



Berkshire Asset Management, LLC  
**FORM ADV PART 2A**

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*This brochure provides information about the qualifications and business practices of Berkshire Asset Management, LLC. If you have any questions about the contents of this brochure, please contact Marilyn Millington at 570-825-2600 or by email at [mmillington@berkshiream.com](mailto:mmillington@berkshiream.com). The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission (SEC) or by any state securities authority.*

*Additional information about Berkshire Asset Management, LLC is also available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). Berkshire Asset Management, LLC's CRD number is: 145463. SEC File #: 801-68485. Registration does not imply any level of skill or training.*

*March 7, 2014*

## **Item 2: Material Changes**

There are no material changes that have been made to the Brochure. Our last annual update was March 26, 2013.

Pursuant to SEC Rules, we will ensure that you receive a summary of any material changes to this and subsequent Brochures within 120 days of the close of our Business' fiscal year. We may further provide other ongoing disclosure information about material changes as necessary.

We will provide a new Brochure as necessary based on changes or new information, at any time, without charge.

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## **Item 4: Advisory Business**

### **OUR FIRM**

The current organizational structure of Berkshire Asset Management, LLC (Berkshire) was formed in 2007. However, the business was started in 1986 as a corporation. Berkshire is owned by Kenneth J. Krogulski who serves as Managing Member, President, CEO and Chief Investment Officer.

As of February 28, 2014, our assets under management include \$743 million discretionary assets and \$124 million non-discretionary assets or a total approximately \$867 million in assets under management.

### **PORTFOLIO MANAGEMENT AND INVESTMENT ADVISORY SERVICES**

Berkshire provides portfolio management and investment supervisory services to individuals, foundations, endowments, trusts, estates, corporations, and pension and profit sharing plans. Berkshire manages advisory accounts and monitors clients' accounts on a daily basis. We tailor our services to meet the individual needs and objectives of our clients and account supervision is guided by the stated objectives of that client (i.e. growth, safety, income, etc.). Thus, every account is governed by the individual objectives of each client. These objectives may not always take into consideration all of the related factors applicable to the rendering of "investment supervisory services"; rather, individual clients will decide on the specific direction of their account and Berkshire will manage the account under that principle.

Berkshire performs asset management services with respect to investment choices for a Clients Plan. Berkshire will assist the Client in establishing appropriate investment objectives and will supervise the chosen investment options of and for the Plan and monitor the investments based on criteria established in the Investment Policy Statement that the Client has specified, or will specify (such assets hereinafter collectively referred to as the "Account").

Generally, we implement one of two strategies if an account has an equity allocation: a "Core Equity Strategy" or a "Dividend Equity Strategy" or a fixed income strategy—either "Taxable or "Tax-exempt" or a combination both. The strategies are described in Item 8 on page seven of this brochure.

### **WRAP FEE ACCOUNTS**

Berkshire participates in several unaffiliated broker sponsored wrap fee programs. The wrap fee accounts are generally equity only and mirror our core equity or dividend investment strategy that is implemented for many of our clients. Each program sponsor sets the rules, fees and requirements for these programs. For a single fee, a program sponsor may recommend that you retain us as an investment adviser. We receive a portion of your wrap fee for our services as your investment adviser. Upon request, we will work with you to accommodate your specific account restrictions. For more information please refer to the program sponsor's wrap fee program brochure.

### COMMINGLED INVESTMENT VEHICLES

Berkshire is the general partner and investment advisor for three limited partnerships or private funds: Berkshire Growth Fund, Berkshire Partnership and Darkhorse Opportunity Fund. In no event should this brochure be considered to be an offer of interest in a private fund or relied upon in determining to invest. This is not an offer of, or an agreement to provide, advisory services directly to any recipient.

### DEFINED CONTRIBUTION PLAN ADVISORY SERVICES

We occasionally provide investment recommendations to Plan Sponsors based on an agreed upon Investment Policy Statement. We provide advice on selection of investment options and model portfolios for the Plans. We do not have investment discretion over plan participant's accounts and thus do not report the funds as assets under management. However, we do make ourselves available to participants to answer questions regarding the investment options available within their plan. The Investment Policy Statement and Plan Investment Options are reviewed with the Plan Sponsor annually. Plan sponsors choose their own custodians and third party administrators.

