appreciation on which a performance fee is calculated with respect to such Series in subsequent years (that is, there is a "perpetual high water mark").

In order to facilitate an equitable allocation of the performance fee payable by the Fund to the Investment Advisor amongst all Unitholders, a “series accounting methodology” will be used to track the performance fee and, therefore, the High Water Mark applicable to each Series of a Class of Units. Units issued at any point shall bear a designation which corresponds to the particular month and year in which the particular Units were issued. Units with a Series Net Asset Value for the fiscal year greater than or equal to the applicable High Water Mark and the Hurdle Rate of such Units may be re-designated into a base series for the Class of such Units (each, a “**Base Series**”) as of the first Business Day of the immediately following fiscal year. In the event that the Series Net Asset Value for a Series of Units does not exceed the applicable High Water Mark and the Hurdle Rate in any particular fiscal year (and, therefore, no performance fee is paid in respect of such Units), no re-designation will occur. Such Series of such Units shall continue and may not be re-designated into a Base Series until such time as the Series Net Asset Value of such Units exceeds the applicable High Water Mark and Hurdle Rate at the end of a subsequent fiscal year.

### **Establishment and Operating Expenses**

The Fund is responsible for the costs of its initial organization and the Offering, including, without limitation, fees and expenses of legal counsel. Such expenses are being amortized over the five-year period commencing with the payment of such expenses.

The Fund is responsible for the payment of all fees and expenses relating to its operations, including, but not limited to, brokerage commissions on portfolio transactions, all regulatory filing fees, registrar and transfer agent fees and expenses, audit fees, accounting fees, administration fees including record keeping and legal fees and expenses, custody and safekeeping charges, providing financial and other reports to Unitholders, all taxes, assessments or other governmental charges levied against the Fund and interest expense, if any.

The Fund is generally required to pay applicable sales taxes on the management fee, performance fee and on most administration expenses that it pays.

Each Class or Series of Units is responsible for the expenses specifically related to that Class or Series and a proportionate share of expenses that are common to all Classes and Series. The Fund Manager shall allocate expenses to each Class and Series of Units in its sole discretion as it deems fair and reasonable in the circumstances.

### **Indemnity Provided by the Fund**

The Fund has agreed to provide an indemnity to certain persons, including the Fund Manager and its past and current directors and officers, in connection with any legal fees, judgments and amounts paid in settlement incurred in carrying out their duties under the Trust Agreement, except in certain circumstances. See “Services Provided to the Fund by Polar Asset Management Partners Inc. – Indemnification of Fund Manager and Investment Advisor”.

## **VALUATION OF THE FUND**

### **Net Asset Value**

The Net Asset Value of the Fund and the Series Net Asset Value of each Series of Units is determined by the Fund Administrator in accordance with a services agreement. A separate Series Net Asset Value is calculated for each Series of each Class of Units. The Net Asset Value and the Series Net Asset Value, as at the relevant Valuation Date, will be calculated by the Fund Administrator on or about the 10<sup>th</sup> day following the relevant Valuation Date. A “**Valuation Date**” is the last Business Day of each month and any other day as determined from time to time by the Fund Manager.

The Net Asset Value as of any date shall equal the fair market value of the assets of the Fund as of such date, less an amount equal to the total Fund liabilities as of such date, determined in accordance with National Instrument 81-106 – *Investment Fund Continuous Disclosure* of the Canadian Securities Administrators (“**NI 81-106**”) or any exemptions therefrom and otherwise in accordance with International Financial Reporting Standards.

The Fund Manager may provide or make available estimates of the Net Asset Value or the Series Net Asset Value per Unit of any Series of Units from time to time. Such estimates, if provided or made available, are for informational purposes only and should not be relied upon or used for any other purpose as they may differ

materially from the actual Net Asset Value or Series Net Asset Value per Unit calculated by the Fund Administrator in accordance with the procedures described herein.

### **Valuation Principles**

The Fund Administrator determines the Net Asset Value of the Fund and the Series Net Asset Value of each Series of Units as at each Valuation Date after performing independent verification and reconciliation of the Fund's assets and liabilities, if any, as well as the recording of its revenues and expenses. The value of any investment on any Valuation Date is intended to represent the fair value of such investment on such date based upon the amount at which the investment could be exchanged between willing parties, other than in a forced liquidation sale, and is the Fund Administrator's estimate of such value using the methodology described in the Fund Manager's valuation policies and procedures, as they may be amended or revised from time to time.

In estimating the value of publicly traded securities, the Fund Administrator will rely on market data independently obtained from third party market data providers. Valuations of other security positions are derived from information received from third parties, including but not limited to brokers and independent valuation services providers. In certain circumstances, the Fund Administrator relies, without independent investigation, upon pricing information and valuations furnished to it by third parties, including pricing services. The Fund Administrator may also rely in part on Polar to value securities and other instruments held by the Fund for which quotations are not readily available. The Fund Manager verifies and reviews the valuation work conducted by the Fund Administrator. Security positions and cash balances are reconciled with the Fund's records based upon confirmations or statements that the Fund Administrator independently receives from prime brokers and other financial institutions that hold the Fund's assets. The procedures performed do not constitute an audit in accordance with generally accepted audit standards.

Any valuation of an investment may not reflect the actual amount that would be received by the Fund upon liquidation of such investment. In addition, the timing of liquidation of investments may also affect the prices that could be obtained upon such liquidations.

### **Series Net Asset Value per Unit**

The Series Net Asset Value, as of any date, shall equal the fair market value of the assets of the Fund as of such date attributable to that particular Series, less an amount equal to the total liabilities of the Fund as of such date attributable to that particular Series. The Series Net Asset Value per Unit shall be computed by the Fund Administrator as at each Valuation Date by dividing the applicable Series Net Asset Value by the total number of Units of such Series then outstanding on such Valuation Date, prior to any issuance or redemption of Units of such Series to be processed by the Fund Manager immediately following such calculation.

The Series Net Asset Value per Unit may differ from another Series due to a different performance fee accrual amount related to such Units.

### **Suspension of Calculation**

The Fund Manager may suspend the calculation of Net Asset Value and any subscriptions or redemptions of the Units: (i) for the whole or any part of a period during which normal trading is suspended on any stock exchange, options exchange or futures exchange within or outside Canada on which securities are listed and traded, or on which specified derivatives are traded, if those securities or specified derivatives represent more than 50% by value, or underlying market exposure, of the total assets of the Fund without allowance for liabilities, and if those securities or specified derivatives are not traded on any other exchange that represents a reasonably practical alternative, or (ii) with the approval of the relevant securities regulatory authorities, if applicable, or as otherwise required or permitted under Applicable Securities Laws.

## **PURCHASE PROCEDURE**

Class A Units and Class F Units are offered for sale in Series on a continuous basis at the applicable Series Net Asset Value per Unit, as at the applicable Valuation Date. Fractional Units will be issued up to a maximum of four decimal places.

Subscribers may purchase Units by delivering a completed Investment Application, together with full payment for the Units, to the subscriber's Registered Dealer. The Fund Manager must receive payment in addition to the duly completed Investment Application and any other required documents by the third Business Day following the date the subscription order is received. If the subscription order request is received by the Fund Manager on or before the last Business Day of the current month-end (each, a "**Subscription Deadline**"), such subscriber will be admitted at the Series Net Asset Value per Unit for the current month-end. If the subscription order request is received after the Subscription Deadline for a month, such subscriber will then be admitted at the Series Net Asset Value per Unit for the end of the following month (*i.e.*, will be processed on the last Business Day of the following month).

The Fund Manager reserves the right to accept or reject subscription orders, provided that any decision to reject an order is made within two Business Days after receipt by the Fund Manager of all required documents. Any monies received with a rejected order will be refunded without interest or deduction. The Fund Manager may permit subscriptions from investors outside of the Offering Jurisdictions in its sole discretion, provided it has determined that doing so will not have an adverse impact on the Fund or the existing Unitholders as a group.

All subscriptions for Units will initially be made through the purchase of interim subscription receipts at a fixed net asset value of \$100 per subscription receipt ("**Subscription Receipts**"). Following the calculation of the Series Net Asset Value of each Series of Units, the Subscription Receipts will be automatically converted, without any further action on the part of the subscriber, into the appropriate number of Units of the applicable Class as per each subscriber's Investment Application. The number of Units of the applicable Series will be the net subscription proceeds divided by the month-end Series Net Asset Value per Unit of such Series determined as at the applicable Valuation Date. Consequently, the initial purchase confirmation will confirm the purchase of the Subscription Receipts while a subsequent confirmation will confirm the final number of Units purchased by the subscriber. The number of Subscription Receipts will be different from the final number of Units so purchased. These Subscription Receipts are not redeemable and do not carry any voting rights.

### **REDEMPTION OF UNITS**

Subject to certain requirements, any Unitholder may, at any time, request that the Fund redeem his or her Units of a Series at the applicable Series Net Asset Value per Unit as at the last calendar day of any month or any other day as the Fund Manager may determine (each a "**Redemption Date**"), provided that a written or electronic request for redemption (a "**Redemption Request**") is received by the Fund Manager no later than 4:00 p.m. (Toronto time) on a date which is not less than 30 calendar days prior to the applicable Redemption Date. The Fund Manager may waive the requirement to submit a Redemption Request at least 30 calendar days prior to the applicable Redemption Date or may accept a redemption of Units at any time during the year provided that the Fund Manager concludes that such action will not adversely affect the interests of the remaining Unitholders. Payment of the redemption proceeds (net of any Redemption Charge, as defined below) will be made to the redeeming Unitholder on or about the 10<sup>th</sup> Business Day of the month following the Redemption Date. See "Income and Capital Gains Distributions".

The investment objective of the Fund is designed for investors with medium to long-term investment horizons and is not intended as a short-term investment. Therefore, the Fund may charge a 10% short-term trading redemption charge (a "**Redemption Charge**"), based on the Net Asset Value attributable the redeemed Units, to any Unitholder who redeems Units within the first year of the purchase of such Units.

The Fund Manager may in its absolute discretion decide to satisfy any Redemption Request in full or in part by instructing the Trustee to transfer *in specie* such securities or other property of the Fund, which together with payments in cash (if any), shall in the aggregate have a value not less than the redemption amount payable to the Unitholder (*i.e.* the Net Asset Value attributable to such redeemed Units) provided that the value of all securities and other property of the Fund shall be determined as at the relevant Valuation Date. The Fund Manager does not anticipate instructing the Trustee to satisfy redemption requests *in specie* other than in exceptional circumstances such as when one or more redemptions by one or more Unitholders have a materially prejudicial effect on the remaining Unitholders or otherwise materially and adversely affect the Fund.

### **Suspension of Redemptions**

The Fund Manager may at any time suspend the right to redeem Units and may postpone the date of payment upon redemption where there has been a suspension in the calculation of the Net Asset Value. See "Valuation of the Fund

– Suspension of Calculation”. In the event of such a suspension, a Unitholder who has submitted a Redemption Request in respect of some or all of the Units for which the Series Net Asset Value (as applicable) has not yet been calculated, may either withdraw the Redemption Request or, in the case of redemption for cash or property other than Units, receive payment based on the Series Net Asset Value (as applicable) calculated as of the first Valuation Date following termination of the suspension.

If, in respect of any particular Redemption Date, the Fund has received Redemption Requests for more than 10% of the outstanding Units and the Fund Manager determines that the redemption of such Units would materially prejudice the interests of the other Unitholders, or otherwise materially and adversely affect the Fund, the Fund Manager may elect to reduce the number of Units to be redeemed pursuant to each Redemption Request received for such Redemption Date such that no more than an aggregate of 10% of the issued and outstanding Units will be redeemed on that Redemption Date (the “**Gate**”). In the event that the Gate is imposed, Unitholders who have submitted Redemption Requests for such Redemption Date will participate in the aggregate amount of funds available for redemption on that date (up to the amount requested to be redeemed by such Unitholder) *pro rata* based on the relative Series Net Asset Value of each redeeming Unitholder’s Units (without reduction for Redemption Requests received for such Redemption Date). To the extent that any Redemption Request is not fully satisfied on a particular Redemption Date, the unsatisfied portion of such Redemption Request (unless withdrawn by the Unitholder) will be treated as if a further Redemption Request has been made in respect of such Units for the next Redemption Date and, if necessary, any subsequent Redemption Dates until all Units specified in the Redemption Request have been redeemed. Any Redemption Request which remains unsatisfied for nine (9) consecutive Redemption Dates as a result of the imposition of the Gate will be satisfied as of the tenth (10th) Redemption Date regardless of the Gate (but subject to other terms relating to redemption of Units by Unitholders). The proceeds payable on redemption will be adjusted for any changes in the Series Net Asset Value per Unit during any period of suspension or delay in the processing of Redemption Requests and any Units to be redeemed on a Redemption Date will be redeemed as of the Series Net Asset Value per Unit on the applicable Redemption Date.

The Fund may redeem some of the Units for which redemption has been requested by Unitholders and postpone or suspend the redemption of the remaining Units of such Unitholders. Any partial redemption shall be made *pro rata* according to the Net Asset Value attributable to the Unitholder’s holdings (without reduction for Redemption Requests as of such Redemption Date).

