

# Hummingbird Management, LLC

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*This disclosure brochure provides clients with information about the qualifications and business practices of Hummingbird Management, LLC, an independent investment advisory firm registered with the United States Securities and Exchange Commission ("SEC"). It also describes the services Hummingbird Management, LLC provides as well as background information on those individuals who provide investment advisory services on behalf of Hummingbird Management, LLC. Please contact Paul Sonkin, Chief Compliance Officer of Hummingbird Management, LLC, at 212-750-7117 if you have any questions about the contents of this disclosure brochure.*

*The information in this disclosure brochure has not been approved or verified by the SEC or by any state securities authority. Registration with the SEC does not imply that Hummingbird Management, LLC or any individual providing investment advisory services on behalf of Hummingbird Management, LLC possess a certain level of skill or training. Additional information about Hummingbird Management, LLC is available on the Internet at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). You can search this site by a unique identifying number, known as a CRD number. The CRD number for Hummingbird Management, LLC is 151242.*

## **MATERIAL CHANGES**

There have been no material changes to this disclosure brochure since the date of its most recent filing (March 1, 2012).

HUMMINGBIRD MANAGEMENT, LLC  
DISCLOSURE BROCHURE

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DISCLOSURE BROCHURE

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## ADVISORY BUSINESS

### Company

Hummingbird Management, LLC is a privately-held Delaware limited liability company that has been providing investment advisory services as an SEC-registered investment adviser since September, 2009. Throughout this disclosure brochure Hummingbird Management, LLC is referred to as “Hummingbird.”

The principal owner of Hummingbird is Paul D. Sonkin.

### Services

Hummingbird provides discretionary portfolio management services to separately managed accounts and privately offered, pooled investment vehicles formed as limited partnerships (commonly known as “hedge funds”).

#### Private Investment Funds

At present, Hummingbird acts as investment manager to the following private investment funds: the Hummingbird Value Fund, L.P. and the Tarsier Nanocap Value Fund, L.P.

Please see the “Investment Strategies” section on page 5 of this disclosure brochure for additional information regarding the investment objectives, types of investments and risk exposures of these private investment funds.

The terms and conditions for participation in each of the private investment funds managed by Hummingbird, including management and incentive fees, conflicts of interest and risk factors, are set forth in the respective fund’s offering documents, which each prospective investor shall receive, and be required to complete and submit certain portions to Hummingbird in order to demonstrate qualification for a fund investment.

Because of the “pooled” nature of private investment funds, clients may not impose restrictions on investments in certain securities or types of securities.

*Private investment funds generally involve various risk factors and liquidity constraints, a complete discussion of which is set forth in the fund’s offering documents, which will be provided to each investor for review and consideration. Each prospective investor will be required to complete a subscription agreement, pursuant to which the investor shall establish that they are qualified for investment in the private investment fund, and acknowledge and accept the various risk factors that are associated with such an investment.*

#### Separately Managed Accounts

Hummingbird also provides value-based, growth-oriented personalized investment management services primarily for high net worth individuals and institutions.

Hummingbird will manage advisory accounts on a discretionary basis. Clients have the opportunity to place reasonable restrictions on the types of investments which will be made on the client's behalf.

### **Assets Under Management**

As of December 31, 2012, the total amount of client assets managed by Hummingbird is approximately \$6,000,000. All assets are managed on a discretionary basis.

## **FEES AND COMPENSATION**

### **Private Investment Funds**

Hummingbird acts as investment adviser to multiple private investment funds organized as a pooled investment vehicles, and charges an asset based management fee of approximately 1.0% to 1.5% per year on assets under management. Additionally, Hummingbird Capital, LLC, an affiliate of Hummingbird serves as general partner of these private investment funds and shares in the profits based on the performance of the respective fund's assets under management pursuant to the terms of the relevant agreement. Generally, Hummingbird Capital, LLC will receive 20% of the net profits generated.

Asset-based fees are generally payable on a quarterly basis in advance and the performance-based allocation accrues monthly and generally is payable annually or more frequently and is subject to a "high water mark." This means that no performance allocation will be made as to net profits in a period to the extent they "restore" net losses previously allocated to an investor in the investment vehicle. Hummingbird in its capacity as investment adviser (or its affiliate, Hummingbird Capital, LLC, in its capacity as general partner) for an investment vehicle, is reimbursed for allocable legal, accounting and administrative expenses that are directly related to such investment vehicle or such investment vehicle's investments.

The terms and conditions for participation in these private investment funds, including management and performance allocation, conflicts of interest and risk factors, are set forth in each fund's offering documents.