### NON-DISCRETIONARY ADVISORY SERVICES

We occasionally provide non-discretionary investment advisory services to clients whereby provide recommendations or supervision of assets held by outside managers. In managing these non-discretionary relationships we generally use the same sources of information and investment research personnel as we use to manage our other client accounts. These are clients of the program sponsor or investment adviser and not Berkshire's client accounts. The program manager may receive or act upon a model portfolio currently or after we take similar actions for our client accounts. As a result, the program sponsor and the firm may compete for execution quality, price or timing.

## Item 5: Fees and Compensation

For portfolio management services, the client will be charged fees on a quarterly basis and are payable in advance. Fees are calculated as a percentage of assets under management. The principal executive officer quotes an exact percentage to each client based on both the nature and dollar value of the account. Fees may be negotiable based upon factors including, but not limited to, the size of the account and other relationships that the client may have with Berkshire.

The maximum annual fee is based on the following schedule:

Equity and Balanced Accounts	
<i>Market Value</i>	<i>Annual Percentage</i>
First \$2,000,000	1.00%
Next \$3,000,000	0.75%
Next \$5,000,000	0.65%
Over \$10,000,000	0.50%

#### Fixed Income Accounts

<i>Market Value</i>	<i>Annual Percentage</i>
First \$5,000,000	0.50%
Next \$5,000,000	0.40%
Over \$10,000,000	0.25%

#### Exchange Traded Funds (ETFs) and Mutual Funds

<i>Market Value</i>	<i>Annual Percentage</i>
All assets	0.20%

#### Defined Contribution Plan Advisory Services

<i>Market Value</i>	<i>Annual Percentage</i>
All assets	< 1.00%

In addition, Berkshire may provide specialized investment advisory or outside manager monitoring services to clients for a negotiated fee. These services are typically tailored to fit the individual client's needs. Berkshire does not maintain a standard fee schedule for this service and the terms of each arrangement are negotiated with the client.

Berkshire may also provide management services to clients through wrap fee programs and dual contract accounts. The services provided by Berkshire and the fees that Berkshire receives under the program are described in detail in the contract executed by each wrap fee or dual contract account and in the disclosure document provided to each client by the wrap fee program or dual contract sponsors.

The client Agreement commences on the date it is accepted by Berkshire and shall remain in effect until termination by either party, for any reason, upon ten days written notice to the other. The client has the right to terminate the Agreement without penalty within five business days after entering into the Agreement. Upon termination, Berkshire will refund any prepaid fees, prorated from the date of termination through the end of the quarter for which fees were prepaid.

You may assume other expenses such as brokerage commissions, transaction fees, custodial fees, wire transfer fees and other fees and taxes charged to your account which are unrelated to the fees we collect. Berkshire does not accept commissions or compensation for the sale of securities or other products purchased in the client accounts. Please refer to Item 12, Brokerage practices section of this Brochure.

## **Item 6: Performance-Based Fees and Side-By-Side Management**

Except as described below, the fee charged will never be based on the capital gains or the capital appreciation of any funds or any part of any funds of any client. Fees as permitted under Rule 205-3 under the Investment Advisers Act of 1940 will be permitted for certain sophisticated,

accredited investors. We receive performance-based fees for a limited number of clients. Berkshire Partnership, Darkhorse Opportunity Fund, L.P. and at the request of certain qualified clients, as defined by the rule, are the only advisory clients under contract that have the potential to pay a performance fee to Berkshire. The receipt of performance-based fees for certain accounts may create a conflict of interest; in that we may have an incentive to make investments that are riskier than would be the case without a performance-based fee.

Berkshire provides investment management advice to a variety of different clients including and special portfolios and institutional accounts, ERISA accounts and investment partnerships. Some of these accounts present a conflict of interests for Berkshire, as our employees or related parties may have an interest in such accounts. We also manage several accounts that pay performance fees. Certain investment professionals manage both accounts with and without such conflicts of interests. Berkshire mitigates potential conflicts in this area by the use of a firm-wide investment committee who are responsible for the determination of target holdings and weighting for each strategy. This may be an incentive to favor one account over another account. We are conscious of these and other potential conflicts, and have designed order allocation procedures to ensure that clients are treated fairly over time.