### **Mandatory Redemptions**

Partial redemptions that reduce the aggregate Net Asset Value attributable to a Unitholder’s investment below the minimum balance of \$1,000 may result in the Fund requiring a mandatory redemption of all Units held by such Unitholder. The Fund may also require the mandatory redemption of Units under other circumstances. Any such mandatory redemption will be made at the applicable redemption price per Unit on the next Redemption Date following the issuance of not less than 10 days’ prior written notice of the mandatory redemption to the affected Unitholder.

### **DEALER COMPENSATION**

A sales commission of up to 2% of the purchase price may be deducted from a purchase order for Class A Units. Such commission is negotiated between the investor and the Registered Dealer through whom the investor purchases the Class A Units and is paid by the investor to the Registered Dealer.

In respect of Class A Units, the Fund Manager will pay Registered Dealers a servicing fee based on the aggregate market value of their clients’ investment in Class A Units at an annualized rate of 1%. Servicing fees are calculated and paid on a monthly basis in arrears approximately 15 days after the determination of the applicable month-end Series Net Asset Value of the Series of Class A Units. A Registered Dealer is entitled to such fees in respect of such Class A Units for so long as its clients hold those Class A Units.

There is no sales commission or servicing fee payable in respect of an investor’s investment in Class F Units.

In respect of a purchase of any Class of Units, the Fund Manager may agree to pay an additional commission, in an amount to be negotiated on a case-by-case basis, to the Registered Dealer and/or other person legally eligible to accept a commission. Commissions may be modified or discontinued by the Fund Manager at any time.

## **UNITS OF THE FUND**

Each Unit of the same Class or Series will represent an equal undivided interest in the net assets of the Fund attributable to that Class or Series of Units. The Fund is authorized to issue an unlimited number of Classes and/or Series of Units and an unlimited number of Units in each such Class or Series, subject to any determination to the contrary made by the Fund Manager in its sole discretion. The Fund may issue fractional Units so that subscription funds may be fully invested. Each whole Unit of a particular Class or Series has equal rights to each other Unit of the same Class and Series with respect to all matters, including voting, receipt of distributions from the Fund, liquidation and other events in connection with the Fund. Units will have no preference, conversion, exchange or pre-emptive rights over any other Unit of the same Class or Series. Each whole Unit of a particular Class entitles the holder thereof to one vote at meetings of Unitholders where all Classes vote together, or to one vote at meetings of Unitholders where that particular Class of Unitholders votes separately as a Class. No holder of a fraction of a Unit, as such, shall be entitled to notice of, or to attend or vote at, meetings of Unitholders or of a Class of Unitholders, except to the extent that such fractional Units may represent in the aggregate one or more whole Units.

Units may only be issued as fully-paid and non-assessable upon receipt of the full consideration for which they are to be issued and are not subject to further call or assessment and no pre-emptive rights attach to them. The Fund Manager may, at any time, sub-divide or consolidate any Units. No certificates representing Units shall be issued by the Fund Manager or Trustee. The rights of Unitholders of the Fund are contained in the Trust Agreement and may be modified, amended or varied only in accordance with the provisions contained in the Trust Agreement. Units are transferable on the register of the Fund only by a registered Unitholder or his or her legal representative, subject to compliance with Applicable Securities Laws. Unitholders are entitled to redeem their Units, subject to the Fund Manager's right to suspend the right of redemption. See "Redemption of Units".

Although the money invested by investors to purchase Units of any Class of the Fund is tracked on a Class by Class basis in the Fund's administration records, the assets of all Classes of Units will be combined into a single pool to create one portfolio for investment purposes.

After obtaining the approval of a Unitholder or providing a Unitholder with 30 days' prior written notice, the Fund Manager may redesignate Units of a Series issued to the Unitholder as Units of another Series having an equivalent value. For greater certainty, Units redesignated into a Base Series do not require prior approval or notice.

The Fund may issue additional Classes of Units from time to time without notification to Unitholders.

## **COMMUNICATIONS WITH UNITHOLDERS**

Each Unitholder will receive from the Fund Administrator an annual statement showing the Units held and any transactions for the preceding year. Such statements will contain any amounts reinvested for the Unitholder during the preceding period, the number of additional Units purchased or redeemed on behalf of the Unitholder and the Net Asset Value attributable to the Units held by the Unitholder determined on the Valuation Date immediately preceding the date of the statement.

The Fund Manager will deliver to Unitholders financial statements of the Fund in accordance with the provisions of NI 81-106. The Fund Manager has relied and going forward intends to rely on the exemption pursuant to section 2.11 of NI 81-106 not to file its financial statements with the Ontario Securities Commission.

Pursuant to NI 81-106, Unitholders will be sent audited annual financial statements within 90 days of the Fund's year-end and unaudited semi-annual financial statements within 60 days after June 30<sup>th</sup> in accordance with their instructions. Under NI 81-106, Unitholders have the option to receive or not receive annual and interim financial statements and have the ability to change their selection at any time by contacting the Fund Manager.

## **MEETINGS OF UNITHOLDERS**

The Fund will not hold regular meetings, however the Fund Manager may convene a meeting of Unitholders, or a Class of Unitholders, as it considers appropriate or advisable from time to time. The Trustee must also call a meeting of Unitholders or of a Class of Unitholders on the written request of Unitholders holding not less than 50% of the outstanding Units (or of a Class with respect to a Class meeting) in accordance with the Trust Agreement,

provided that in the event of a request to call a meeting of Unitholders made by such Unitholders, the Trustee shall not be obliged to call any such meeting until it has been satisfactorily indemnified by such Unitholders against all costs of calling and holding such meeting.

Units of a Class shall vote separately as a Class if a Class is affected by any matter requiring the approval of Unitholders in a manner that is different from Units of another Class or if the notice calling the meeting so provides.

Not less than 21 days' notice will be given of any meeting of Unitholders. The quorum at any meeting is two or more Unitholders present in person or by proxy representing not less than 10% of the Units, or Units of a Class, as applicable, then outstanding. If no quorum is present at such meeting when called, the meeting will be adjourned by the Fund Manager to a date and time determined by the Fund Manager, and at the adjourned meeting the Unitholders then present in person or represented by proxy will form the necessary quorum, if notice of the adjourned meeting is given.

Any consent of Unitholders under the Trust Agreement must be given by not less than 50% of the Units or Units of a Class, as applicable, represented and voted at a meeting or by written resolution.

### **AMENDMENTS TO THE TRUST AGREEMENT**

Any provision of the Trust Agreement may be amended by the Fund Manager (except in the circumstances set out below), with the approval of the Trustee, upon notice to Unitholders, but no such amendment may be made which adversely affects the pecuniary value of the interest of any Unitholder in the Fund or restricts any protection provided to the Trustee or increases the responsibilities of the Trustee under the Trust Agreement. The notice to be provided to Unitholders must be given in writing not less than 30 days in advance of the effective date of the amendment unless the Fund Manager and Trustee agree to an earlier effective date.

Any provision of the Trust Agreement may be amended by the Fund Manager (except in the circumstances set out below), with the approval of the Trustee, without any prior notice to, or approval of, Unitholders if the amendment is necessary to comply with applicable laws or regulatory authorities, to correct any ambiguity, mistake or manifest error contained in the Trust Agreement, or to provide additional protection to Unitholders or enhance the rights of Unitholders, provided that Unitholders are given notice of the amendments as soon as reasonably possible following the effective date of the amendments.

Any provision of the Trust Agreement may be amended, deleted, expanded or varied with the consent of the Unitholders, for any of the following purposes:

- (a) the provisions of the Trust Agreement regarding amendments to the Trust Agreement are changed;
- (b) the basis of the calculation of a fee or expense that is charged to the Fund is changed in a way that could result in an increase in charges to the Fund;
- (c) the Fund Manager is changed, unless the new manager is an affiliate of the current manager;
- (d) the fundamental investment objective of the Fund is changed;
- (e) the auditor of the Fund is changed;
- (f) the Fund decreases the frequency of the calculation of the Net Asset Value; or
- (g) the Fund undertakes a reorganization with, or transfers its assets to, another fund, if
  - (i) the Fund ceases to continue after the reorganization or transfer of assets, and
  - (ii) the transaction results in the Unitholders of the Fund becoming unitholders in the other fund; and
  - (iii) there is, in the opinion of the Fund Manager, a material difference in the fundamental investment objective of the Fund and the other fund.

In addition, the consent of the Trustee is also required for any amendment if it restricts any protection provided to the Trustee or impacts the responsibilities of the Trustee under the Trust Agreement.

No change or amendment to the redemption rights attaching to a Class or Series of Units may be made without the prior written consent of a majority of Unitholders of such Class or Series, including changes to the frequency of redemptions, any minimum holding period before which Units may be redeemed, minimum redemption amounts, the implementation of any redemption charges, deferral of payment of redemption proceeds, suspension of redemptions, or any other matter that could limit, penalize or impair the redemption of such Units.

Pursuant to the terms of the Trust Agreement, at no time shall non-residents of Canada for purposes of the Tax Act be the beneficial owners of a majority of the Units. The Fund Manager may require declarations as to the jurisdictions in which beneficial owners of Units are resident. If the Fund Manager becomes aware, as a result of acquiring such declarations as to beneficial ownership or otherwise, that the beneficial owners of more than 40% of the Units then outstanding are, or may be, non-residents of Canada or that such a situation is imminent, the Fund Manager will so notify Unitholders and will not accept a subscription for Units or issue or register a transfer of Units to a person unless the person provides a declaration that the person is not a non-resident of Canada. If, notwithstanding the foregoing, the Fund Manager determines that a majority of the Units are held by non-residents of Canada, the Fund Manager will send a notice to non-resident Unitholders, chosen in inverse order to the order of acquisition or registration or in such manner as the Fund Manager may consider equitable and practicable, requiring them to redeem or transfer their Units or a portion thereto to residents of Canada within a specified period of not more than 60 days. If the non-resident Unitholders receiving such notice have not redeemed or transferred the specified number of Units or provided the Fund Manager with satisfactory evidence that they are not non-residents of Canada within such period, the Fund Manager may arrange for the redemption or sale, on behalf of such Unitholders, of such Units and until such Units are redeemed or sold, shall suspend the voting and distribution rights attached to such Units. Upon such redemption or sale, the affected Unitholders shall cease to be Unitholders and their rights shall be limited to receiving the net proceeds of such redemption or sale. Notwithstanding the foregoing, the Fund Manager may determine not to take any of the actions described above if the Fund Manager has been advised that the failure to take any of such actions would not adversely impact the status of the Fund as a mutual fund trust for the purposes of the Tax Act.

#### **TERMINATION OF THE FUND**

The Fund Manager may at any time terminate and dissolve the Fund by giving notice to the Trustee and each then Unitholder written notice of its intention at least 90 days before the date on which the Fund is to be terminated (the “**Termination Date**”). After giving such notice, the right of Unitholders to require payment for all or any of their Units shall be suspended and the Fund Manager shall make appropriate arrangements for converting the Fund’s property into cash. After payment of the liabilities of the Fund, each Unitholder registered as such at the close of business on the date fixed as the Termination Date will be entitled to receive from the Trustee his or her proportionate share of the value of the Fund attributable to the Series of Units held in accordance with the number of Units which he or she then holds. If the Fund is terminated, the Trust Agreement will be terminated and the assets distributed in accordance with the terms of the Trust Agreement.

#### **INCOME AND CAPITAL GAINS DISTRIBUTIONS**

The Fund Manager intends to cause the Fund to distribute annually to Unitholders sufficient income and capital gains (net of applicable losses) so that it generally will not pay any non-refundable Canadian federal income tax under Part I of the Tax Act. Distributions, if any, are paid as of the last Business Day of the calendar year, and at such other times as may be determined by the Fund Manager. Subject to the Fund Manager’s discretion to make distributions of cash, including to those Unitholders who have redeemed their Units during the applicable calendar year, distributions will automatically be reinvested in additional Units. Following such distributions, Units will be immediately consolidated such that the number of outstanding Units held by each Unitholder on such day following the distribution will equal the number of Units held by the Unitholder prior to the distribution, except to the extent that tax has to be withheld in respect of the distribution. All distributions payable in respect of a Class of Units will be made on a *pro rata* basis to Unitholders of that Class.

## CERTAIN CANADIAN FEDERAL INCOME TAX CONSIDERATIONS

In the opinion of Blake, Cassels & Graydon LLP, counsel to the Fund, the following is, as of the date hereof, a summary of certain of the principal Canadian federal income tax considerations generally applicable to the acquisition, holding and disposition of Units by a Unitholder who acquires Units pursuant to this Offering Memorandum. This summary is applicable to a Unitholder who is an individual (other than a trust, except for the discussion under “Taxation of Registered Plans”, including a trust governed by a Registered Plan) and who, for the purposes of the Tax Act and at all relevant times, is resident in Canada, deals at arm’s length and is not affiliated with the Fund, and who will hold his/her Units as capital property.