### **Separately Managed Accounts**

Hummingbird does not maintain a standardized fee schedule for its separately managed accounts. Fees for separately managed accounts are negotiated and are based on a percentage of the current market value of the assets under management. The exact fee charged will be stipulated in the advisory agreement. Some separately managed accounts may pay more or less than others depending on certain factors, including the type and size of the account, the historical or anticipated transaction activity, the range of services provided to the client or the amount of client relationship assets under management.

## **Important Additional Fee Information**

### Qualified Clients

Because Hummingbird Capital, LLC (an affiliate of Hummingbird) receives a performance allocation, an investor in these private investment funds must be a “Qualified Client.” As defined in Rule 205-3 under the Investment Adviser Act of 1940, as amended, a “Qualified Client” is an individual or company that immediately after entering into an investment contract has at least \$750,000 under management with the advisory firm or an individual or a company with a net worth (or a joint net worth, in the case of an individual, with assets held jointly with a spouse) of more than \$1,500,000 immediately before entering into the investment contract.

### Fees Negotiable

The fees of certain investors may be higher than other investment advisers offering similar services. Management fees, incentive fees and fees that are a percentage of assets under management are sometimes subject to negotiation and renegotiation. Fees may vary due to the particular circumstances of the client or as otherwise negotiated with particular clients.

### Trading Costs

The management fee does not cover any execution-related expenses, commissions or margin interest, if any, securities exchange or SEC fees, or other fees required by law or charged by the broker-dealer with custody of the account.

### Direct Debiting of Client Accounts

In order for Hummingbird’s advisory fees to be directly debited from a client’s account, the client provides written authorization (in Hummingbird’s investment management agreement) permitting Hummingbird to bill the custodian. In addition, the account must be held by a qualified custodian and the qualified custodian must agree to send to the client an account statement on at least a quarterly basis. The account statement must indicate all amounts disbursed from the account including the amount of advisory fees paid directly to Hummingbird. Clients are informed that it is their responsibility to verify the accuracy of the fee calculation and that the account custodian will not determine whether the fee is properly calculated.

### Termination of Client Relationship

Separately managed account investment advisory services generally are terminable on thirty (30) days prior written notice. Upon termination, fees are generally pro-rated based on the length of time in the billing period in which services are provided, and any unearned fees paid in advance are refunded to the client.

## PERFORMANCE-BASED FEES AND SIDE-BY-SIDE MANAGEMENT

As stated in the “Fees and Compensation” above, under certain circumstances Hummingbird Capital, LLC, an affiliate of Hummingbird, is eligible to receive a performance-based allocation (*e.g.*, as general partner of one of the private investment funds managed by Hummingbird). In addition, Hummingbird manages client accounts where it is not eligible to receive performance-based compensation for its advisory services.

Situations – such as those described above - where Hummingbird manages both accounts that pay performance-based compensation and accounts that do not pay performance-based compensation gives rise to certain conflicts of interest that have the potential to motivate Hummingbird to favor its performance-based account clients over other clients. For example, performance-based compensation is typically significantly higher than the asset-based fees paid on traditional accounts. In the case of private investment funds, many investment advisers, including Hummingbird or its related persons, have significant investments in the funds that they manage. As a result, Hummingbird has additional incentives to favor the performance-based clients over other clients by allocating investment opportunities to the performance-based accounts. Finally, because performance-based compensation is not paid unless the private investment fund achieves a certain level of performance, the performance allocation arrangement may create an incentive for Hummingbird to make investments that are more risky or more speculative than might be the case in the absence of an allocation based on performance.

Please see the section entitled “Brokerage Practices” on page 11 of this disclosure brochure for additional information on Hummingbird’s brokerage practices.)

## TYPES OF CLIENTS

Hummingbird provides investment advisory services to individuals (including high net worth individuals), pension and profit sharing plans, trusts, estates, charitable organizations, corporations and other types of business entities. In addition, Hummingbird provides investment management services to various domestic pooled investment vehicles that are not registered investment companies. Currently, Hummingbird provides investment management services to the following private investment funds:

- The Hummingbird Value Fund, L.P.
- Tarsier Nanocap Value Fund, L.P.

## Engaging the Services of Hummingbird

### Private Investment Funds

Investors in private investment funds managed by Hummingbird will be required to complete a subscription agreement (including an investor questionnaire to determine their eligibility for investment in the fund) and become a party to the



operating agreement that governs the operation of the respective private investment fund.

### Separately Managed Accounts

All clients wishing to engage Hummingbird for investment advisory services must sign an investment management agreement that governs the relationship with Hummingbird. The investment management agreement describes the services and responsibilities of Hummingbird to the client. It also outlines Hummingbird's fee in detail.