With respect to Darkhorse Opportunity Fund, Berkshire does not offer a similar investment service to other clients, and therefore other clients will not be competing for investment opportunities with the Fund.

## **Item 7: Types of Clients**

Berkshire provides portfolio management services to individuals, foundations, endowments, trusts, estates, corporations, and pension and profit sharing plans.

In general, Berkshire will establish a minimum dollar value for client accounts. The standard minimum is \$750,000 for non-wrap fee or non-dual contract broker accounts. At our discretion, this figure may be negotiable, depending upon the client's objectives and the nature of the account. A *suggested* minimum annual management fee of \$7,500 was implemented for new clients on January 1, 1994.

Berkshire Growth Fund, Berkshire Partnership, Darkhorse Opportunity Fund, L.P. have minimums defined by their offering documents and are subject to the investment minimums stated in these documents. All three Pennsylvania limited partnerships are offered privately to investors that qualify in accordance with the requirements of the applicable offering documents.

## **Item 8: Methods of Analysis, Investment Strategies and Risk of Loss**

### **EQUITY**

Berkshire uses fundamental analysis when selecting securities for investment. Berkshire keeps a constant focus on the company's fundamentals, as market timing is not practiced. The goal is to purchase sound businesses at reasonable prices. Other desirable characteristics we may consider include: simple businesses that are easy to understand; low sales and earnings volatility; low debt and adequate interest expense coverage; a self-funding balance sheet; low cost of production

relative to others in the industry; a strategic capital reinvestment program; a strong management team which has demonstrated superior skills in operating the business and which has a significant personal investment in the equity of the company. Once these businesses are identified, the company will initiate a position in the equity at a significant discount to our estimate of the company's intrinsic value. Intrinsic value is calculated by estimating the present value of future free cash flows. Free cash flow is defined as net income plus non-cash charges less capital expenditures.

Depending on objectives and risk parameters, clients with an equity allocation generally follow one of our equity strategies. We have two primary equity strategies:

The *Core Equity Strategy* seeks long-term capital appreciation by investing primarily in equity securities of the U.S. issuers with equity capitalizations in excess of \$1 billion at the time of purchase. The strategy holds between 25 and 35 equities and the relevant index for measurement is the S&P 500.

The *Dividend Income Strategy* seeks long-term capital appreciation by investing in dividend paying stocks. We invest primarily in the equity securities of medium-and large-sized companies that are dominant in their industry and pay a dividend. The strategy primarily holds U.S. companies but may, from time to time, hold foreign securities. The strategy holds between 30 and 60 equities and the relevant index for measurement is the S&P 500.

## FIXED INCOME

Both taxable and tax-exempt bonds are purchased primarily with the intention of realizing an attractive total return. Berkshire follows a conservative, high-quality fixed income investment strategy. A portfolio is structured using primarily taxable bonds with an A rating or better by S&P and Moody's. With municipal portfolios, our universe is generally limited to investment grade municipal general obligation bonds and essential service revenue bonds.

Our Taxable Bond Strategy seeks an allocation to high quality bonds for clients that do not require tax-exempt income. The taxable municipals must meet the same criteria as the municipals purchased for tax-free portfolios, including primarily investment grade general obligation or essential service revenue bonds. The result is a portfolio with an average A credit rating and an effective maturity of between 0 and 25 years. Portfolio management is conservative, with capital preservation as an important part of every aspect of the process. The strategy objective is to outperform our benchmark. From time to time, investments may be made in corporate bonds or intermediate term bond funds. The performance of the strategy is benchmarked against the Barclays Capital U.S. Government/Credit Intermediate Credit Bond Index.

The objective of the Municipal Fixed Income strategy emphasizes capital preservation with incremental after-tax return. Our approach is to attempt to achieve consistency of risk-adjusted performance, taking into full consideration state tax, capital gains, and income implications. We focus on key elements of total return: security selection, credit exposure, sector rotation, duration management and yield curve positioning. We utilize a disciplined approach; seeking



opportunities from shifting market trends, pricing inefficiencies, and intensive credit analysis provide excess returns within the context of a tax-efficient portfolio management program. Our goal is to outperform the Barclays Capital Municipal Bond Index.