Generally, Units will be considered to be capital property to a holder provided the holder does not hold the Units in the course of carrying on a business of trading or dealing in securities and has not acquired them in one or more transactions considered to be an adventure or concern in the nature of trade. Assuming that the Fund is a “mutual fund trust” for purposes of the Tax Act, certain Unitholders who might not otherwise be considered to hold their Units as capital property may, in certain circumstances, be entitled to have their Units, and all other “Canadian securities” owned or subsequently owned by such Unitholders, treated as capital property by making an irrevocable election under subsection 39(4) of the Tax Act. Unitholders should consult their own tax advisors as to whether an election under subsection 39(4) of the Tax Act is available or advisable in their circumstances.

This summary assumes that no Unitholder has entered or will enter into a “derivative forward agreement”, as that term is defined for the purposes of the Tax Act, with respect to the Units.

This summary assumes that at all times the Fund will comply with its investment restrictions as described in “Investment Strategies of the Fund – Investment Restrictions”.

This summary further assumes (i) that none of the issuers of securities held by the Fund will be a foreign affiliate of the Fund or a Unitholder, or a non-resident trust that is not an “exempt foreign trust” as defined in section 94 of the Tax Act, and (ii) the Fund will not be required to include any amounts in income pursuant to section 94.1 or section 94.2 of the Tax Act.

This summary is based on the facts set out in this Offering Memorandum, a certificate of the Fund Manager regarding certain factual matters, the current provisions of the Tax Act as at the date hereof, the Tax Proposals, and counsel’s understanding of the current published administrative policies and assessing practices of the CRA. Other than the Tax Proposals, this summary does not take into account or anticipate any changes in law, whether by legislative, governmental or judicial action, nor does it take into account other federal or any provincial, territorial or foreign tax considerations, which may differ significantly from those discussed herein. There can be no assurance that the Tax Proposals will be enacted in the form publicly announced or at all.

**This summary is not exhaustive of all possible Canadian federal income tax considerations applicable to an investment in Units and does not describe the income tax consequences relating to the deductibility of interest on money borrowed to acquire Units. The income and other tax consequences of acquiring, holding or disposing of Units will vary depending on an investor’s particular circumstances, including the province or territory in which the investor resides or carries on business. Accordingly, this summary is of a general nature only and is not intended to be legal or tax advice to any investor. Investors should consult their own tax advisers for advice with respect to the income tax consequences of an investment in Units, based on their particular circumstances.**

### Status of the Fund

This summary is based on the assumption that the Fund qualifies, and will continue to qualify at all times, as a “mutual fund trust” within the meaning of the Tax Act.

To qualify as a mutual fund trust, (i) the Fund must be a Canadian resident “unit trust” for purposes of the Tax Act, (ii) the only undertaking of the Fund must be (a) the investing of its funds in property (other than real property or interests in real property or immovables or real rights in immovables), (b) the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) or of any immovable (or real right in immovables) that is capital property of the Fund, or (c) any combination of the activities described in (a) and (b),

and (iii) the Fund must comply with certain minimum requirements respecting the ownership and dispersal of Units. The Fund Manager has advised counsel that the Fund has, at all times since its establishment, met the requirements necessary for it to qualify as a mutual fund trust and that the Fund is expected to meet the requirements necessary for it to qualify as a mutual fund trust at all times.

This summary is also based on the assumption that the Fund has not been established and has not been and will not be maintained primarily for the benefit of non-resident persons unless, at all times, substantially all of its property consists of property other than “taxable Canadian property” within the meaning of the Tax Act (if the definition of such term were read without reference to paragraph (b) of that definition).

If the Fund were not to qualify or deemed to qualify as a “mutual fund trust” at all times, the income tax considerations described below would in some respects be materially and adversely different.

This summary is also based on the assumption that the Fund will at no time be a “SIFT trust” as defined in the rules in the Tax Act relating to SIFT trusts and SIFT partnerships. This, in turn, is based in part on the assumption that the Units will at no time be listed or traded on a stock exchange or other public market. For the purposes of such rules, the redemption mechanism does not result in the Units being considered to be traded on a public market.

### **Taxation of the Fund**

The taxation year of the Fund is the calendar year. The Fund will be subject to tax in each taxation year under Part I of the Tax Act on the amount of its income for the year, including net realized taxable capital gains and dividends received in the year on shares of corporations, less the portion thereof that it claims in respect of amounts paid or payable to Unitholders (whether in cash or in Units) in the year. An amount will be considered to be payable to a Unitholder in a taxation year if it is paid in the year by the Fund or the Unitholder is entitled in that year to enforce payment of the amount. The Fund intends to make sufficient distributions in each year of its net income and net capital gains for tax purposes, thereby permitting the Fund to deduct sufficient amounts so that the Fund will generally not be liable in such year for non-refundable income tax under Part I of the Tax Act.

The Fund will be required to include in its income for each taxation year any dividends received (or deemed to be received) by it in such year on shares of corporations and generally any other income earned on its investments.

With respect to indebtedness, including a convertible debenture, the Fund will be required to include in its income for a taxation year all interest thereon that accrues (or is deemed to accrue) to it to the end of that year (or until the disposition of the indebtedness in the year) or that has become receivable or is received by the Fund before the end of that year, including on a conversion, redemption or repayment on maturity, except to the extent that such interest was included in computing the Fund’s income for a preceding taxation year and excluding any interest that accrued prior to the time of the acquisition of the indebtedness by the Fund.

In general, the Fund will realize a capital gain (or capital loss) upon the actual or deemed disposition of a security included in its portfolio to the extent the proceeds of disposition net of any amounts included as interest on the disposition of the security and any reasonable costs of disposition exceed (or are less than) the adjusted cost base of such security unless the Fund were considered to be trading or dealing in securities or otherwise carrying on a business of buying and selling securities or the Fund has acquired the security in a transaction or transactions considered to be an adventure or concern in the nature of trade. The Fund Manager has advised counsel that the Fund takes the position that gains and losses realized on the disposition of its securities are capital gains and capital losses. The Fund Manager has also advised counsel that the Fund has made an election under subsection 39(4) of the Tax Act, so that all securities held by the Fund that are “Canadian securities” (as defined in the Tax Act), including Canadian securities acquired in connection with a short sale, will be deemed to be capital property to the Fund.

In general, gains and losses realized by the Fund from derivative transactions, as well as short sales of securities other than Canadian securities, will be on income account except where such derivatives are used to hedge securities in the Fund’s portfolio held on capital account provided there is sufficient linkage, subject to the DFA Rules discussed below, and such gains and losses will be recognized for tax purposes at the time they are realized by the Fund in accordance with the CRA’s published administrative practice.

The Fund's portfolio will include securities which are not denominated in Canadian dollars. The cost and proceeds of disposition of securities, dividends, interest and all other amounts will be determined for the purposes of the Tax Act in Canadian dollars at the exchange rate prevailing at the time of the transaction, as more particularly determined in accordance with section 261 of the Tax Act. Accordingly, the Fund may realize gains or losses by virtue of the fluctuation in the value of foreign currencies relative to Canadian dollars. The amount of income, gains and losses realized by the Fund may be affected by fluctuations in the value of foreign currencies relative to the Canadian dollar. Gains or losses in respect of currency hedges entered into in respect of amounts invested in the portfolio of the Fund will constitute capital gains and capital losses to the Fund if the securities in the Fund's portfolio are capital property to the Fund and provided there is sufficient linkage.

The Tax Act contains rules (the "**DFA Rules**") that target certain financial arrangements (described in the DFA Rules as "derivative forward agreements") that seek to reduce tax by converting, through the use of derivative contracts, the return on an investment that would have the character of ordinary income to capital gains. The DFA Rules are broad in scope and could apply to other agreements or transactions (including certain options and forward contracts). If the DFA Rules were to apply in respect of derivatives to be utilized by the Fund, gains realized in respect of the property underlying such derivatives could be treated as ordinary income rather than capital gains.

Income or gains from investments in countries other than Canada may be subject to foreign taxes. To the extent such foreign tax paid by the Fund exceeds 15% of the amount included in the Fund's income from such investments, such excess may generally be deducted by the Fund in computing its income for purposes of the Tax Act, subject to the detailed provisions of the Tax Act. To the extent that such foreign tax paid does not exceed 15% of such foreign source income and has not been deducted in computing the Fund's income, the Fund may generally designate a portion of its foreign source income in respect of a Unitholder so that such income and a portion of the foreign tax paid by the Fund may be regarded as foreign source income of, and foreign tax paid by, the Unitholder for the purposes of the foreign tax credit provisions of the Tax Act.

With respect to an issuer that is a trust resident in Canada whose units are included in the portfolio of the Fund and held as capital property for the purposes of the Tax Act, and that is not subject in a taxation year to tax under the rules in the Tax Act applicable to certain publicly traded trusts and partnerships (the "**SIFT Rules**"), the Fund will be required to include in the calculation of its income for a taxation year the net income, including net taxable capital gains, paid or payable to the Fund by such trust in the calendar year in which that taxation year ends, notwithstanding that certain of such amounts may be reinvested in additional units of the trust. Provided that appropriate designations are made by such trust, net taxable capital gains realized by the trust, foreign source income of the trust and taxable dividends from taxable Canadian corporations received by the trust that are paid or payable by the trust to the Fund will effectively retain their character in the hands of the Fund. The Fund will be required to reduce the adjusted cost base of units of such trust by any amount paid or payable by the trust to the Fund except to the extent that the amount was included in calculating the income of the Fund or was the Fund's share of the non-taxable portion of capital gains of the trust, the taxable portion of which was designated in respect of the Fund. If the adjusted cost base to the Fund of such units becomes a negative amount at any time in a taxation year of the Fund, that negative amount will be deemed to be a capital gain realized by the Fund in that taxation year and the Fund's adjusted cost base of such units will be increased by the amount of such deemed capital gain to zero.

With respect to an issuer that is a limited partnership whose securities are included in the Fund's portfolio and held as capital property for the purposes of the Tax Act, and that is not subject in a taxation year to the tax under the SIFT Rules, the Fund is required to include or, subject to certain restrictions, is entitled to deduct, in computing its income, its share of the net income or loss for tax purposes of the limited partnership allocated to the Fund for the fiscal period of the limited partnership ending in the Fund's taxation year, whether or not a distribution is received. In general, the adjusted cost base of such securities is such securities' cost to the Fund plus the share of the income of the limited partnership allocated to the Fund for fiscal years of the limited partnership ending before the particular time less the share of losses of the limited partnership allocated to the Fund for fiscal years of the limited partnership ending before the particular time, and less the Fund's share of any distributions received from the limited partnership before the particular time. If the adjusted cost base to the Fund of the securities of such a limited partnership is negative at the end of the fiscal year of the limited partnership, the amount by which it is negative is deemed to be a capital gain realized by the Fund and the Fund's adjusted cost base of such securities is increased by the amount of such deemed capital gain.

Under the SIFT Rules, each issuer of securities in the Fund's portfolio that is a "SIFT trust" or "SIFT partnership" as defined under the SIFT Rules (which will generally include income trusts, other than certain REITs, and certain partnerships, the units of which are listed or traded on a stock exchange or other public market) will be subject to a special tax in respect of (i) income from business carried on in Canada, and (ii) certain income and capital gains in respect of "non-portfolio properties" (collectively, "**Non-Portfolio Income**"). Non-Portfolio Income that is earned by a partnership that is a SIFT partnership or that is distributed by a SIFT trust to its unitholders will be taxed at a rate that is equivalent to the federal general corporate tax rate plus a prescribed amount on account of provincial tax. Non-Portfolio Income that is earned by a partnership that is a SIFT partnership and is allocated to the Fund, or becomes payable to the Fund by an issuer that is a SIFT trust, will generally be taxed as though it were a taxable dividend from a taxable Canadian corporation and will be deemed to be an "eligible dividend" eligible for the enhanced gross-up and tax credit rules.

The Fund will be entitled for each taxation year throughout which it is a mutual fund trust for purposes of the Tax Act to reduce (or receive a refund in respect of) its liability, if any, for tax on its net realized capital gains by an amount determined under the Tax Act based on the redemptions of Units during the year (the "**Capital Gains Refund**"). The Capital Gains Refund in a particular taxation year may not completely offset the tax liability of the Fund for such taxation year which may arise upon the sale or other disposition of capital property in connection with the redemption of Units and Fund distributions.

A loss realized by the Fund on a disposition of capital property will be a suspended loss for purposes of the Tax Act if the Fund, or a person affiliated with the Fund, acquired a property (a "**substituted property**") that is the same or identical to the property disposed of, within 30 days before and 30 days after the disposition and the Fund, or a person affiliated with the Fund, owns the substituted property 30 days after the original disposition. If a loss is suspended, the Fund cannot deduct the loss from the Fund's capital gains until the substituted property is disposed of and is not reacquired by the Fund, or a person affiliated with the Fund, within 30 days before and after the disposition.