In addition to completing Hummingbird's internal documents (e.g., investment management agreement), clients must complete certain broker-dealer/custodial documentation. Upon completion of these documents, Hummingbird will be considered engaged by the client. A client has an ongoing responsibility for ensuring that Hummingbird is informed in a timely manner of changes in the client's investment objectives and risk tolerance.

## **METHODS OF ANALYSIS, INVESTMENT STRATEGIES AND RISK OF LOSS**

*The following is a general discussion of the methods of analysis and investment strategies employed by Hummingbird.*

### **Investment Strategy**

Hummingbird follows a disciplined investment strategy that is generally referred to as "value investing". This discipline was pioneered by Benjamin Graham and advanced by his direct disciples -- Walter Schloss, Irving Kahn, Warren Buffett, and by other alumni of Columbia Business School such as Chuck Royce, Mario Gabelli and Tom Knapp.

Value investing rests on two intellectual commitments. First, that it is possible for the diligent and intelligent investor to establish the real, fundamental, or intrinsic value of some, though hardly all, investment securities. Second, that there are times when the market offers to sell these securities for substantially less than their intrinsic worth. The difference between market price and intrinsic value is what Benjamin Graham, in *The Intelligent Investor*, defined as the **margin of safety**.

The disciplined value investor buys securities only when there is a sufficient margin of safety both to protect the capital that has been invested and to provide a substantial return when the market comes to realize that the securities have been underpriced. The approach works both to preserve capital and to produce superior returns. A large body of statistical evidence confirms that value investing generates both lower risk and higher return when applied in a disciplined fashion over long periods of time.

For value investing to work, for it to provide superior returns with lower risk, two

things must take place. First, the market has to make mistakes pricing a particular security. Second, at some later point, the market has to recognize its mistake and rectify it.

Mispricing is not spread uniformly across all areas of the capital markets. As one should expect, the market is more prone to error in areas where fewer analysts are examining corporate financial statements and making fewer recommendations to their megafund clients.

## **Think Small**

A common thread in Hummingbird's approach is that it seeks to exploit small pockets of inefficiency in an otherwise efficient capital market. Hummingbird has identified several segments in the market where inefficiencies exist for varying periods of time. Most of these market inefficiencies are found in the small and micro cap sector of the market. As a consequence, most of Hummingbird's investments are expected to be in companies with market caps well below \$1 billion.

Hummingbird's basic intent is to buy securities in a company at a discount to their intrinsic value. Three factors are critical to deciding whether or not a security is a legitimate candidate. The first is Hummingbird's ability to estimate intrinsic value and the reliability Hummingbird places in that estimate. The second factor is the length of time it will take to close the gap between the current price and the intrinsic value. The third is the margin of safety, which is expected to protect clients and investors in case a mistake is made in either the estimate of the intrinsic value or the length of time to close the gap.

If the intrinsic value is very certain and the time period to close the gap is well defined with a low level of risk, a security trading at a 5% discount maybe a very compelling investment. This is the case with an arbitrage situation. By contrast, a security trading at a 70% discount to a very reliable estimate of intrinsic value might not be a good candidate if the gap cannot be closed in a reasonable period.

Hummingbird will have two primary areas of investment, *General Portfolio Operations* and *Arbitrage Operations*.

## **General Portfolio Operations**

General Portfolio Operations consist of purchasing securities at prices less than their intrinsic value as determined by careful analysis. Hummingbird will put little effort into forecasting the future course of the securities market or the future prospects of individual companies on a basis differing materially from their past performance. Instead, Hummingbird will tend to purchase securities when the sentiment for a company's outlook is bleak and the price of the stock is low, and to sell them in periods of optimism and high prices.

General Portfolio Operations contains three sub-categories of investments: *Moderate Neglect*; *Deep Neglect*; *Hybrid Securities*.

*Moderately neglected companies* are ones that maintain some level of institutional sponsorship and analyst coverage. In most cases, the outlook is negative due to some type of black cloud hovering over the company. This pessimism can have several causes: industry overcapacity; a product transition; a production problem; a botched acquisition. These companies still care about Wall Street and maintain friendly relations with buy and sell side analysts. Wall Street, however, does not care about them. This unrequited affection creates opportunities.

*Deeply neglected companies* are ones that lose sponsorship and analyst coverage. Disparities between intrinsic value and price can be extreme. It is not uncommon to find a company trading at the value of its net cash on the balance sheet; when one buys the stock, one is also getting the business for free. These companies have given up on Wall Street. They often think of themselves as private firms with a few outside shareholders. They issue sketchy earnings releases if they issue a press release at all. They would not choose to be public, but somehow they are stuck. A frequent catalyst in realizing the value of this kind of investment is that someone (usually management) pays a premium to take them private.