## RESEARCH

We subscribe to a number of online and paper sources of analysis of economic data, asset allocation models, evaluation of mutual funds, ETFs, separate account managers and other investments. The process of security selection incorporates client needs, resources, time horizon, risk tolerance and past investment experience with the design of an asset allocation that allows for flexibility. Active management of tactical allocations is made from time to time based on compelling market dislocations and/or longer term economic trends. Although we believe the markets are mostly efficient, it is difficult, if not impossible, to consistently exceed market indices. However, the market occasionally offers compelling opportunities. On such occasions, allocations may be adjusted keeping mind that markets can be unpredictable we make every effort to mitigate risks.

We use computer software and commercial databases to perform analysis that aids in measuring the level of risk and return in the client's portfolio and provide guidelines to help achieve the individual client's financial goals.

## RISK

All investments are subject to risk, including possible loss of principal. Because Berkshire's equity investment style expects to hold a portfolio of a limited number of securities, a decline in the value of these investments would cause the portfolio's overall value to decline to a greater degree than a less concentrated portfolio. Our equity investment styles are considered sector neutral but may focus its investments in certain stocks in a sector, thereby increasing the potential vulnerability to market volatility.

Like all fixed income securities, the market prices of municipal bonds are susceptible to fluctuations in interest rates. If interest rates rise, market prices of existing bonds will decline, despite the lack of change in both the coupon rate and maturity. Bonds with longer maturities are generally more susceptible to changes in interest rates than bonds with shorter maturities. Many municipal bonds carry provisions that allow the issuer to call or redeem the bond prior to the actual maturity date. With revenue bonds, the interest and principal are dependent on the revenues paid by users of a facility or service, or other dedicated revenues including those from special taxes. In general, the consumer spending that provides the funding or income stream for revenue bond issuers may be more vulnerable to changes in consumer tastes or a general economic downturn than the income stream for general obligation bond issuers. Credit risk is the risk that the issuer will default or be unable to make required principal or interest payments. Despite the fact that many municipal bonds have high credit ratings, there is a risk of default in any bond investment. Because tax-exempt interest generated by municipal bonds is usually more beneficial for investors in higher tax brackets, municipal bonds may not be appropriate for all investors, particularly those in lower tax brackets. In addition, if you are subject to the federal alternative minimum tax (AMT), the interest income generated by certain municipal bonds (mainly private activity bonds) may be

taxable. As with all bonds, investors run the risk that inflation will diminish the purchasing power of a municipal bond's principal and interest income. There can be no assurance that bonds validly issued will not be partially or totally repudiated by the issuing state or municipality, should that be deemed reasonable and necessary to serve other important public purposes.

Not all risks can be quantified. A type of risk called "special event risk," lawsuits or significant legal changes, an economic downturn, or other events could impact any investment.

The objectives, guidelines and restrictions of each separate client are documented when the account is opened and a copy is maintained on file. The objectives, guidelines and restrictions of each Partnership are detailed in the applicable offering documents. We are mindful of the inherent risks when investing in securities and have taken steps to manage client accounts within the risk parameters agreed upon.

When evaluating risk, financial loss may be viewed differently by each Client and may depend on many different risk items, each of which may affect the probability of adverse consequences and the magnitude of any potential losses. The following risks may not be all-inclusive, but should be considered carefully by a prospective Client before retaining Berkshire's services.

These risks should be considered as possibilities, with additional regard to their actual probability of occurring and the effect on a Client if there is in fact an occurrence. Although not all apply to every client, some definitions include:

**Market Risk** – The price of any security or the value of an entire asset class can decline for a variety of reasons outside of Berkshire's control, including, but not limited to, changes in the macroeconomic environment, unpredictable market sentiment, forecasted or unforeseen economic developments, interest rates, regulatory changes, and domestic or foreign political, demographic, or social events. If a Client has a high allocation in a particular asset class it may negatively affect overall performance to the extent that the asset class underperforms relative to other market assets.