In general, one-half of the amount of any capital gain (a "**taxable capital gain**") realized by the Fund in a taxation year must be included in computing the Fund's income for the year, and one-half of the amount of any capital loss (an "**allowable capital loss**") realized by the Fund in a taxation year must be deducted from taxable capital gains realized by the Fund in the year. Any excess of allowable capital losses over taxable capital gains for a taxation year may be deducted against taxable capital gains realized by the Fund in any of the three preceding taxation years or in any subsequent taxation year to the extent and under the circumstances described in the Tax Act.

In computing its income for tax purposes, the Fund may deduct reasonable administrative and other expenses incurred to earn income and such other expenses as permitted by the Tax Act. The Fund may generally deduct the costs and expenses of the Offering paid by the Fund and not reimbursed at a rate of 20% per year, pro-rated where the Fund's taxation year is less than 365 days. Any losses incurred by the Fund may not be allocated to Unitholders but may generally be carried forward and back and deducted in computing the taxable income of the Fund in accordance with the detailed rules and limitations in the Tax Act.

### **Taxation of Unitholders**

No gain or loss will be realized by a Unitholder on the issuance of a Unit upon the exchange of a Subscription Receipt.

A Unitholder will generally be required to include in computing income for a taxation year the amount of the Fund's net income for the taxation year, including net realized taxable capital gains, paid or payable to the Unitholder (whether in cash or in Units) in the taxation year, including any portions of amounts paid on redemption treated as distributions of income or gains by the Fund. The non-taxable portion of the Fund's net realized capital gains paid or payable to a Unitholder in a taxation year will not be included in the Unitholder's income for the year. Any other amount in excess of the Fund's net income and net realized capital gains for a taxation year paid or payable to the Unitholder in the year (i.e. returns of capital) will not generally be included in the Unitholder's income. Such amount, however, will generally reduce the adjusted cost base of the Unitholder's Units. To the extent that the adjusted cost base of a Unit would otherwise be less than zero, the negative amount will be deemed to be a capital gain realized by the Unitholder from the disposition of the Unit and the Unitholder's adjusted cost base will be

increased by the amount of such deemed capital gain to zero. Any losses of the Fund for purposes of the Tax Act cannot be allocated to, and cannot be treated as a loss of, a Unitholder.

Provided that appropriate designations are made by the Fund, such portion of the net realized taxable capital gains of the Fund, the taxable dividends received or deemed to be received by the Fund on shares of taxable Canadian corporations and the foreign source income of the Fund as is paid or becomes payable to a Unitholder will effectively retain its character and be treated as such in the hands of the Unitholder for purposes of the Tax Act. To the extent that amounts are designated as taxable dividends from taxable Canadian corporations, the gross-up and dividend tax credit rules will apply including the enhanced gross-up and dividend tax credit rules in respect of “eligible dividends”. Where the Fund makes designations in respect of its foreign source income, for the purpose of computing any foreign tax credit that may be available to a Unitholder, the Unitholder will generally be deemed to have paid as tax to the government of a foreign country that portion of taxes paid by the Fund to that country that is equal to the Unitholder’s share of the Fund’s income from sources in that country, subject to the specific limitations in the Tax Act.

Under the Tax Act, the Fund is permitted to deduct in computing its income for a taxation year an amount that is less than the amount of its distributions for the year, to the extent necessary to the Fund to utilize, in a taxation year, losses from prior years without affecting the ability of the Fund to distribute its income annually. The amount distributed to a Unitholder but not deducted by the Fund will not be included in the Unitholder’s income. However, the adjusted cost base of the Unitholder’s Units will be reduced by such amount (other than the non-taxable portion of the Fund’s net realized capital gains paid or payable to the Unitholders, the taxable portion of which was designated to the Unitholder in a year).

On the disposition or deemed disposition of a Unit, including on a redemption, the Unitholder will realize a capital gain (or capital loss) to the extent that the Unitholder’s proceeds of disposition (other than any amount payable by the Fund which represents an amount that is otherwise required to be included in the Unitholder’s income as described above) exceed (or are less than) the aggregate of the adjusted cost base of the Unit and any reasonable costs of disposition. For the purpose of determining the adjusted cost base of Units to a Unitholder, when additional Units are acquired, the cost of the newly acquired Units will be averaged with the adjusted cost base of all Units of the same series owned by the Unitholder as capital property immediately before that time. The cost of Units acquired as a distribution of income or capital gains will generally be equal to the amount of the distribution. A consolidation of Units following a distribution paid in the form of additional Units will not be regarded as a disposition of Units and will not affect the aggregate adjusted cost base to a Unitholder of Units.

If the Fund delivers securities or other property of the Fund to any Unitholder upon a redemption of a Holder’s Units, the Holder’s proceeds of disposition of the Units will generally be equal to the aggregate of the fair market value of the distributed property and the amount of any cash received, less any capital gain realized by the Fund on the disposition of such distributed property. The cost of any property distributed by the Fund in specie will generally be equal to the fair market value of such property at the time of the distribution. Such distributed property may or may not be a qualified investment for Registered Plans. If such distributed property is not a qualified investment for Registered Plans, such Registered Plans (and, in the case of certain Registered Plans, the annuitants, beneficiaries or subscribers thereunder or holders thereof) may be subject to adverse tax consequences.

In general, one-half of any capital gain (a “**taxable capital gain**”) realized by a Unitholder on the disposition of Units or taxable capital gain designated by the Fund in respect of the Unitholder in a taxation year of the Unitholder will be included in computing the Unitholder’s income for that year and one-half of any capital loss (an “**allowable capital loss**”) realized by the Unitholder in a taxation year of the Unitholder must be deducted from taxable capital gains realized by the Unitholder in a taxation year or designated by the Fund in respect of the Unitholder in the taxation year in accordance with the detailed provisions of the Tax Act. Allowable capital losses for a taxation year in excess of taxable capital gains for that taxation year may be carried back and deducted in any of the three preceding taxation years or carried forward and deducted in any subsequent taxation year against taxable capital gains in accordance with the provisions of the Tax Act.

Amounts designated by the Fund to a Unitholder as taxable dividends from taxable Canadian corporations or as net realized taxable capital gains as well as taxable capital gains realized by the Unitholder on the disposition of Units may increase the Unitholder’s liability for alternative minimum tax.

The Series Net Asset Value per Unit will reflect any income and gains of the Fund that have accrued or have been realized but have not been made payable at the time the Units are acquired. Accordingly, a Unitholder who acquires Units may become taxable on the Unitholder's share of income and gains of the Fund that accrued before the Units were acquired, notwithstanding that such amounts will have been reflected in the price paid by the Unitholder for the Units.

In such instance, an investor who acquired Units at any time in the year but prior to a distribution being paid or made payable will have to pay tax on the entire distribution (to the extent it is a taxable distribution) notwithstanding that such amounts may have been reflected in the price paid by the Unitholder for the Units.

### **Taxation of Registered Plans**

Amounts of income and capital gains included in the income of a trust governed by a Registered Plan are generally not taxable under Part I of the Tax Act, provided that the Units are qualified investments for the Registered Plan. See "Eligibility for Investment". Unitholders should consult their own advisers regarding the tax implications of establishing, amending, terminating or withdrawing amounts from a trust governed by a Registered Plan.

### **ELIGIBILITY FOR INVESTMENT**

In the opinion of Blake, Cassels & Graydon LLP, counsel to the Fund, provided that the Fund qualifies as a "mutual fund trust" for the purposes of the Tax Act at all times, (i) Units offered pursuant to this Offering Memorandum will be "qualified investments" under the Tax Act for a trust governed by a Registered Plan and (ii) provided further that neither the Fund, nor any person that does not deal at arm's length with the Fund within the meaning of the Tax Act, is an annuitant, a beneficiary, an employer or a subscriber under, or a holder of, the Registered Plan (as applicable), the Subscription Receipts will be "qualified investments" under the Tax Act for a trust governed by a Registered Plan.

The Units or the Subscription Receipts will not be a "prohibited investment" for trusts governed by a TFSA, RDSP, RESP, RRSP or RRIF unless the holder of the TFSA or RDSP, the annuitant under the RRSP or RRIF, or the subscriber under the RESP, as applicable, (i) does not deal at arm's length with the Fund for purposes of the Tax Act, or (ii) has a "significant interest" as defined in the Tax Act in the Fund. Generally, a holder or annuitant, as the case may be, will not have a significant interest in the Fund unless the holder or annuitant, as the case may be, owns interests as a beneficiary under the Fund that have a fair market value of 10% or more of the fair market value of the interests of all beneficiaries under the Fund, either alone or together with persons and partnerships with which the holder or annuitant, as the case may be, does not deal at arm's length. In addition, the Units will not be a prohibited investment if such Units are "excluded property" as defined in the Tax Act for trusts governed by a TFSA, RDSP, RESP, RRSP or RRIF.

Holders of TFSAs or RDSPs, subscribers under RESPs and annuitants under RRSPs and RRIFs should consult with their own tax advisors as to the status of the Units or Subscription Receipts as a "prohibited investment" for the purposes of the Tax Act, including whether such Units would be excluded property based on their own particular circumstances.

### **INTERNATIONAL INFORMATION REPORTING**

The Tax Act includes provisions which implement the Organization for Economic Co-operation and Development Common Reporting Standard and the Canada-United States Enhanced Tax Information Exchange Agreement (the "**International Information Exchange Legislation**"). Pursuant to the International Information Exchange Legislation, certain "Canadian financial institutions" (as defined in the International Information Exchange Legislation) are required to have procedures in place, in general terms, to identify accounts held by residents of foreign countries or by certain entities organized in, or the "controlling persons" of which are resident in, a foreign country (or, in the case of the U.S., of which the holder or any such controlling person is a citizen) and to report required information to the CRA. Such information would be exchanged by the CRA on a reciprocal, bilateral basis with the countries in which the account holder or any such controlling person is resident (or of which such holder or person is a citizen, where applicable), where such countries (including the U.S.) have agreed to a bilateral information exchange with Canada to which the International Information Exchange Legislation applies. Under the International Information Exchange Legislation, Unitholders may be required to provide certain information

regarding their tax status for the purpose of such information exchange, unless the investment is held within a Registered Plan.

### **RISK FACTORS**

An investment in the Fund involves significant risks. An investment in Units should only be made after consulting with independent and qualified sources of investment and tax advice. An investment in the Fund is speculative and is not intended as a complete investment program. Only investors who can reasonably afford the risk of loss of their entire investment should consider the purchase of Units. **The following does not purport to be a complete summary of all the risks associated with an investment in the Fund:**

1. **Reliance on Investment Advisor.** All investment and trading decisions for the Fund will be made by the Investment Advisor and its judgment and ability will determine the success of the Fund. No assurance can be given that the investment strategies of the Fund will prove successful under any or all market conditions.
2. **Limited Ability to Liquidate Investment.** There is no market for the Units and one is not expected to develop. Accordingly, it is possible that Unitholders may not be able to dispose of their Units other than by way of redemption at the end of any month. In addition, the Fund may charge a Redemption Charge to a Unitholder who redeems Units within the first year of the purchase of such Units. This Offering of Units is not qualified by way of prospectus, and consequently, the resale of Units is subject to restrictions under Applicable Securities Laws. Unitholders are advised to seek legal advice prior to any resale of the Units.
3. **Possible Effect of Redemptions.** Substantial redemptions of Units could require the Fund to liquidate positions more rapidly than otherwise desirable to raise the necessary cash to fund redemptions of Units and achieve a market position appropriately reflecting a smaller asset base. Such factors could adversely affect the value of the Units redeemed and of the Units remaining outstanding.
4. **Taxation of the Fund.** If the Fund does not qualify, or ceases to qualify, as a mutual fund trust under the Tax Act, the income tax considerations described under the heading “Certain Canadian Federal Income Tax Considerations” would be materially and adversely different in certain respects. There can be no assurance that Canadian federal income tax laws and the administrative policies and assessing practices of the CRA respecting the treatment of mutual fund trusts will not be changed in a manner which adversely affects the Unitholders.

Pursuant to rules in the Tax Act, if the Fund experiences a “loss restriction event” it (i) will be deemed to have a year-end for tax purposes (which would result in an unscheduled distribution of the Fund’s net income and net realized capital gains, if any, at such time to Unitholders so that the Fund is not liable for income tax on such amounts under Part I of the Tax Act), and (ii) will become subject to the loss restriction rules generally applicable to a corporation that experiences an acquisition of control, including a deemed realization of any unrealized capital losses and restrictions on its ability to carry forward losses. Generally, the Fund will be subject to a loss restriction event if a person becomes a “majority-interest beneficiary”, or a group of persons becomes a “majority-interest group of beneficiaries”, of the Fund, as those terms are defined in the affiliated persons rules contained in the Tax Act, with certain modifications. Generally, a majority-interest beneficiary of the Fund is a beneficiary in the income or capital, as the case may be, of the Fund whose beneficial interests, together with the beneficial interests of persons and partnerships with whom the beneficiary is affiliated, have a fair market value that is greater than 50% of the fair market value of all the interests in the income or capital, as the case may be, of the Fund. Please see “Certain Canadian Federal Income Tax Considerations – Taxation of Unitholders” for the tax consequences of a distribution to Unitholders. In many circumstances, the loss restriction event rules would not apply to a trust that qualifies as a “mutual fund trust” for purposes of the Tax Act and meets certain asset diversification requirements. It is anticipated that the Fund will qualify as a mutual fund trust and meet such asset diversification requirements and, thus, the Fund may be precluded from being subject to the consequences of a “loss restriction event” described above. However, no assurance can be given in that regard.