*Hybrid Securities* consist of convertible and non-convertible bonds and preferred stock. The parameters are similar to the neglect categories mentioned above, although in this case Hummingbird would be purchasing securities in a different area of the company's capital structure.

## **Arbitrage Operations**

Arbitrage Operations consists of purchasing securities at prices less than their intrinsic value where the value can be estimated with greater certainty and where there is a clear catalyst to realize that value.

Arbitrage breaks down into three sub-categories: *Microcap Arbitrage*; *Liquidations*; *Recapitalizations*, *Reorganizations* and *Spin-offs*.

*Microcap arbitrage* involves purchasing securities of companies that are merging or being acquired, with a focus on situations that, because of their size, fall below the radar screens of the traditional arbitrage community. Hummingbird will concentrate on cash tenders and mergers as opposed to deals involving stock swaps. Hummingbird believes that a small nimble fund can profit handsomely from deals too tiny to attract the big players.

*Liquidations* refers to the purchase of securities where the company is in a formal process of liquidation. In these situations the intrinsic value can be estimated with a fairly high level of precision; the timetable is relatively short and predictable.

*Recapitalizations*, *Reorganizations* and *Spin-offs* consist of purchasing securities of companies that are in the midst of a major change in capital structure. This may be due to a partial LBO or merger where a small portion of the company remains in public hands. *Spin-offs* are special cases where even a large company can fall into an information vacuum. Often a company that announces a spinoff has been suffering from a "conglomerate discount"; its shares are unloved because conglomerates are

out of fashion. The spin-off is announced, but the discount rarely goes away. Also, since management's options for the spun-off companies are often struck at the initial trading price, there is very little incentive to talk up a company's prospects before the spin-off is completed. There is opportunity here, in the shares of the parent company before the spin-off, and especially in the newly separated company after the event.

## **Risk**

### In General

Investing in securities involves risk of loss that each client should be prepared to bear. Typical investment risks include market risk typified by a drop in a security's price due to a company specific event (e.g. unsystematic risk), or general market activity (e.g., systematic risk). In addition, certain strategies may impose more risk than others. For example, with fixed income securities, a period of rising interest rates could erode the value of bond since bond values generally fall as bond yields rise. Investment risk with international equities also includes fluctuation in currency values, differences in accounting and economic and political instability. Depending upon the client need and investment mandate, Hummingbird will attempt to thoroughly explain the applicable risks and address them in the investment management agreement.

### Options

There are numerous risks associated with transactions in options on securities or securities indexes. A decision as to whether, when and how to use options involves the exercise of skill and judgment, and even a well-conceived transaction may be unsuccessful to some degree because of market behavior or unexpected events. As the writer of covered call options, the client forgoes, during the option's life, the opportunity to profit from increases in the market value of the underlying security or the index above the sum of the option premium received and the exercise price of the call, but has retained the risk of loss, minus the option premium received, should the price of the underlying security decline. In the case of index options, the client incurs basis risk between the performance of the underlying portfolio and the performance of the underlying index. For example, the underlying portfolio may decline in value while the underlying index may increase in value, resulting in a loss on the call option while the underlying portfolio declines as well.

### Margin Transactions

When buying stocks on margin, you are employing leverage as an investing strategy. Leverage allows you to extend your financial reach by investing using borrowed funds while limiting the amount of your own cash you expend. Please note, however, that this can involve a high degree of risk. Some of these risks include:

- Losing more money than you have invested;

- Being required to deposit additional cash or securities in your account on short notice to cover market losses;
- Being forced to sell some or all of your securities when falling stock prices reduce the value of your securities; and
- Having your brokerage firm sell some or all of your securities without consulting you to pay off the loan it made to you.

### Private Investment Funds

Private investment funds generally involve various risk factors and liquidity constraints, a complete discussion of which is set forth in the fund's offering documents, which will be provided to each investor for review and consideration. Each prospective investor will be required to complete a subscription agreement, pursuant to which the investor shall establish that they are qualified for investment in the fund, and acknowledges and accepts the various risk factors that are associated with such an investment.

### Nanocap Investments

Nanocap companies generally can involve significantly greater risks than securities of larger, well-known companies. Therefore, investment in the Tarsier Nanocap Value Fund, L.P. is not suitable for anyone who is not prepared for this higher level of risk, the possible need to hold on to the interests for an extended period of time, as well as the possibility of a total loss of their entire investment in the Tarsier Nanocap Value Fund, L.P.

