

## FORM ADV PART II

# CUMMINGS BAY CAPITAL MANAGEMENT, L.P.

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This brochure provides information about the qualifications and business practices of Cummings Bay Capital Management, L.P., an investment adviser registered with the Securities and Exchange Commission. If you have any questions about the contents of this brochure, please contact us at (972) 628-4100. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority. Additional information about Cummings Bay Capital Management, L.P. is also available at the Securities and Exchange Commission's website [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). Our registration as an investment adviser does not imply any level of skill or training.

## ITEM 2. MATERIAL CHANGES

There were no material changes.

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## ITEM 4. ADVISORY BUSINESS

Cummings Bay is an investment adviser registered with the SEC and an alternative fixed income manager since 2010 specializing in long-short equities, with a global geographic reach. Our client base is comprised primarily of retail and unregistered investment funds.

### OWNERSHIP OF CUMMINGS BAY

Cummings Bay is 100% owned, directly, or indirectly, by senior management. James Dondero and Mark Okada, directly or indirectly may be deemed to be principal owners of Cummings Bay.

### CUMMINGS BAY REGULATORY ASSETS UNDER MANAGEMENT

Figures are in US\$ millions as of 12/31/2012.

Total Assets Under Management	\$	66.8
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#### *By Vehicle Type:*

Retail Fund	\$	50.2
Unregistered Investment Fund	\$	16.6

The stated AUM above is managed on a discretionary basis.

### OUR ADVISORY SERVICES

Cummings Bay provides investment advisory services in several different strategies and types of investment vehicles. Cummings Bay is an investment sub-adviser to an open end mutual fund registered under the Investment Company Act of 1940, as amended (“1940 Act”), (“Retail Fund”), and adviser to an Unregistered Investment Fund (“Unregistered Investment Fund”, together with “Retail Fund”, “Client Accounts” or “Clients”).

Cummings Bay is an affiliate of Highland Capital Management, L.P. (“Highland”), a SEC registered investment advisor. Employees of Cummings Bay may also be employees of Highland. In addition, Highland may act, pursuant to a servicing agreement, to provide Cummings Bay with a variety of services mentioned herein, including but not limited to; back office support, valuation services, legal and compliance services, administration, and tax and finance services. Payments to Highland under this agreement will be funded solely by Management Fee, except for permitted fund expenses.

## TAILORING SERVICES

With respect to Unregistered Investment Funds, investment restrictions, if any, are generally established in the organizational or offering documents of the applicable fund.

## ITEM 5. FEES AND COMPENSATION

For providing investment advisory services, Cummings Bay may charge Clients a management fee and/or performance fee or carried interest, and other fees as necessary and agreed to (including, but not limited to, expenses related to servicing accounts, such as administration and legal services).

Under appropriate circumstances and where permitted by applicable law, the terms of an investment advisory contract, including fee schedules, terms of payment and performance fees and termination provisions, are negotiable. In negotiating fee schedules, Cummings Bay may consider various factors, including assets under management, investment objectives, strategies and restrictions, and the resources required to meet investment objectives.

Clients may incur brokerage and other transaction costs associated with Cummings Bay's management of Client Accounts. Please see Item 12. Brokerage Practices of this ADV Part 2 for a discussion of Cummings Bay's brokerage practices.

As discussed in Item 4. Advisory Business, Cummings Bay may contract with Highland for the provision of certain services. To provide these services, Highland will charge Cummings Bay a fee. This fee is based off arms-length negotiations and payable by Cummings Bay, not its Client Account.

### FEE SCHEDULE

The following summary of fees is typically updated in this brochure annually (on or about March 31) and may not reflect subsequent changes. Fees in the below Fee Schedule are annualized.

Product	Management Fee	Performance Fee or Carried Interest	Other Fees
Retail Funds	Up to 1.20%	None	Administrative Fee of 0.20%
Unregistered Investment Funds	Up to 1.50%	Up to 20%	None

Certain investment vehicles managed by Cummings Bay may invest in other investment vehicles managed by Cummings Bay or its affiliates. Both investment vehicles may impose management fees, performance fees or other expenses (including administrative fees). This may result in greater expense to a Client than if such Client had invested directly in the underlying investment vehicle. Certain companies in which Clients are invested also may

use the products or services, or invest in investment vehicles, offered by Cummings Bay or its affiliates and may pay fees or other compensation accordingly.