5. **Charges to the Fund.** The Fund will pay management fees, and legal, accounting, filing and other expenses regardless of whether the Fund realizes profits. In addition, the Fund will accrue and pay a performance fee

to the Investment Advisor in respect of each fiscal year in which net appreciation in the Series Net Asset Value of each Series of Units is in excess of such Series' High Water Mark and Hurdle Rate.

6. Performance Fee. The performance fee payable to the Investment Advisor is based, in part, on unrealized gains that may never be realized in the event of adverse changes in the value of such investments. A performance-based fee arrangement may create an incentive for riskier or more speculative investments by the Investment Advisor than might be the case in the absence of such performance-based fee arrangement.
7. Illiquidity of Fund Investments. The Fund invests the majority of its assets in issuers with small market capitalization. The securities of these issuers may be infrequently traded on public markets or (in the case of securities purchased in a private placement) may be subject to statutory hold periods under applicable securities laws. There can be no assurance that the Fund will be able to dispose of its investments in a timely manner in order to honour requests to redeem Units. Furthermore, the Fund may realize lower returns than would otherwise be the case if it is required to dispose of an illiquid security at a time when there is not an active market for such security.
8. Equity Securities. Equity securities fluctuate in value in response to many factors, including, among others, the activities and financial condition of individual companies, the business market in which individual companies compete, industry market conditions, interest rates and general economic environments. In addition, events such as the domestic and international political environments, terrorism and natural disasters, may be unforeseeable and contribute to market volatility in ways that may adversely affect investments made by the Fund.
9. Investment and Trading Risks in General. All securities investments present a risk of loss of capital. However, the investment strategies utilized by the Fund endeavour to moderate this risk through the careful selection of controlled investment techniques.
10. General Economic and Market Conditions. The success of the activities of the Fund will be affected by general economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws (including laws relating to taxation of the investments of the Fund), trade barriers, currency exchange controls, and national and international political circumstances (including wars, terrorist acts or security operations). These factors may affect the level and volatility of securities prices and the liquidity of the investments of the Fund. Volatility or illiquidity could impair the profitability of the Fund or result in losses. The Fund may maintain substantial trading positions that can be adversely affected by the level of volatility in the financial markets; the larger the positions, the greater the potential for loss.
11. Short Sales. Short selling involves selling securities which are not owned and borrowing them for delivery to the purchaser, with an obligation to replace the borrowed securities at a later date. Short selling allows the investor to profit from declines in market prices of the sold securities to the extent such decline exceeds the transaction costs and the costs of borrowing the securities. A short sale creates the risk of a theoretically unlimited loss, in that the price of the underlying security could increase without limit, thus increasing the cost to the Fund of buying those securities to cover the short position. There can be no assurance that the Fund will be able to maintain the ability to borrow securities sold short.
12. Leverage. The Fund will have the authority to borrow money to pay redemptions, for cash management purposes and for investment purposes. The Fund may directly or indirectly borrow funds from brokerage firms and banks. Borrowing for investment purposes is known as "leverage". Although leverage presents opportunities for increasing total investment return, it has the effect of potentially increasing losses as well. Any event that adversely affects the value of an investment could be magnified to the extent that leverage is employed. The cumulative effect of the use of leverage, directly or indirectly, could result in a loss that would be greater than if leverage were not employed and the volatility of an investment in Units may be significantly greater than would otherwise be the case without leverage.
13. Securities Lending. The Fund may lend securities on a collateralized and uncollateralized basis from its portfolio to creditworthy securities firms and financial institutions. While a securities loan is outstanding, the Fund will continue to receive the equivalent of the interest or dividends paid by the issuer on the

securities, as well as interest on the investment of the collateral or a fee from the borrower. The risks in lending securities on a collateralized basis, as with other extensions of secured credit, consist of possible delay in receiving additional collateral, if any, or in recovery of the securities or possible loss of rights in the collateral, if any, should the borrower fail financially. Absent collateral, the Fund would be an unsecured creditor of any such securities firms or financial institutions.

14. Past Performance. There can be no assurance that the Fund will achieve its investment objective. Past investment performance of the Fund or other funds managed by Polar should not be construed as an indication of the future results of an investment in the Fund. In addition, the Fund recently amended its investment objective to expand its investment universe to include U.S. companies as previously the Fund was limited to investing in equity securities of small-sized Canadian companies.
15. Suspension of Trading. Securities exchanges typically have the right to suspend or limit trading in any instrument traded on the exchange. A suspension of trading of securities held by the Fund would render it impossible to liquidate positions and could thereby expose the Fund to losses.
16. Conflicts of Interest. The Fund and Polar may be subject to various conflicts of interest. See “Conflicts of Interest.”
17. Dependence on Key Personnel. The Fund’s investment activities depend on the experience and expertise of key personnel of Polar. If these individuals leave Polar, this may have a material adverse effect on the Fund’s operations and performance.
18. Not a Mutual Fund Offered by Prospectus. The Fund is not a mutual fund offered by prospectus and as a result is not required to make public filings or operate in accordance with requirements of Canadian securities regulations applicable to public investment funds. As such, the Fund will not invest in a manner similar to the investments made by a mutual fund offered by prospectus. Investors should note that as the Fund is not a mutual fund offered by prospectus, the rules designed to protect investors who purchase securities of a mutual fund offered by prospectus, including National Instrument 81-102 – *Investment Funds*, will not apply to the Units.
19. Limited Operating and Performance History. Although all persons involved in the management and administration of the Fund, including the service providers to the Fund, have significant experience in their respective fields of specialization, the Fund has a limited operating and performance history upon which prospective investors can evaluate the Fund’s performance. In addition, the Fund recently amended its investment objective to include investments in small-sized U.S. companies. There can be no assurance that the Investment Advisor’s assessment of short- or long-term prospects of investments will prove accurate.
20. Multiple Classes of Units. Each Class of Units has its own fees and expenses which are tracked separately. If for any reason, the Fund is unable to pay the expenses of one Class of Units using that Class’ proportionate share of the Fund’s assets, the Fund will be required to pay those expenses out of the other Classes’ proportionate share of the Fund’s assets. This could effectively lower the investment returns of the other Class or Classes of Units even though the value of the investments of the Fund might have increased.
21. Unitholder Liability. The Trust Agreement provides that no Unitholder will be subject to any liability whatsoever, in tort, contract or otherwise, to any person in connection with the investment obligations, affairs or assets of the Fund and all such persons shall look solely to the Fund’s assets for satisfaction of claims of any nature arising out of or in connection therewith. There is a risk, which is considered by the Fund Manager to be remote in the circumstances, that a Unitholder could be held personally liable, notwithstanding the foregoing statement in the Trust Agreement, for obligations of the Fund to the extent that claims are not satisfied out of the assets of the Fund. It is intended that the operations of the Fund will be conducted in such manner so as to minimize such risk. In the event that a Unitholder should be required to satisfy any obligation of the Fund, such Unitholder will be entitled to reimbursement from any available assets of the Fund.

22. Cybersecurity Risk. As part of its business, the Fund Manager and the Investment Advisor process, store and transmit large amounts of electronic information, including information relating to the transactions of the Fund and personally identifiable information of the Unitholders. Similarly, service providers of the Fund Manager, the Investment Advisor and the Fund, especially the Fund Administrator, may process, store and transmit such information. Each of the Fund Manager and the Investment Advisor has procedures and systems in place that it believes are reasonably designed to protect such information and prevent data loss and security breaches. However, such measures cannot provide absolute security. The techniques used to obtain unauthorized access to data, disable or degrade service, or sabotage systems change frequently and may be difficult to detect for long periods of time. Hardware or software acquired from third parties may contain defects in design or manufacture or other problems that could unexpectedly compromise information security. Network connected services provided by third parties to the Fund Manager or the Investment Advisor may be susceptible to compromise, leading to a breach of the Fund Manager's or the Investment Advisor's network. The Fund Manager and the Investment Advisor's systems or facilities may be susceptible to employee error or malfeasance, government surveillance, or other security threats. On-line services provided by the Fund Manager or the Investment Advisor to the Unitholders may also be susceptible to compromise. Breach of the Fund Manager's or the Investment Advisor's information systems may cause information relating to the transactions of the Fund and personally identifiable information of the Unitholders to be lost or improperly accessed, used or disclosed. The service providers of the Fund Manager, the Investment Advisor and the Fund are subject to the same electronic information security threats as the Fund Manager and the Investment Advisor. If a service provider fails to adopt or adhere to adequate data security policies, or in the event of a breach of its networks, information relating to the transactions of the Fund and personally identifiable information of the Unitholders may be lost or improperly accessed, used or disclosed. The loss or improper access, use or disclosure of the Fund Manager's, the Investment Advisor's or the Fund's proprietary information may cause the Fund Manager, the Investment Advisor or the Fund to suffer, among other things, financial loss, the disruption of its business, liability to third parties, regulatory intervention or reputational damage. Any of the foregoing events could have a material adverse effect on the Fund and the Unitholders' investments therein.

### **CONFLICTS OF INTEREST**

The Fund will be subject to a number of actual and potential conflicts of interest involving Polar and its affiliates. However, Polar and its affiliates have substantial incentives to see the assets of the Fund appreciate in value, and merely because an actual or potential conflict of interest exists does not mean that it will be acted upon to the detriment of the Fund.

Polar and its directors, shareholders, officers and employees will devote as much of their time to the activities of the Fund as they deem necessary and appropriate. Polar and its affiliates are not restricted from forming additional investment funds, from entering into other investment advisory relationships or from engaging in other business activities, even if such activities may be in competition with the Fund and/or may involve substantial time and resources of Polar. For example, officers or employees of Polar may be appointed to the board of directors of a particular issuer in which the Fund has an investment which could result in a conflict of interest for any subsequent transactions of the issuer traded or made on behalf of the Fund. These activities could be viewed as creating a conflict of interest in that the time and effort of the investment team will not be devoted exclusively to the business of the Fund but will be allocated between the business of the Fund and the management of the assets of other advisees of Polar.

Polar and its principals may enter into transactions in the same or different securities or investments to be traded or made on behalf of the Company for their proprietary accounts. Polar and its affiliates are also actively engaged in transactions on behalf of accounts and other investment funds that may involve the same securities in which the Fund may invest. These other accounts and investment funds may have investment programs and investment objectives similar to or dissimilar from those of the Fund. The transactions and portfolio strategies of Polar and/or its affiliates used for other investment funds or accounts could conflict with the transactions and investment strategies employed by Polar in managing the Fund. Polar may sell or recommend the sale, and may buy or recommend the purchase, of a particular security for certain but not all accounts (including accounts in which Polar or its officers or employees may have an interest) or may take different action with regard to the timing or nature of actions taken with respect to the Fund and, accordingly, transactions in a particular account, including the Fund, may not be

consistent with transactions in other accounts. This could adversely affect the prices and availability of the securities and other financial instruments in which the Fund invests or may seek to invest.

There may be situations of conflict in the actual allocation of opportunities by Polar with the result that other clients of Polar could obtain preferential allocations. If it is determined by the Investment Advisor that it would be appropriate for the Fund and one or more other accounts or investment funds managed by it to participate in an investment opportunity, the Investment Advisor will seek to execute orders for all of the participating accounts and investment funds, on an equitable basis, taking into account such factors as the relative amounts of capital available for investments and the investment programs and portfolio positions of the Fund and the other accounts or funds.

The Fund, or Polar on its behalf, may engage service providers (including law firms, accounting and audit firms and research providers) with whom Polar has other pre-existing business relationships.

The Fund Administrator may rely in part on Polar to value securities and other instruments held by the Fund for which quotations are not readily available. As Polar's compensation is linked to such valuations, Polar could have a conflict of interest in providing such valuations.

The Fund depends on the Fund Administrator for administration of certain of its business activities. While the Fund Administrator devotes as much time and resources as in their judgment is reasonably required, the Fund Administrator is involved in other business activities.

#### **Statement of Related and Connected Issuers**

Applicable Securities Laws require securities dealers and advisers, when they trade in or advise with respect to their own securities or securities of certain other issuers to which they, or certain other parties related to them, are related or connected or securities of an issuer in which a "responsible person" (as defined by the rules of the Investment Industry Regulatory Organization of Canada) is an officer or director, to do so only in accordance with particular disclosure and other rules. These rules require dealers and advisers, prior to trading with or advising their customers or clients, to inform them of the relevant relationships and connections with the issuer of the securities. Clients and customers should refer to the applicable provisions of these Applicable Securities Laws for the particulars of these rules and their rights or consult with a legal adviser.