### **Cash Management**

Hummingbird, without limitation, may hold cash or invest in cash equivalents for short-term investments. Among the cash equivalents in which Hummingbird may invest are: obligations of the U.S. Government, its agencies or instrumentalities (U.S. Government Securities; U.S. Treasury Bills), commercial paper and repurchase agreements, money market mutual funds, certificates of deposit and bankers' acceptances issued by domestic branches of U.S. banks that are members of the Federal Deposit Insurance Corporation. In the event the Hummingbird determines that there is not sufficiently good value in any securities suitable for investment, all capital may be held in cash and cash equivalents.

### **DISCIPLINARY HISTORY**

Neither Hummingbird nor any of its supervised persons have any reportable disciplinary history.

### **OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS**

Paul D. Sonkin, Managing Member of Hummingbird Management, LLC, is also a

Managing Member of Hummingbird Capital, LLC, a Delaware limited liability company that serves as general partner to the following private investment funds: The Hummingbird Value Fund, L.P.; and the Tarsier Nanocap Value Fund, L.P (collectively, the “Hummingbird Funds”).

Mr. Sonkin is also an Adjunct Professor at Columbia University Graduate School of Business, where he teaches courses on security analysis and value investing.

### **Potential Conflicts of Interest**

Hummingbird Capital, LLC, an affiliate of Hummingbird, may receive performance-based incentive allocations in its role as the general partner of the Hummingbird Funds. Under a performance-based management fee system, the high fee returns that can be earned can pose potential conflicts of interest. Due to these potentially higher returns, the focus by the general partner (and Hummingbird which is the portfolio manager for each of the Hummingbird Funds) on accounts being charged a performance-based management fee could consume much of its time and efforts to the detriment of accounts not being charged a performance-based management fee.

Notwithstanding such economic benefit and potential conflicts of interest, as a fiduciary, Hummingbird always strives to serve the best interest of the client.

*Please contact Paul D. Sonkin, the Chief Compliance Officer of Hummingbird, at (212) 750-7117 if you have additional questions about these potential conflicts of interest.*

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

### **Code of Ethics**

Hummingbird has adopted a Code of Ethics to prevent violations of federal securities laws. The Code of Ethics is predicated on the principle that Hummingbird and its employees owe a fiduciary duty to its clients. Accordingly, Hummingbird expects all employees to act with honesty, integrity and professionalism and to adhere to federal securities laws. Hummingbird and its employees are required to adhere to the Code of Ethics. At all times, Hummingbird and its employees must (i) place client interests ahead of Hummingbird's; (ii) engage in personal investing that is in full compliance with Hummingbird's Code of Ethics; and (iii) avoid taking advantage of their position. Clients and prospective clients may request a copy of Hummingbird's Code of Ethics by contacting Paul D. Sonkin, Chief Compliance Officer of Hummingbird, at (212) 750-7117.

### **Prohibition on Use of Insider Information**

Hummingbird has also adopted policies and procedures to prevent the misuse of “insider” information. A copy of Hummingbird's Insider Trading policies and procedures is available to any client or prospective client upon request. For a copy of

Hummingbird's Insider Trading policies and procedures, please contact Paul D. Sonkin, Chief Compliance Officer of Hummingbird, at (212) 750-7117.

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

*Hummingbird may purchase or sell for a client, portfolio securities or investment products in which Hummingbird or its related personnel have a material financial interest.*

Hummingbird Capital, LLC, an affiliate of Hummingbird, acts as general partner of the private investment funds managed by Hummingbird. As the general partner, the affiliate maintains a capital account in each of the private investment funds and therefore, receives allocations of net profit (or losses) of the private investment funds. In order to create a strong congruity of interest between the management of the private investment funds and its investors, the managing member of Hummingbird has invested in the various private investment funds.

*Hummingbird or individuals associated with Hummingbird may buy, sell, or hold in their personal accounts the same securities that Hummingbird recommends to its clients.*

To minimize conflicts of interest, and to maintain the fiduciary responsibility Hummingbird has for its clients, Hummingbird has established the following policy:

- An officer, manager, or employee of Hummingbird shall not buy or sell securities for a personal portfolio when the decision to purchase is derived by reason of their employment with Hummingbird, unless the information is also available to the investing public as a whole;
- No person associated with Hummingbird shall prefer his or her own interest to that of any client;
- No person associated with Hummingbird shall trade against the interests of any client account;
- Personal trades in securities being purchased or sold for clients may only be made simultaneously with or after trades are made for clients; and
- Hummingbird personnel may not anticipate trades to be placed for clients.

## **BROKERAGE PRACTICES**

### **Best Execution**

Best execution has been defined by the SEC as the "execution of securities transactions for clients in such a manner that the client's total cost or proceeds in each transaction is the most favorable under the circumstances." The best execution

responsibility applies to the circumstances of each particular transaction and an investment adviser must consider the full range and quality of a broker-dealer's services, including, among other things, execution capability, commission rates, the value of any research, financial responsibility and responsiveness.