**Advisory Risk** – There is no guarantee that Berkshire's judgment or investment decisions about particular securities or asset classes will necessarily produce the intended results. Berkshire's judgment may prove to be incorrect, and a Client might not achieve her investment objectives. Berkshire may also make future changes to the investing algorithms and advisory services that it provides. In addition, it is possible that Clients or Berkshire itself may experience computer equipment failure, loss of internet access, viruses, or other events that may impair access to Berkshire's online financial advisory service. Berkshire and its agents are not responsible to any Client for losses unless caused by Berkshire breaching its fiduciary duty. Advisory Risk may also be present in the underlying investments of the three limited partnerships and will be disclosed in the relevant offering documents.

**Volatility and Correlation Risk** – Clients should be aware that Berkshire's asset selection process is based in part on a careful evaluation of past price performance and volatility in order to evaluate future probabilities. However, it is possible that different or unrelated asset classes

may exhibit similar price changes in similar directions which may adversely affect a Client, and may become more acute in times of market upheaval or high volatility. Past performance is no guarantee of future results, and any historical returns, expected returns, or probability projections may not reflect actual future performance.

**Liquidity and Valuation Risk** – High volatility and/or the lack of deep and active liquid markets for a security may prevent a Client from selling her securities at all, or at an advantageous time or price because Berkshire and the Client’s Broker may have difficulty finding a buyer and may be forced to sell at a significant discount to market value. Some securities (including ETFs) that hold or trade financial instruments may be adversely affected by liquidity issues as they manage their portfolios. While Berkshire values the securities held in Client Accounts based on reasonably available exchange-traded security data, Berkshire may from time to time receive or use inaccurate data, which could adversely affect security valuations, transaction size for purchases or sales, and/or the resulting advisory fees paid by a Client to Berkshire. Additional liquidity risks may also apply to the limited partnerships, as further described in the relevant offering documents.

**Credit Risk** – Berkshire cannot control and Clients are exposed to the risk that financial intermediaries or security issuers may experience adverse economic consequences that may include impaired credit ratings, default, bankruptcy or insolvency, any of which may affect portfolio values or management. This risk applies to assets on deposit with any Broker chosen by Client, notwithstanding asset segregation and insurance requirements that are beneficial to Broker clients generally. In addition, exchange trading venues or trade settlement and clearing intermediaries could experience adverse events that may temporarily or permanently limit trading or adversely affect the value of Client securities. Finally, any issuer of securities may experience a credit event that could impair or erase the value of the issuer’s securities held by a Client. Berkshire seeks to limit credit risk by generally adhering to the purchase of ETFs, which are subject to regulatory limits on asset segregation and leverage such that fund shareholders are given liquidation priority versus the fund issuer; however, certain funds and products may involve higher issuer credit risk because they are not structured as a registered fund.

**Legislative and Tax Risk** - Performance may directly or indirectly be affected by government legislation or regulation, which may include, but is not limited to: changes in investment advisor or securities trading regulation; change in the U.S. government’s guarantee of ultimate payment of principal and interest on certain government securities; and changes in the tax code that could affect interest income, income characterization and/or tax reporting obligations (particularly for ETF securities dealing in natural resources). Berkshire does not engage in financial or tax planning, and in certain circumstances a Client may incur taxable income on her investments without a cash distribution to pay the tax due.

**Foreign Investing and Emerging Markets Risk** - Foreign investing involves risks not typically associated with U.S. investments, and the risks may be exacerbated further in emerging market countries. These risks may include, among others, adverse fluctuations in foreign currency values, as well as adverse political, social and economic developments affecting one or more foreign countries. In addition, foreign investing may involve less publicly available information

and more volatile or less liquid securities markets, particularly in markets that trade a small number of securities, have unstable governments, or involve limited industry. Investments in foreign countries could be affected by factors not present in the U.S., such as restrictions on receiving the investment proceeds from a foreign country, foreign tax laws or tax withholding requirements, unique trade clearance or settlement procedures, and potential difficulties in enforcing contractual obligations or other legal rules that jeopardize shareholder protection. Foreign accounting may be less transparent than U.S. accounting practices and foreign regulation may be inadequate or irregular.

**ETF Risks, including Net Asset Valuations and Tracking Error** - An ETF typically includes embedded expenses that may reduce the fund's net asset value, and therefore directly affect the fund's performance and indirectly affect a Client's portfolio performance or an index benchmark comparison. Expenses of the fund may include investment advisor management fees, custodian fees, brokerage commissions, and legal and accounting fees. ETF expenses may change from time to time at the sole discretion of the ETF issuer. Berkshire discloses each ETF's current information, including expenses, on the Site. ETF tracking error and expenses may vary.