The Fund is a related issuer of Polar. Polar will earn management fees and performance fees from the Fund. See "Fees and Expenses of the Fund".

Polar may engage in activities as an Investment Fund Manager, Portfolio Manager, Commodity Trading Manager and Exempt Market Dealer in respect of securities of related and connected issuers or securities of an issuer in which a "responsible person" is an officer or director, but will do so only in compliance with Applicable Securities Laws.

#### **CUSTODIAN / PRIME BROKER**

The Bank of Nova Scotia is the custodian of the assets of the Fund (the "Custodian"). The Custodian is also the prime broker for, and receive fees from, the Fund.

#### **SOFT DOLLAR POLICY**

Soft dollar arrangements occur when brokers have agreed to provide other services (relating to research and trade execution) at no cost to Polar, in its capacity as investment advisor to the Fund and other trading vehicles, in exchange for brokerage business from Polar. As investment advisor, Polar has authority to determine which securities will be purchased or sold, and the terms upon which such transactions are to be affected, including the commissions to be paid. Polar enters into such arrangements in accordance with National Instrument 23-102 – *Use of Client Brokerage Commissions* of the Canadian Securities Administrators.

Portfolio transactions will be allocated to broker dealers on the basis of best execution and in consideration of such broker dealer's provision or payment of the costs of research and brokerage services which are of benefit to the Fund, Polar and/or related funds and accounts. Portfolio transactions will not be allocated to broker dealers that are affiliated with Polar or the Fund.

Polar need not solicit competitive bids and does not have an obligation to seek the lowest available commissions or markups and markdowns. Polar considers the full range and quality of a broker's services, including the value of research provided, execution capability, speed of executions, financial responsibility, willingness to commit capital and responsiveness to Polar. In seeking to minimize transaction costs, in addition to explicit costs, Polar also considers bid-ask spreads, the price impact of placing its orders and missed opportunity costs, among other implicit costs. Accordingly, the commissions and other transaction costs (which may include dealer markups or markdowns) charged to the Fund by brokers or dealers in the foregoing circumstances may be higher than those charged by other brokers or dealers that may offer such products or services.

#### **FUND ADMINISTRATOR**

The Fund has entered into a services agreement with SGGG Fund Services Inc. (the "**Fund Administrator**"). The Fund Administrator will calculate the monthly Series Net Asset Value and Series Net Asset Value per Unit (as applicable), allocate and report taxable income to the Unitholders, prepare the annual and semi-annual financial statements as required, keep Unitholder records and any other services that the Fund may request.

#### **LEGAL COUNSEL**

Blake, Cassels & Graydon LLP acts as legal counsel to the Fund and to the Fund Manager.

#### **AUDITORS**

Ernst & Young LLP acts as the auditors of the Fund.

#### **PERSONAL INFORMATION**

By purchasing the Units, the purchaser acknowledges that the Fund Manager and its respective agents and advisers may each collect, use and disclose the purchaser's name and other specified personally identifiable information (the "**Information**"), including the amount of the Units that the purchaser has purchased, for purposes of meeting legal, regulatory and audit requirements and as otherwise permitted or required by law or regulation. The purchaser consents to the disclosure of that information.

By purchasing the Units, the purchaser acknowledges that (A) Information concerning the purchaser will be disclosed to the relevant Canadian securities regulatory authorities and may become available to the public in accordance with the requirements of applicable securities and freedom of information laws and the purchaser consents to the disclosure of the Information; (B) Information is being collected indirectly by the applicable Canadian securities regulatory authority under the authority granted to it in securities legislation; and (C) Information is being collected for the purposes of the administration and enforcement of the applicable Canadian securities legislation; by purchasing the Units, the purchaser shall be deemed to have authorized such indirect collection of personal information by the relevant Canadian securities regulatory authorities. Questions about such indirect collection of Information should be directed to the securities regulatory authority in the purchaser's jurisdiction.

#### **LANGUAGE OF DOCUMENTS**

Upon receipt of this document, the purchaser hereby confirms that he, she or it has expressly requested that all documents evidencing or relating in any way to the offer and/or sale of the Units (including for greater certainty any purchase confirmation or any notice) be drawn up in the English language only. Par la réception de ce document, vous confirmez par les présentes que vous avez expressément exigé que tous les documents faisant foi ou se rapportant de quelque manière que ce soit à l'offre ou à la vente des valeurs mobilières décrites aux présentes (incluant, pour plus de certitude, toute confirmation d'achat ou tout avis) soient rédigés en anglais seulement.

#### **PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING LEGISLATION**

In order to comply with Canadian legislation aimed at the prevention of money laundering, the Fund Manager may require additional information concerning investors.

If, as a result of any information or other matter which comes to the Fund Manager's attention, any director, officer or employee of the Fund Manager, or its professional advisers, knows or suspects that an investor is engaged in money laundering or terrorist financing, such person is required to report such information or other matter to the Financial Transactions and Reports Analysis Centre of Canada and such report shall not be treated as a breach of any restriction upon the disclosure of information imposed by law or otherwise.

### **PURCHASERS' RIGHTS OF ACTION FOR DAMAGES AND RESCISSION**

Applicable Securities Laws provide purchasers of securities pursuant to an offering memorandum with a remedy for damages or rescission, or both, in addition to any other rights they may have at law, where the offering memorandum and any amendment to it contains a "Misrepresentation". Where used herein, the term "Misrepresentation" means an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make any statement not misleading in light of the circumstances in which it was made. These remedies, or notice with respect to these remedies, must be exercised or delivered, as the case may be, by the purchaser within the time limits prescribed by Applicable Securities Laws.

#### **Ontario**

Section 130.1 of the *Securities Act* (Ontario) (the "**Ontario Act**") provides that every purchaser of securities pursuant to an offering memorandum (such as this Offering Memorandum) or any amendment to it shall have a statutory right of action for damages or rescission against the issuer and any selling security holder in the event that the offering memorandum contains a Misrepresentation. A purchaser who purchases securities offered by the offering memorandum during the period of distribution has, without regard to whether the purchaser relied upon the Misrepresentation, a right of action for damages or, alternatively, while still the owner of the securities, for rescission against the issuer and any selling security holder provided that:

- (a) if the purchaser exercises its right of rescission, it shall cease to have a right of action for damages as against the issuer and the selling security holders, if any;
- (b) the issuer and the selling security holders, if any, will not be liable if they prove that the purchaser purchased the securities with knowledge of the Misrepresentation;
- (c) the issuer and the selling security holders, if any, will not be liable for all or any portion of damages that it proves do not represent the depreciation in value of the securities as a result of the Misrepresentation relied upon; and
- (d) in no case shall the amount recoverable exceed the price at which the securities were offered.

Section 138 of the Ontario Act provides that no action shall be commenced to enforce these rights more than:

- (a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action; or
- (b) in the case of an action for damages, the earlier of:
  - (i) 180 days after the date that the purchaser first had knowledge of the facts giving rise to the cause of action; or
  - (ii) three years after the date of the transaction that gave rise to the cause of action.

This Offering Memorandum is being delivered in reliance on the exemption from the prospectus requirements contained under section 73.3 of the *Securities Act* (Ontario) and section 2.3 of NI 45-106 (the "accredited investor exemption"). The rights referred to in section 130.1 of the Ontario Act do not apply in respect of an offering memorandum (such as this Offering Memorandum) delivered to a prospective purchaser in connection with a distribution made in reliance on the accredited investor exemption if the prospective purchaser is:

- (a) a Canadian financial institution or a Schedule III bank (each as defined in NI 45-106);

- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada); or
- (c) a subsidiary of any person referred to in paragraphs (a) and (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary.

These rights of action for rescission or damages are in addition to, and without derogation from, any other right the purchaser may have at law.

### **Alberta**

Securities legislation in Alberta provides that every purchaser of securities in reliance on the exemption set forth in section 2.10 (the “minimum amount exemption”) of NI 45-106 pursuant to this Offering Memorandum shall have, in addition to any other rights they may have at law, a right of action for damages or rescission against the issuer and certain other persons if this Offering Memorandum or any amendment to it contains a misrepresentation. However, such rights must be exercised within prescribed time limits. Purchasers should refer to the applicable provisions of the *Securities Act* (Alberta) (the “**Alberta Act**”) for particulars of those rights or consult with a lawyer.

Specifically, Section 204 of the Alberta Act provides that if this Offering Memorandum, or any amendment to it, contains a misrepresentation (as defined in the Alberta Act), a purchaser who purchases Units offered by this Offering Memorandum or any amendment shall be deemed to have relied on that misrepresentation, if it was a misrepresentation at the time of purchase, and has a right of action

- (a) for damages against
  - (i) the issuer;
  - (ii) every director of the issuer at the date of this Offering Memorandum;
  - (iii) every person or company who signed this Offering Memorandum; and
- (b) for rescission against the issuer.

If the purchaser exercises its right of rescission against the issuer, the purchaser will not have a right of action for damages against the issuer or against any aforementioned person or company. No such person or company is liable if it proves that the purchaser purchased the Units with knowledge of the misrepresentation. In an action for damages, the defendant will not be liable for all or any portion of the damages that it proves do not represent the depreciation in value of the Units as a result of the misrepresentation relied upon. The amount recoverable under this right of action will not exceed the price at which the Units are offered.

In Alberta, no action shall be commenced to enforce these rights of action more than:

- (a) in the case of an action for rescission, 180 days from the day of the transaction that gave rise to the cause of action; or
- (b) in the case of any action, other than an action for rescission, the earlier of:
  - (i) 180 days from the day that the purchaser first had knowledge of the facts giving rise to the cause of action, or
  - (ii) three years from the day of the transaction that gave rise to the cause of action.

The foregoing summary is subject to the express provisions of the Alberta Act and the regulations promulgated thereunder and specific reference should be made to same. The rights of action for rescission or damages are in addition to, and without derogation from, any other right the purchaser may have at law.

### **Saskatchewan**

Section 138 of *The Securities Act, 1988* (Saskatchewan), as amended (the “**Saskatchewan Act**”) provides that where an offering memorandum (such as this Offering Memorandum) or any amendment to it is sent or delivered to a purchaser and it contains a misrepresentation (as defined in the Saskatchewan Act), a purchaser who purchases a security covered by the offering memorandum or any amendment to it is deemed to have relied upon that misrepresentation, if it was a misrepresentation at the time of purchase, and has a right of action for rescission against the issuer or a selling security holder on whose behalf the distribution is made or has a right of action for damages against:

- (a) the issuer or a selling security holder on whose behalf the distribution is made;
- (b) every promoter and director of the issuer or the selling security holder, as the case may be, at the time the offering memorandum or any amendment to it was sent or delivered;
- (c) every person or company whose consent has been filed respecting the offering, but only with respect to reports, opinions or statements that have been made by them;
- (d) every person who or company that, in addition to the persons or companies mentioned in (a) to (c) above, signed the offering memorandum or the amendment to the offering memorandum; and
- (e) every person who or company that sells securities on behalf of the issuer or selling security holder under the offering memorandum or amendment to the offering memorandum.

Such rights of rescission and damages are subject to certain limitations including the following:

- (a) if the purchaser elects to exercise its right of rescission against the issuer or selling security holder, it shall have no right of action for damages against that party;
- (b) in an action for damages, a defendant will not be liable for all or any portion of the damages that he, she or it proves do not represent the depreciation in value of the securities resulting from the misrepresentation relied on;
- (c) no person or company, other than the issuer or a selling security holder, will be liable for any part of the offering memorandum or any amendment to it not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, unless the person or company failed to conduct a reasonable investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation or believed that there had been a misrepresentation;
- (d) in no case shall the amount recoverable exceed the price at which the securities were offered; and
- (e) no person or company is liable in an action for rescission or damages if that person or company proves that the purchaser purchased the securities with knowledge of the misrepresentation.

In addition, no person or company, other than the issuer or selling security holder, will be liable if the person or company proves that:

- (a) the offering memorandum or any amendment to it was sent or delivered without the person’s or company’s knowledge or consent and that, on becoming aware of it being sent or delivered, that person or company gave reasonable general notice that it was so sent or delivered; or
- (b) with respect to any part of the offering memorandum or any amendment to it purporting to be made on the authority of an expert, or purporting to be a copy of, or an extract from, a report, an opinion or a statement of an expert, that person or company had no reasonable grounds to believe and did not believe that there had been a misrepresentation, the part of the offering memorandum or any amendment to it did not fairly represent the report, opinion or statement of the expert, or was not a fair copy of, or an extract from, the report, opinion or statement of the expert.

Not all defences upon which the Fund or others may rely are described herein. Please refer to the full text of the Saskatchewan Act for a complete listing.

Similar rights of action for damages and rescission are provided in section 138.1 of the Saskatchewan Act in respect of a misrepresentation in advertising and sales literature disseminated in connection with an offering of securities.

Section 138.2 of the Saskatchewan Act also provides that where an individual makes a verbal statement to a prospective purchaser that contains a misrepresentation relating to the security purchased and the verbal statement is made either before or contemporaneously with the purchase of the security, the purchaser is deemed to have relied on the misrepresentation, if it was a misrepresentation at the time of purchase, and has a right of action for damages against the individual who made the verbal statement.