In seeking best execution, the determinative factor is not the lowest possible cost, but whether the transaction represents the best qualitative execution, taking into consideration the full range of a broker-dealer's services, including among others, the value of research provided, execution capability, commission rates, and responsiveness. Consistent with the foregoing, while Hummingbird will seek competitive rates, it may not necessarily obtain the lowest possible commission rates for client transactions.

For fixed income securities, Hummingbird attempts to obtain best execution for the volume of bonds sought by speaking with more than one broker and comparing pricing and transactions costs.

### **Broker Analysis**

Hummingbird evaluates a wide range of criteria in seeking the most favorable price and market for the execution of transactions. These include the broker-dealer's trading costs, efficiency of execution and error resolution, financial strength and stability, capability, positioning and distribution capabilities, information in regard to the availability of securities, trading patterns, statistical or factual information, opinion pertaining to trading and prior performance in serving Hummingbird.

Also in consideration is such broker-dealers' provision or payment of the costs of research and other investment management-related services (the provisional payment of such costs by brokers are referred to as payment made by "soft dollars", as further discussed in the "Research/Soft Dollars Benefits" section immediately below). Accordingly, if Hummingbird determines in good faith that the amount of trading costs charged by a broker-dealer is reasonable in relation to the value of the brokerage and research or investment management-related services provided by such broker, the client may pay trading costs to such broker in an amount greater than the amount another broker might charge.

Hummingbird's portfolio manager is responsible for continuously monitoring and evaluation the performance and execution capabilities of brokers that transact orders for our client accounts to ensure consistent quality executions. In addition, Hummingbird periodically reviews its transaction costs in light of current market circumstances and other relevant information.

### **Research/Soft Dollar Benefits**

Research or investment-management-related services provided by brokers through which portfolio transactions are executed, settled and cleared may include research reports on particular industries and companies, economic surveys and analyses, recommendations as to specific securities, on-line quotations, news and research services, and other services providing lawful and appropriate assistance to



Hummingbird in the performance of its investment decision-making responsibilities (collectively, “soft dollar items”).

Soft dollar items may be provided directly by brokers, by third parties at the direction of brokers or purchased by Hummingbird with soft-dollar credits provided by brokers. Soft dollar items may arise from over-the-counter principal or agency transactions, as well as exchange traded agency transactions. Brokers sometimes suggest a level of business that they would like to receive in return for the various services that they provide. Actual brokerage business received by any broker may be less than the suggested allocations, but can (and often does) exceed the suggestions because total brokerage is allocated on the basis of all the considerations described above. A broker will not be excluded from executing transactions for Hummingbird because it has not been identified as providing soft dollar items.

Section 28(e) of the Securities Exchange Act of 1934, as amended, permits the use of soft dollar items in certain circumstances, provided that Hummingbird does not pay a rate of commissions in excess of what is competitively available from comparable brokerage firms for comparable services, taking into account various factors, including commission rates, financial responsibility and strength and ability of the broker to efficiently execute transactions. Non-research products and “soft dollars” which are not generated through agency transactions in securities are outside the parameters of Section 28(e)’s “safe harbor.”

Hummingbird may, from time to time, use soft dollars to pay some or all of the costs of research and brokerage services; provided, however, that (a) any research obtained is (i) related to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities or (ii) consists of reports and analyses concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts and (b) any brokerage services obtained are related to effecting securities transactions or functions incidental to effecting securities transactions such as clearance, settlement and custody.

Soft dollar items, whether provided directly or indirectly, may be utilized for the benefit of Hummingbird and its affiliates’ other accounts. Hummingbird may from time to time use soft dollars to acquire soft dollar items that Hummingbird or its affiliates would otherwise be obligated to provide to, or acquire at their own expense.

## **Brokerage Selection**

### Hummingbird Directed Brokerage

For separately managed accounts, Hummingbird does not have the discretionary authority to determine the broker dealer to be used. Hummingbird will not take physical possession or control of client assets.

Not all investment advisers require their clients to direct brokerage. Hummingbird is required to disclose that by directing brokerage, Hummingbird may not be able to

achieve most favorable execution of client transactions and that this practice may cost clients more money.

Please see the disclosures in the “Research/Soft Dollars Benefits” section directly above for additional information regarding Hummingbird’s use of recommended broker-dealers.

#### Client Directed Brokerage

Certain clients may direct Hummingbird to use particular brokers for executing transactions in their accounts. With regard to client directed brokerage, Hummingbird is required to disclose that Hummingbird may be unable to negotiate commissions, block or batch orders or otherwise achieve the benefits described above, including best execution. Directed brokerage commission rates may be higher than the rates Hummingbird might pay for transactions in non-directed accounts. Therefore, directing brokerage may cost clients more money.