Furthermore, ETF performance may not exactly match the performance of the index or market benchmark that the ETF is designed to track because 1) the ETF will incur expenses and transaction costs not incurred by any applicable index or market benchmark; 2) certain securities comprising the index or market benchmark tracked by the ETF may, from time to time, temporarily be unavailable, and 3) supply and demand in the market for either the ETF and/or for the securities held by the ETF may cause the ETF shares to trade at a premium or discount to the actual net asset value of the securities owned by the ETF. Certain ETF strategies may from time to time include the purchase of fixed income, commodities, foreign securities, American Depositary Receipts, or other securities for which expenses and commission rates could be higher than normally charged for exchange-traded equity securities, and for which market quotations or valuation may be limited or inaccurate. Clients should be aware that to the extent they invest in ETF securities they will pay two levels of advisory compensation – advisory fees charged by Berkshire plus any advisory fees charged by the investment advisor of the ETF. This scenario may cause a higher advisory cost (and potentially lower investment returns) than if a Client purchased the ETF directly.

**Inflation, Currency, and Interest Rate Risks** - Security prices and portfolio returns will likely vary in response to changes in inflation and interest rates. Inflation causes the value of future dollars to be worth less and may reduce the purchasing power of an investor's future interest payments and principal. Inflation also generally leads to higher interest rates, which in turn may cause the value of many types of fixed income investments to decline. In addition, the relative value of the U.S. dollar-denominated assets primarily managed by Berkshire may be affected by the risk that currency devaluations affect Client purchasing power.

#### **Additional Strategies and Risks of Short Sales, Options and Leverage**

We may recommend to a very small number of suitable clients investment strategies that include options and leverage.

### **Investment Strategies:**

- **Sub-advisors:** Sub-advisers are selected for a small percentage of our clients if assets reach a threshold of \$10 million or more in total client assets. The selection of sub-advisor is to achieve an optimal asset allocation within their risk return profile. Berkshire employs a rigorous multi-phase approach to researching and selecting managers suitable for certain clients. Our approved sub-managers are evaluated using data and information from several sources including manager and independent data bases. Berkshire attempts to verify all information by comparing public and private sources. The risks of placing money with outside managers are covered on pages 9-12 above.
- **Short sales:** This strategy usually, but not always, involves the sale of securities that are not owned, or borrowed by the seller in anticipation of profiting from a decline in the price of the securities.
- **Margin transactions:** This strategy involves using ones current holdings as collateral to buy additional securities. Clients must complete specific paperwork to allow for such trading to occur in their account(s).
- **Option writing, including covered options, uncovered options or spreading strategies:** Writing an option refers to the act of selling an option. An option is the right, but not obligation, to buy or sell a particular trading instrument at a specified price, on or before its expiration. When someone writes an option, they must deliver to the buyer a specified number of shares if the option is exercised. The writer has an obligation to perform a duty while the buyer has the option to take action. In the case of writing covered options the writer owns the security in advance of having to deliver should the buyer exercise the option. In the case of writing an uncovered option the seller does not own the security and would be subject to additional market risk should the option be executed. Spread strategies involve multiple options trading. Clients must complete additional documents in order to qualify for option trading.

### **Risks Associated Short Sales, Options and Leverage:**

- **Short sales:** If the price rises, you can lose money. If a large number of short sellers try to cover their positions in a stock, it can drive up the price even faster. There is no way to accurately predict when a stock will fall (or rise for that matter). The value the market places on a stock does not always match its metrics. Other costs of shorting may include a fee for borrowing the assets and payment of any dividends paid on the borrowed assets.
- **Margin transactions:** The major risks involving the use of margin transactions include market and interest rate risks. There are specific margin requirements set by the Federal Reserve and custodian. Generally clients with approved margin can use 50% of their holdings. Clients must then maintain a maintenance margin. This is a percentage of the current market value of the securities in the account. If this percentage falls below 25%, clients will be required to either deposit additional funds or sell off securities to meet the requirement. The interest rate risk comes into play on the funds being borrowed. If interest rates increase, so will the cost associated with

borrowing the funds to make the additional purchases. In the event a client does not meet their margin requirements, firms can sell off securities without contacting the client.