Section 141(1) of the Saskatchewan Act provides a purchaser with the right to void the purchase agreement and to recover all money and other consideration paid by the purchaser for the securities if the securities are sold in contravention of the Saskatchewan Act, the regulations to the Saskatchewan Act or a decision of the Financial and Consumer Affairs Authority of Saskatchewan.

Section 141(2) of the Saskatchewan Act also provides a right of action for rescission or damages to a purchaser of securities to whom an offering memorandum or any amendment to it was not sent or delivered prior to or at the same time as the purchaser enters into an agreement to purchase the securities, as required by Section 80.1 of the Saskatchewan Act.

The rights of action for damages or rescission under the Saskatchewan Act are in addition to and do not derogate from any other right which a purchaser may have at law.

Section 147 of the Saskatchewan Act provides that no action shall be commenced to enforce any of the foregoing rights more than:

- (a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action; or
- (b) in the case of any other action, other than an action for rescission, the earlier of:
  - (i) one year after the plaintiff first had knowledge of the facts giving rise to the cause of action; or
  - (ii) six years after the date of the transaction that gave rise to the cause of action.

The Saskatchewan Act also provides a purchaser who has received an amended offering memorandum delivered in accordance with subsection 80.1(3) of the Saskatchewan Act with a right to withdraw from the agreement to purchase the securities by delivering a notice to the person who or company that is selling the securities, indicating the purchaser's intention not to be bound by the purchase agreement, provided such notice is delivered by the purchaser within two business days of receiving the amended offering memorandum.

### **Manitoba**

Section 141.1 of the *Securities Act* (Manitoba), as amended (the "**Manitoba Act**") provides that where an offering memorandum (such as this Offering Memorandum) or any amendment to it contains a misrepresentation, a purchaser who purchases a security offered by the offering memorandum is deemed to have relied on the representation if it was a misrepresentation at the time of purchase and has a right of rescission against the issuer or has a right of action for damages against (i) the issuer or a selling security holder on whose behalf the distribution is made, (ii) every director of the issuer at the date of the offering memorandum, and (iii) every person or company who signed the offering memorandum.

Such rights of rescission and damages are subject to certain limitations including the following:

- (a) if the purchaser chooses to exercise a right of rescission against the issuer, the purchaser shall have no right of action for damages against the parties listed under (i), (ii) and (iii);

- (b) in an action for damages, a defendant will not be liable for all or any part of the damages that he or she proves do not represent the depreciation in value of the security as a result of the misrepresentation;
- (c) in no case shall the amount recoverable exceed the price at which the securities were offered under the offering memorandum; and
- (d) no person or company is liable in an action for rescission or damages if that person or company proves that the purchaser had knowledge of the misrepresentation.

In addition, no person or company, other than the issuer, will be liable if the person or company proves that:

- (a) the offering memorandum was sent to the purchaser without the person's or company's knowledge or consent, and that, after becoming aware that it was sent, the person or company promptly gave reasonable notice to the issuer that it was sent without the person's or company's knowledge and consent;
- (b) with respect to any part of the offering memorandum purporting to be made on the authority of an expert or to be a copy of, or an extract from, an expert's report, opinion or statement, the person or company proves that the person or company did not have any reasonable grounds to believe and did not believe that (i) there had been a misrepresentation, or (ii) the relevant part of the offering memorandum (A) did not fairly represent the expert's report, opinion or statement, or (B) was not a fair copy of, or an extract from, the expert's report, opinion or statement; or
- (c) with respect to any part of the offering memorandum not purporting to be made on an expert's authority and not purporting to be a copy of, or an extract from, an expert's report, opinion or statement, unless the person or company (i) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation, or (ii) believed there had been a misrepresentation.

Not all defences upon which the Fund or others may rely are described herein. Please refer to the full text of the Manitoba Act for a complete listing.

Section 141.2 of the Manitoba Act provides that a purchaser of a security to whom an offering memorandum was required to be sent in compliance with Manitoba securities legislation, but was not sent within the prescribed time has a right of action for rescission or damages against the dealer, offeror or issuer who did not comply with the requirement.

Section 141.3 of the Manitoba Act also provides that a purchaser of a security to whom an offering memorandum is required to be sent may rescind the contract to purchase the security by sending a written notice of rescission to the issuer not later than midnight on the second day, excluding Saturdays and holidays, after the purchaser signs the agreement to purchase the securities.

Section 141.4 of the Manitoba Act provides that no action may be commenced to enforce any of the foregoing rights:

- (a) in the case of an action for rescission, more than 180 days after the day of the transaction that gave rise to the cause of action; or
- (b) in the case of any other action, other than an action for rescission, the earlier of:
  - (i) 180 days after the day that the plaintiff first had knowledge of the facts giving rise to the cause of action, or
  - (ii) two years after the day of the transaction that gave rise to the cause of action.

The rights of action for damages or rescission under the Manitoba Act are in addition to and do not derogate from any other right which a purchaser may have at law.

## Nova Scotia

The right of action for damages or rescission described herein is conferred by section 138 of the *Securities Act* (Nova Scotia) (the “**Nova Scotia Act**”). Section 138 of the Nova Scotia Act provides, in relevant part, that in the event that an offering memorandum (such as this Offering Memorandum), together with any amendment thereto, or any advertising or sales literature (as defined in the Nova Scotia Act) contains a Misrepresentation, the purchaser will be deemed to have relied upon such Misrepresentation if it was a Misrepresentation at the time of purchase and has, subject to certain limitations and defences, a statutory right of action for damages against the issuer and, subject to certain additional defences, every director of the issuer at the date of the offering memorandum and every person who signed the offering memorandum or, alternatively, while still the owner of the securities purchased by the purchaser, may elect instead to exercise a statutory right of rescission against the issuer, in which case the purchaser shall have no right of action for damages against the issuer, directors of the issuer or persons who have signed the offering memorandum, provided that, among other limitations:

- (a) no action shall be commenced to enforce the right of action for rescission or damages by a purchaser resident in Nova Scotia later than 120 days after the date on which the initial payment was made for the securities;
- (b) no person will be liable if it proves that the purchaser purchased the securities with knowledge of the Misrepresentation;
- (c) in the case of an action for damages, no person will be liable for all or any portion of the damages that it proves do not represent the depreciation in value of the securities as a result of the Misrepresentation relied upon; and
- (d) in no case will the amount recoverable in any action exceed the price at which the securities were offered to the purchaser.

In addition, a person or company, other than the issuer, will not be liable if that person or company proves that:

- (a) the offering memorandum or amendment to the offering memorandum was sent or delivered to the purchaser without the person’s or company’s knowledge or consent and that, on becoming aware of its delivery, the person or company gave reasonable general notice that it was delivered without the person’s or company’s knowledge or consent;
- (b) after delivery of the offering memorandum or amendment to the offering memorandum and before the purchase of the securities by the purchaser, on becoming aware of any Misrepresentation in the offering memorandum or amendment to the offering memorandum the person or company withdrew the person’s or company’s consent to the offering memorandum or amendment to the offering memorandum, and gave reasonable general notice of the withdrawal and the reason for it; or
- (c) with respect to any part of the offering memorandum or amendment to the offering memorandum purporting (i) to be made on the authority of an expert, or (ii) to be a copy of, or an extract from, a report, an opinion or a statement of an expert, the person or company had no reasonable grounds to believe and did not believe that (A) there had been a Misrepresentation, or (B) the relevant part of the offering memorandum or amendment to offering memorandum did not fairly represent the report, opinion or statement of the expert, or was not a fair copy of, or an extract from, the report, opinion or statement of the expert.

Furthermore, no person or company, other than the issuer, will be liable with respect to any part of the offering memorandum or amendment to the offering memorandum not purporting (a) to be made on the authority of an expert or (b) to be a copy of, or an extract from, a report, opinion or statement of an expert, unless the person or company (i) failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no Misrepresentation or (ii) believed that there had been a Misrepresentation.

If a Misrepresentation is contained in a record incorporated by reference into, or deemed incorporated by reference into, the offering memorandum or amendment to the offering memorandum, the Misrepresentation is deemed to be contained in the offering memorandum or an amendment to the offering memorandum.

The rights of action for damages or rescission under the Nova Scotia Act are in addition to and do not derogate from any other right which a purchaser may have at law.

### **New Brunswick**

Section 150 of the *Securities Act* (New Brunswick) (the “**New Brunswick Act**”) provides that where an offering memorandum (such as this Offering Memorandum) contains a Misrepresentation, a purchaser who purchases securities shall be deemed to have relied on the Misrepresentation if it was a Misrepresentation at the time of purchase and:

- (a) the purchaser has a right of action for damages against the issuer and any selling security holder(s) on whose behalf the distribution is made, or
- (b) where the purchaser purchased the securities from a person referred to in paragraph (a), the purchaser may elect to exercise a right of rescission against the person, in which case the purchaser shall have no right of action for damages against the person.

This statutory right of action is available to New Brunswick purchasers whether or not such purchaser relied on the Misrepresentation. However, there are various defenses available to the issuer and the selling security holder(s). In particular, no person will be liable for a Misrepresentation if such person proves that the purchaser purchased the securities with knowledge of the Misrepresentation when the purchaser purchased the securities. Moreover, in an action for damages, the amount recoverable will not exceed the price at which the securities were offered under the offering memorandum and any defendant will not be liable for all or any part of the damages that the defendant proves do not represent the depreciation in value of the security as a result of the misrepresentation.

If the purchaser intends to rely on the rights described in (a) or (b) above, such purchaser must do so within strict time limitations. The purchaser must commence an action to cancel the agreement within 180 days after the date of the transaction that gave rise to the cause of action. The purchaser must commence its action for damages within the earlier of:

- (a) one year after the purchaser first had knowledge of the facts giving rise to the cause of action; or
- (b) six years after the date of the transaction that gave rise to the cause of action.

The foregoing summary is subject to the express conditions of the New Brunswick Act and the regulations promulgated thereunder and specific reference should be made to same. The rights of action for rescission or damages under the New Brunswick Act are in addition to and do not derogate from any other right the purchaser may have at law.

### **Prince Edward Island**

Section 112 of the *Securities Act* (Prince Edward Island) (the “**PEI Act**”) provides to a purchaser who purchases, during the distribution period, a security offered by an offering memorandum (such as this Offering Memorandum) containing a misrepresentation, without regard to whether he or she relied on the misrepresentation, a right of action for rescission against the issuer or the selling security holder on whose behalf the distribution is made or a right of action for damages against (a) the issuer, (b) the selling security holder on whose behalf the distribution is made, (c) every director of the issuer at the date of the offering memorandum, and (d) every person who signed the offering memorandum. If the purchaser elects to exercise a right of action for rescission, the purchaser shall have no right of action for damages.

Such rights of rescission and damages are subject to certain limitations and a person will not be liable if the person proves that the purchaser purchased the securities with knowledge of the misrepresentation.

In addition, no person or company, other than the issuer and selling security holder, will be liable if the person proves that:

- (a) the offering memorandum was sent to the purchaser without the person's knowledge or consent and that, on becoming aware of its being sent, the person had promptly given reasonable notice to the issuer that it had been sent without the knowledge and consent of the person;
- (b) the person, on becoming aware of the misrepresentation in the offering memorandum, had withdrawn the person's consent to the offering memorandum and had given reasonable notice to the issuer of the withdrawal and the reason for it; or
- (c) with respect to any part of the offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of, or an extract from, a report, statement or opinion of an expert, the person had no reasonable grounds to believe and did not believe that (i) there had been a misrepresentation, or (ii) the relevant part of the offering memorandum (A) did not fairly represent the report, statement or opinion of the expert, or (B) was not a fair copy of, or an extract from, the report, statement or opinion of the expert.

Not all defences upon which the Fund or others may rely are described herein. Please refer to the full text of the PEI Act for a complete listing.

In an action for damages, the defendant is not liable for any damages that he or she proves do not represent the depreciation in value of the security resulting from the misrepresentation. In addition, the amount recoverable must not exceed the price at which the securities purchased by the purchaser were offered.

Section 121 of the PEI Act provides that no action may be commenced to enforce any of the foregoing rights more than:

- (a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action; or
- (b) in the case of any action other than an action for rescission, the earlier of:
  - (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or
  - (ii) three years after the date of the transaction giving rise to the cause of action.

### **Newfoundland and Labrador**

Section 130.1 of the *Securities Act* (Newfoundland and Labrador) provides that if an offering memorandum (such as this Offering Memorandum) contains a Misrepresentation, a purchaser who purchases Units offered by the offering memorandum is deemed to have relied on the representation if it was a Misrepresentation at the time of purchase, and the purchaser has:

- (a) a right of action for damages against:
  - (i) the issuer;
  - (ii) every director of the issuer at the date of the offering memorandum; and
  - (iii) every person or company who signed the offering memorandum; and
- (b) a right of rescission against the issuer.