However, when the client designates the broker, Hummingbird will assist the client in negotiating a commission discount with the broker which takes into consideration any special services the broker might be providing to the client, and whether the broker may be providing custodial services to the client. Occasionally, the client has a pre-existing relationship with the broker, so Hummingbird does not have significant influence in negotiating commissions in these instances, and commissions paid by the client with directed brokerage arrangements are generally higher than those otherwise obtainable.

Hummingbird encourages each client to compare the possible costs or disadvantages of directed brokerage against the value of custodial or other services provided by the broker to the client in exchange for the directed brokerage designation.

#### **Trade Aggregation/Allocation**

It is the objective of Hummingbird to provide a means of allocating trading and investment opportunities between advisory clients on a fair and equitable basis and in compliance with all applicable state and federal guidelines. With respect to clients’ accounts with substantially similar investment objectives and policies, Hummingbird may often seek to purchase or sell a particular security in each account. Hummingbird will aggregate orders only when such aggregation is consistent with Hummingbird’s duty to seek best execution and is consistent with the investment objective of each client. No client account will be unfairly favored over any other account.

Each client that participates in an aggregated order will participate based on the average execution price in that particular security. All transaction costs will be allocated pro rata based on each client’s participation in the transaction. All securities purchased or sold, whether the order is filled completely or partially, will then be allocated pro rata based on the assets of each account.

#### **Trade Errors**

Trade errors are promptly reported to the custodian and will be rectified by the custodian with no adverse financial effect on the client.

## **REVIEW OF ACCOUNTS**

Hummingbird undertakes a continuous day-to-day review of securities held in the private investment funds. Any development affecting the portfolio structure of a private investment fund or an existing holding will trigger a review and appropriate action. All reviews will be conducted by Paul D. Sonkin, Managing Member and Chief Compliance Officer of Hummingbird.

Investors in private investment funds for which Hummingbird serves as manager will receive the following: (i) annual audited financial statements of the fund audited by an independent certified public accounting firm; (ii) a quarterly report; and (iii) information appropriate to enable investors to prepare their respective income tax returns.

Separately managed account clients will receive monthly statements directly from the custodian. Confirmation statements will be issued by the custodian for all trading activity.

## **CLIENT REFERRALS AND OTHER COMPENSATION**

### **Client Referrals**

From time to time, Hummingbird may retain solicitors to refer clients to Hummingbird. If a client is introduced to Hummingbird by either an unaffiliated or an affiliated solicitor, Hummingbird may pay that solicitor a referral fee in accordance with the all requirements of the Investment Advisers Act, and any corresponding state securities law requirements. Any such referral fee shall be paid solely from Hummingbird's advisory fee, and shall not result in any additional charge to the client.

If the client is introduced to Hummingbird by an unaffiliated solicitor, the solicitor must, at the time of the solicitation:

1. Disclose the nature of their solicitor relationship;
2. Provide each prospective client with a copy of the Hummingbird written disclosure brochure;
3. Provide each prospective client a copy of the solicitor's written disclosure statement that discloses the terms of the solicitation arrangement between Hummingbird and the solicitor, including the compensation to be received by the solicitor.

Any affiliated solicitor of Hummingbird shall disclose the nature of their relationship to prospective clients at the time of the solicitation and will provide all prospective clients with a copy of this written disclosure statement.

## **Other Compensation**

Hummingbird does not use solicitors or receive any economic benefits (e.g., sales incentives, prizes) from non-clients for providing investment advice.

## **CUSTODY**

### Private Investment Funds

Because an affiliate serves as general partner of various private investment funds managed by Hummingbird, Hummingbird is deemed to have custody over client/investor assets. To satisfy SEC custody rules, Hummingbird provides each investor in these private investment funds with annual audited financial statements of the fund audited by an independent certified public accounting firm within 120 days of the end of the fund's fiscal year (December 31<sup>st</sup>).

### Separately Management Accounts

Custody of separately managed account client assets will be maintained with the independent custodian selected by the client. Hummingbird will not have physical custody of any assets in the client's account except as permitted for payment of advisory fees. Clients will be solely responsible for paying all fees or charges of the custodian. Clients will authorize Hummingbird to give the custodian instructions for the purchase, sale, conversion, redemption, exchange or retention of any security, cash or cash equivalent or other investment for the client's account.