- Trading options: Market risk is the primary risk associated with trading options. The most conservative strategy for options trading is writing covered option. The reason it is more conservative than others is that the writer of the call already owns the security. Whereas with an uncovered option, the writer of the option would have to buy the security at whatever the security is selling for in the current market.

## **Item 9: Disciplinary Information**

Registered investment advisers are required to disclose all material facts regarding any legal or disciplinary events that would be material to a client or prospective client's evaluation of Berkshires advisory business or the integrity of its management.

Berkshire has no information applicable to this Item.

## **Item 10: Other Financial Industry Activities and Affiliations**

Neither Berkshire nor its representatives are registered as a broker dealer or as representatives of a broker dealer. All material conflicts of interest are disclosed regarding the investment advisor, its representatives or any of its employees which could be reasonably expected to impair the rendering of unbiased and objective advice. When selecting other advisors or third party managers we take the same care in ensuring that that no material conflicts arise.

Berkshire is the General Partner and investment adviser to Berkshire Partnership (BP) and Berkshire Growth Fund (BGF). Additionally, BDF Partners, LLC, a Delaware LLC and a wholly owned subsidiary of Berkshire, is the General Partner of Darkhorse Opportunity Fund, L.P. (DOF). BP, BGF and DOF are Pennsylvania limited partnerships offered privately to investors that qualify in accordance with the requirements of the applicable offering documents. BP, BGF and DOF invest substantially all their assets in equity and debt securities listed on national securities exchanges. DOF may also invest in: equity securities of foreign companies including companies in emerging markets; option contracts on securities and securities indices; preferred shares; depository receipts; and money market instruments. Some advisory clients of Berkshire may also be investors in BP, BGF and DOF and we may in the future offer other advisory clients investment interests in the partnerships. Berkshire has a financial investment in BP and BGF and employees may also have financial investments in the partnerships.

## **Item 11: Code of Ethics, Participation or Interest in Client Transactions and Personal Trading**

Berkshire requires of those individuals directing or determining investment advice, that they demonstrate their successful completion of a college or university degree in a related field (such as banking, finance, economics) and/or have prior equivalent experience. In addition, all employees of Berkshire annually become a signatory to the Berkshire's Code of Ethics, Policy on Insider Trading and Policy restricting most personal security transactions.



All applicable individuals must exhibit a keen understanding of the economic, financial and market factors necessary to make wise and informed decisions regarding portfolio management practices.

Berkshire may, from time to time, recommend to clients that they buy or sell securities in which related persons, such as its employees, have a financial interest. However, if one or more of the Berkshire's employees has a financial interest in a security recommended to clients, the Berkshire will follow the procedures outlined below regarding employee trading. From time to time, the Berkshire's employees may have a position in a certain security that may also be recommended to a client. Berkshire has established the following restrictions and disclosure procedures to ensure, at all times, that it fulfills its fiduciary obligation.

- (1) Employees and their immediate family residing in the same household are prohibited from acquiring any securities in an initial public offering. The only exception is that employees are permitted to exercise subscription rights in mutual thrift conversions where the employee is a customer.
- (2) Employees and their immediate family residing in the same household, acquiring securities in a private placement must receive express prior approval from the President or Chief Compliance Officer. The basis for granting approval or not will take into account whether the investment opportunity should be reserved for the Berkshire's clients, and whether the opportunity is being offered to the employee by virtue of his or her position with the Berkshire. Employees who have been authorized to acquire securities in a private placement are required to disclose that investment when they play a part in any subsequent consideration by Berkshire to invest on behalf of clients in the issue.
- (3) All transactions by employees, either for themselves or members of their immediate family residing in the same household, shall require approval prior to the purchase or sale as stated in the personal securities trading policy.
- (4) Blackout Period: Employees and their immediate family residing in the same household are prohibited from executing personal securities transactions on a day Berkshire has a pending buy or sell order in that same security, until that order is executed or withdrawn. In addition, all employees and their immediate family residing in the same household are prohibited from buying or selling a security if Berkshire executed a trade in the same security the previous trading day. Any profits realized on trades executed in violation of this policy will be disgorged.