If the purchaser chooses to exercise a right of rescission against the issuer, the purchaser has no right of action for damages against a person or company referred to above.

If a Misrepresentation is contained in a record incorporated by reference in, or is deemed to be incorporated into, the offering memorandum, the Misrepresentation is deemed to be contained in the offering memorandum.

When a Misrepresentation is contained in the offering memorandum, no person or company other than the issuer, is liable:

- (a) if the person or company proves
  - (i) that the offering memorandum was sent to the purchaser without the person's or company's knowledge or consent, and
  - (ii) that, after becoming aware that it was sent, the person or company promptly gave reasonable notice to the issuer that it was sent without the person's or company's knowledge and consent;
- (b) if the person or company proves that, after becoming aware of the Misrepresentation, the person or company withdrew the person's or company's consent to the offering memorandum and gave reasonable notice to the issuer of the withdrawal and the reason for it;
- (c) if, with respect to any part of the offering memorandum purporting to be made on the authority of an expert or to be a copy of, or an extract from, an expert's report, opinion or statement, the person or company proves that the person or company did not have any reasonable grounds to believe and did not believe that (i) there had been a Misrepresentation, or (ii) the relevant part of the offering memorandum (A) did not fairly represent the expert's report, opinion or statement, or (B) was not a fair copy of, or an extract from, the expert's report, opinion or statement; or
- (d) with respect to any part of the offering memorandum not purporting to be made on an expert's authority and not purporting to be a copy of, or an extract from, an expert's report, opinion or statement, unless the person or company (i) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no Misrepresentation, or (ii) believed there had been a Misrepresentation.

The amount recoverable shall not exceed the price at which the Units were offered under the offering memorandum.

In an action for damages, the defendant is not liable for all or any part of the damages that the defendant proves do not represent the depreciation in value of the security as a result of the Misrepresentation.

All or any one or more of the persons or companies that are found to be liable or accept liability in an action for damages are jointly and severally liable. A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable to make the same payment in the same cause of action unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.

No action shall be commenced to enforce these contractual rights more than:

- (a) in the case of an action for rescission, 180 days after the purchaser signs the agreement to purchase the Units; or
- (b) in the case of an action for damages, before the earlier of:
  - (i) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action; or
  - (ii) three years after the date the purchaser signs the agreement to purchase the Units.

## **Yukon**

Securities legislation in the Yukon provides that if an offering memorandum (such as this Offering Memorandum) contains a misrepresentation, a purchaser who purchases a security offered by the offering memorandum during the period of distribution has, without regard to whether the purchaser relied on the misrepresentation:

- (a) a right of action for damages against:
  - (i) the issuer;
  - (ii) the selling security holder on whose behalf the distribution is made;
  - (iii) every director of the issuer at the date of the offering memorandum, and
  - (iv) every person who signed the offering memorandum; and
- (b) a right of rescission against:
  - (i) the issuer; or
  - (ii) the selling security holder on whose behalf the distribution is made.

If the purchaser chooses to exercise a right of rescission against the issuer, the purchaser has no right of action for damages against a person or company referred to above.

If a misrepresentation is contained in a record incorporated by reference in, or is deemed to be incorporated into, an offering memorandum, the misrepresentation is deemed to be contained in the offering memorandum.

If a misrepresentation is contained in the offering memorandum, no person is liable if the person proves that the purchaser purchased the securities with knowledge of the misrepresentation.

A person, other than the issuer or selling security holder, is not liable in an action for damages if the person proves that:

- (a) the offering memorandum was sent to the purchaser without the person's knowledge or consent, and that, on becoming aware of its being sent, the person had promptly given reasonable notice to the issuer that it had been sent without the person's knowledge and consent;
- (b) the person, on becoming aware of the misrepresentation, had withdrawn the person's consent to the offering memorandum and had given reasonable notice to the issuer of the withdrawal and the reason for it; or
- (c) with respect to any part of the offering memorandum purporting to be made on the authority of an expert or to be a copy of, or an extract from, a report, opinion or statement of an expert, the person had no reasonable grounds to believe and did not believe that
  - (i) there had been a misrepresentation, or
  - (ii) the relevant part of the offering memorandum
    - (A) did not fairly represent the report, opinion or statement of the expert, or
    - (B) was not a fair copy of, or an extract from, the report, opinion or statement of the expert.

A person, other than the issuer or selling security holder, is not liable in an action for damages with respect to any part of the offering memorandum not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, unless the person

- (a) failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no misrepresentation, or

- (b) believed there had been a misrepresentation.

The amount recoverable shall not exceed the price at which the securities were offered under the offering memorandum. In an action for damages, the defendant is not liable for all or any part of the damages that the defendant proves do not represent the depreciation in value of the security as a result of the misrepresentation.

All or any one or more of the persons or companies that are found to be liable or accept liability in an action for damages are jointly and severally liable. A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable to make the same payment in the same cause of action unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.

The issuer, and every director of the issuer at the date of the offering memorandum who is not a selling security holder, is not liable if the issuer does not receive any proceeds from the distribution of the securities and the misrepresentation was not based on information provided by the issuer, unless the misrepresentation

- (a) was based on information previously publicly disclosed by the issuer;
- (b) was a misrepresentation at the time of its previous public disclosure; and
- (c) was not subsequently publicly corrected or superseded by the issuer before completion of the distribution of the securities being distributed.

No action may be commenced to enforce a right more than,

- (a) in the case of an action for rescission, 180 days after the date of the transaction giving rise to the cause of action; or
- (b) in the case of any action other than an action for rescission,
  - (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or
  - (ii) three years after the date of the transaction giving rise to the cause of action,

whichever period expires first.

The rights of action for rescission or damages conferred are in addition to and do not derogate from any other right that the purchaser may have at law.

### **Northwest Territories**

Securities legislation in the Northwest Territories provides that if an offering memorandum (such as this Offering Memorandum) contains a misrepresentation, a purchaser who purchases a security offered by the offering memorandum during the period of distribution has, without regard to whether the purchaser relied on the misrepresentation:

- (a) a right of action for damages against
  - (i) the issuer;
  - (ii) the selling security holder on whose behalf the distribution is made;
  - (iii) every director of the issuer at the date of the offering memorandum, and
  - (iv) every person who signed the offering memorandum; and
- (b) a right of rescission against:

- (i) the issuer; or
- (ii) the selling security holder on whose behalf the distribution is made.

If the purchaser chooses to exercise a right of rescission against the issuer, the purchaser has no right of action for damages against a person or company referred to above.

If a misrepresentation is contained in a record incorporated by reference in, or is deemed to be incorporated into, an offering memorandum, the misrepresentation is deemed to be contained in the offering memorandum.

If a misrepresentation is contained in the offering memorandum, no person is liable if the person proves that the purchaser purchased the securities with knowledge of the misrepresentation.

A person, other than the issuer or selling security holder, is not liable in an action for damages if the person proves that:

- (a) the offering memorandum was sent to the purchaser without the person's knowledge or consent, and that, on becoming aware of its being sent, the person had promptly given reasonable notice to the issuer that it had been sent without the person's knowledge and consent;
- (b) the person, on becoming aware of the misrepresentation, had withdrawn the person's consent to the offering memorandum and had given reasonable notice to the issuer of the withdrawal and the reason for it; or
- (c) with respect to any part of the offering memorandum purporting to be made on the authority of an expert or to be a copy of, or an extract from, a report, opinion or statement of an expert, the person had no reasonable grounds to believe and did not believe that
  - (i) there had been a misrepresentation, or
  - (ii) the relevant part of the offering memorandum
    - (A) did not fairly represent the report, opinion or statement of the expert, or
    - (B) was not a fair copy of, or an extract from, the report, opinion or statement of the expert.

A person, other than the issuer or selling security holder, is not liable in an action for damages with respect to any part of the offering memorandum not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, unless the person

- (a) failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no misrepresentation, or
- (b) believed there had been a misrepresentation.

The amount recoverable shall not exceed the price at which the securities were offered under the offering memorandum. In an action for damages, the defendant is not liable for all or any part of the damages that the defendant proves do not represent the depreciation in value of the security as a result of the misrepresentation.

All or any one or more of the persons or companies that are found to be liable or accept liability in an action for damages are jointly and severally liable. A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable to make the same payment in the same cause of action unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.

The issuer, and every director of the issuer at the date of the offering memorandum who is not a selling security holder, is not liable if the issuer does not receive any proceeds from the distribution of the securities and the misrepresentation was not based on information provided by the issuer, unless the misrepresentation

- (a) was based on information previously publicly disclosed by the issuer;
- (b) was a misrepresentation at the time of its previous public disclosure; and
- (c) was not subsequently publicly corrected or superseded by the issuer before completion of the distribution of the securities being distributed.

No action may be commenced to enforce a right more than,

- (a) in the case of an action for rescission, 180 days after the date of the transaction giving rise to the cause of action; or
- (b) in the case of any action other than an action for rescission,
  - (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or
  - (ii) three years after the date of the transaction giving rise to the cause of action,

whichever period expires first.

The rights of action for rescission or damages conferred are in addition to and do not derogate from any other right that the purchaser may have at law.

### **Nunavut**

Securities legislation in Nunavut provides that if an offering memorandum (such as this Offering Memorandum) contains a misrepresentation, a purchaser who purchases a security offered by the offering memorandum during the period of distribution has, without regard to whether the purchaser relied on the misrepresentation:

- (a) a right of action for damages against
  - (i) the issuer;
  - (ii) the selling security holder on whose behalf the distribution is made;
  - (iii) every director of the issuer at the date of the offering memorandum, and
  - (iv) every person who signed the offering memorandum; and
- (b) a right of rescission against:
  - (i) the issuer; or
  - (ii) the selling security holder on whose behalf the distribution is made.

If the purchaser chooses to exercise a right of rescission against the issuer, the purchaser has no right of action for damages against a person or company referred to above.

If a misrepresentation is contained in a record incorporated by reference in, or is deemed to be incorporated into, an offering memorandum, the misrepresentation is deemed to be contained in the offering memorandum.

If a misrepresentation is contained in the offering memorandum, no person is liable if the person proves that the purchaser purchased the securities with knowledge of the misrepresentation.

A person, other than the issuer or selling security holder, is not liable in an action for damages if the person proves that:

- (a) the offering memorandum was sent to the purchaser without the person's knowledge or consent, and that, on becoming aware of its being sent, the person had promptly given reasonable notice to the issuer that it had been sent without the person's knowledge and consent;
- (b) the person, on becoming aware of the misrepresentation, had withdrawn the person's consent to the offering memorandum and had given reasonable notice to the issuer of the withdrawal and the reason for it; or
- (c) with respect to any part of the offering memorandum purporting to be made on the authority of an expert or to be a copy of, or an extract from, a report, opinion or statement of an expert, the person had no reasonable grounds to believe and did not believe that
  - (i) there had been a misrepresentation, or
  - (ii) the relevant part of the offering memorandum
    - (A) did not fairly represent the report, opinion or statement of the expert, or
    - (B) was not a fair copy of, or an extract from, the report, opinion or statement of the expert.

A person, other than the issuer or selling security holder, is not liable in an action for damages with respect to any part of the offering memorandum not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, unless the person

- (a) failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no misrepresentation, or
- (b) believed there had been a misrepresentation.

The amount recoverable shall not exceed the price at which the securities were offered under the offering memorandum. In an action for damages, the defendant is not liable for all or any part of the damages that the defendant proves do not represent the depreciation in value of the security as a result of the misrepresentation.

All or any one or more of the persons or companies that are found to be liable or accept liability in an action for damages are jointly and severally liable. A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable to make the same payment in the same cause of action unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.

The issuer, and every director of the issuer at the date of the offering memorandum who is not a selling security holder, is not liable if the issuer does not receive any proceeds from the distribution of the securities and the misrepresentation was not based on information provided by the issuer, unless the misrepresentation

- (a) was based on information previously publicly disclosed by the issuer;
- (b) was a misrepresentation at the time of its previous public disclosure; and
- (c) was not subsequently publicly corrected or superseded by the issuer before completion of the distribution of the securities being distributed.

No action may be commenced to enforce a right more than,

- (a) in the case of an action for rescission, 180 days after the date of the transaction giving rise to the cause of action; or

- (b) in the case of any action other than an action for rescission,
  - (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or
  - (ii) three years after the date of the transaction giving rise to the cause of action,

whichever period expires first.

The rights of action for rescission or damages conferred are in addition to and do not derogate from any other right that the purchaser may have at law.

**British Columbia, Alberta and Québec**

Notwithstanding that the *Securities Act* (British Columbia), the *Securities Act* (Alberta) and the *Securities Act* (Québec) do not provide, or require the Fund to provide, to purchasers resident in the Province of Alberta purchasing under the exemption contained in section 2.3 (the “**accredited investor exemption**”) of NI 45-106 and to purchasers in British Columbia and Québec any rights of action in circumstances where this Offering Memorandum or an amendment hereto contains a Misrepresentation, the Fund hereby grants to such purchasers contractual rights of action that are equivalent to the statutory rights of action set forth above with respect to purchasers resident in Ontario.