Clients will receive directly from the custodian at least quarterly a statement showing all transactions occurring in the client's account during the period covered by the account statement, and the funds, securities and other property in the client's account at the end of the period. *Clients are urged to compare the account statement provided by the broker-dealer/custodian with any statements provided by Hummingbird.*

## **INVESTMENT DISCRETION**

### Private Investment Funds

As investment manager of various private investment funds, Hummingbird is solely responsible for researching, selecting and monitoring investments and in making decisions on when and how much to invest with or withdraw from a particular investment. Limited partners in private investment funds organized as limited

partnerships do not have any right to participate in management or in making investment decisions. In addition, Hummingbird has authority to select the broker or dealer with whom orders for the purchase or sale of securities for the funds are placed for execution. Hummingbird also has the authority to determine the prices and commission rates at which securities transactions for the funds are effected.

#### Separately Managed Accounts

Hummingbird generally has discretionary authority to make the following determinations for its separately managed account clients without obtaining the consent before the transactions are effected: (1) which securities are bought and sold; (2) the total amount of securities to be bought and sold.

Hummingbird's authority in making investment related decisions may be limited by account guidelines, investment objectives and trading restrictions, as agreed between Hummingbird and the client and set forth in writing in the investment management agreement.

### **VOTING CLIENT SECURITIES**

#### **Proxy Voting**

The act of managing assets of clients may include the voting of proxies related to such managed assets. Where the power to vote in person or by proxy has been delegated, directly or indirectly, to the investment adviser, the investment adviser has the fiduciary responsibility for (a) voting in a manner that is in the best interests of the client and (b) properly dealing with potential conflicts of interest arising from proxy proposals being voted upon. Accordingly, Hummingbird has instituted proxy voting policies and procedures ("Proxy Voting Policies and Procedures") that are designed to (i) ensure that proxies are voting in an appropriate manner and (ii) complement Hummingbird's investment policies and procedures regarding its general responsibility to monitor the performance and/or corporate events of companies which are issuers of securities held in managed accounts.

Hummingbird's general policy is to vote proxy proposals, amendments, consents or resolutions relating to client securities, including interests in private investment funds, if any (collectively, "proxies"), in a manner that serves the best interests of the applicable fund as Hummingbird determines in its sole discretion, taking into account the following factors: (i) the impact on the value of the securities; (ii) the costs and benefits associated with the proposal; and (iii) the customary industry and business practices. The Proxy Voting Policies and Procedures also address how Hummingbird will vote proxies with regard to specific matters, such as the election of Board members, mergers and acquisitions, compensation, independent auditors and other matters. Investors may obtain a copy of the Hummingbird's Proxy Voting Policies and Procedures and the proxy voting record relating to a fund by contacting Paul D. Sonkin, Managing Member and Chief Compliance Officer of Hummingbird, at (212) 750-7117.

## **Class Action Settlements**

Although Hummingbird has discretion over client accounts, it will not be responsible for handling client claims in class action lawsuits or similar settlements involving securities owned by the client. Clients will receive the paperwork for such claims directly from their account custodians. Each client should verify with their custodian or other account administrator whether such claims are being made on the client's behalf by the custodian or if the client is expected to file such claims directly.

## **FINANCIAL INFORMATION**

### **Prepayment of Fees**

Because Hummingbird does not require or accept prepayment of more than \$1,200 in fees six months or more in advance, Hummingbird is not required to include a balance sheet with this disclosure brochure.

### **Financial Condition**

Hummingbird does not have any adverse financial conditions to disclose.

### **Bankruptcy**

Hummingbird has never been the subject of a bankruptcy petition.

## **PRIVACY NOTICE**

Hummingbird views protecting its customers' private information as a top priority and, pursuant to the requirements of the federal Gramm-Leach-Bliley Act, Hummingbird has instituted policies and procedures to ensure that customer information is private and secure. Hummingbird does not disclose any nonpublic personal information about its customers or former customers to any nonaffiliated third parties, except as permitted by law. In the course of servicing a client's account, Hummingbird may share some information with its service providers, such as transfer agents, custodians, broker-dealers, accountants, and lawyers, etc. Hummingbird restricts internal access to nonpublic personal information about the client to those persons who need access to that information in order to provide services to the client and to perform administrative functions for Hummingbird. As emphasized above, it has always been and will always be Hummingbird's policy never to sell information about current or former customers or their accounts to anyone. It is also Hummingbird's policy not to share information unless required to process a transaction, at the request of a customer, or as required by law. For the full text of Hummingbird's Privacy Notice, please contact Paul D. Sonkin, Managing Member and Chief Compliance Officer of Hummingbird, at (212) 750-7117.

## **CLIENT COMPLAINTS**

Clients may contact Paul D. Sonkin, Managing Member and Chief Compliance Officer of Hummingbird, at (212) 750-7117 to submit a complaint. Written complaints should be sent to Hummingbird Management, LLC, 575 Madison Avenue, 9th Floor - Suite 108, New York, New York 10022.