## FOR RETAIL INVESTORS

### *Retail Funds*

As compensation for our advisory services, Cummings Bay's Retail Fund pays a management fee (accrued daily or weekly) of up to 1.20% annually and payable in arrears. The management fee is based upon the applicable Retail Fund's average daily net assets, which may or may not be net of investment leverage (borrowed capital). This management fee is deducted from the Retail Fund's assets on a monthly basis. Cummings Bay also receives an administrative fee of 0.20% of average daily net assets, which is deducted from the Retail Fund's assets.

In addition to management fees, administrative fees, and brokerage and transaction costs, investors in the Retail Fund will indirectly bear certain other fees and expenses paid by the Retail Fund, including, but not limited to expenses of the independent trustees of the Retail Fund, fees and expenses for legal, fund accounting, transfer agency, custodial and auditing services, interest expense, taxes, and other investment-related costs, insurance premiums, extraordinary and non-recurring and certain other unusual expenses. The Retail Fund's prospectus and statement of additional information include more detailed information about the fees and expenses paid by such Retail Fund.

Cummings Bay will occasionally waive a portion of the fees payable by the Retail Fund, which could result in an indirect benefit to investors in the Retail Fund.

## FOR INSTITUTIONAL INVESTORS

### *Unregistered Investment Funds*

As compensation for our advisory services, the Unregistered Investment Fund may pay Cummings Bay management fees of up to 1.50% annually. Management fees are based upon outstanding capital accounts or amounts of committed capital and may be deducted quarterly in advance. Cummings Bay may also deduct performance fees or investment profit allocations in the form of carried interest ranging from 0% to 20% of returns, which may be after the achievement of a hurdle rate, and which may or may not be contingent on the manager of the applicable Unregistered Investment Fund eclipsing the high-water mark. In some cases, certain investors in an Unregistered Investment Fund may pay a different fee than others based on the terms of their agreement with Cummings Bay. Upon termination of the applicable Unregistered Investment Fund's advisory agreement,

any management fees that have been prepaid are generally returned on a pro-rated basis.

In addition to management fees, performance fees, and brokerage and transaction costs, investors in the Unregistered Investment Funds will indirectly bear the fees and expenses paid by the Unregistered Investment Funds, including custody fees, administration, legal, audit and tax preparation fees, and certain other fees and expenses. Each Unregistered Investment Fund's offering documents include more detailed information about the fees and expenses paid by such Unregistered Investment Fund.

Please see the section titled Performance-Based Fees and Side-By-Side Management of this ADV Part 2 for additional information regarding performance fees or investment profit allocations in the form of carried interest.

## OTHER COMPENSATION

Client Accounts may hold significant positions, individually or collectively, in the securities issued by a company. Accordingly, Cummings Bay or an affiliate may have the right to appoint a board member or officer for such company. Cummings Bay or an affiliate may appoint an employee or a third party to such position as it sees fit in the best interest of the company and its Clients. Unless the offering and/or governing documents for Client Accounts permit otherwise, all compensation received by the employee(s) for such positions will be paid to Cummings Bay or an affiliate for the benefit of the Client Account, generally in proportion to relative assets of the Client Account as of the date paid.

In addition, to the extent permitted by the offering and/or governing documents of the applicable advised accounts, Cummings Bay and/or its affiliates may receive other fees for services provided to portfolio companies, provided such fees are on arms-length terms and approved by the Board of Directors or other governing body of the applicable portfolio company. See also Item 10. Other Financial Industry Activities and Affiliations.

We have established procedures designed to address possible conflicts of interest that such board or officer positions might present, including requiring authorization from the Chief Compliance Officer prior to an officer or employee serving as a board member. As a result of such activities, Cummings Bay may acquire confidential information, which may restrict Client Accounts from transacting in certain securities. As a result, we may not initiate a transaction on behalf of Clients which we otherwise might have.