Berkshire maintains that it is always acting in the best interest of the client. However, investing in securities can be unpredictable thus every attempt is made to ensure that clients' interests are placed first. You may obtain a copy of our Code of Ethics by sending a request to the address or email on the cover sheet of this brochure.

## **Item 12: Brokerage Practices**

For discretionary accounts, Berkshire receives from such client's written authority empowering Berkshire to determine which securities and amounts thereof to be bought or sold and the broker-dealer to be used to execute transactions. For the selection of broker-dealers and in determining commission rates paid, Berkshire chooses firms it believes provide quality execution, competitive commission rates and other research related services deemed important to

Berkshire's ability to successfully and competitively discharge its fiduciary responsibility to its clients.

In selecting a brokerage firm, Berkshire will not necessarily direct transactions to the broker or dealer offering the lowest commissions. Berkshire may also consider a variety of factors, including the brokerage firm's execution capabilities, ability to avoid significant market impact, reputation, access to the markets for the securities being traded, and willingness to provide products and services that assist Berkshire in the investment decision-making process. Berkshire received no referrals from broker dealers or third parties in exchange for using that broker.

Berkshire may direct transactions to brokers in return for research services that assist it in the investment decision-making process (such as written research reports on companies, sectors, or the economy, or subscriptions to on-line data bases that provide real time and historical pricing information). When Berkshire does so, Berkshire may pay the executing broker a commission greater than another qualified broker (which does not provide research) might charge to effect the same transaction. Such arrangements are generally referred to as "soft dollar arrangements." Berkshire only enters into a soft dollar arrangement if it determines in good faith that the commission paid is reasonable in relation to the value of the execution and research services provided. Soft dollar arrangements generally take one of two forms: proprietary or third party. Under a proprietary arrangement, the executing broker directly provides research services to Berkshire. Brokers that provide proprietary research generally charge a bundled commission that includes the cost of execution and the additional research services, and they do not typically assign a particular value to their research services.

Berkshire regularly assesses the value of the research services provided by the brokers with which it deals. Over time, Berkshire attempts to direct commission business to a broker in an amount that is fair and reasonable under the circumstances and proportional to Berkshire's assessment of the value added by that broker. Subject to best execution and the relevant factors referenced above, a significant percentage of client trades may be executed with broker-dealers that research and brokerage execution services to Berkshire. All research services knowingly acquired in connection the broker-dealer transactions constitute eligible research for purpose of Section 28(e) of the Securities Exchange Act of 1934.

From time to time, clients may select a directed broker. A letter is signed by the client upon selection of a Directed Broker. The Firm keeps an original copy of this letter on file for the duration of the arrangement. We have implemented trade rotation procedures when executing trades of the same security across a number of custodians in order to mitigate favoring one account over another. Trades are alternated by broker and a log is kept to ensure procedures are followed. It is possible, however, that trades for clients directing their transactions to a particular broker, may be executed after trades in which the Firm has discretion over the broker to be used.

On occasion, we may place orders with brokers to effect cross transactions between client accounts in which one client will purchase securities held by another client. Such transactions are entered into only when we believe the transactions is in the best interest of both clients, we determine the price to be fair to both clients and we believe the transaction constitutes "best



execution” for both clients. Neither Berkshire nor any related party receives any compensation in connection with such transactions. ERISA and the Investment Company Act of 1940 each impose conditions and/or constraints on “cross” transactions.

We attempt to follow procedures to avoid errors, though errors occasionally occur. We seek to identify and correct the trading errors affecting any account as quickly as possible in order to put our clients in the position as if no error had occurred. A “trade error” is generally any transaction resulting in client funds being committed to an unintentional transaction. We do not benefit economically from the resolution of a trade error.

### **Item 13: Review of Accounts**

Due to the nature of our services, most accounts will be reviewed by the investment manager for the account on a daily basis to measure the impact of factors including, but not limited to, daily market activity, general economic or political trends, interest rate movements, and/or changes in the regulatory environment. However, depending upon the current market conditions and the particular position of the account, not all accounts need daily review. Client accounts will be monitored by the investment manager to ensure that the client’s primary objectives are maintained (e.g. growth, safety, income, etc.). The number of accounts assigned to an investment manager will never exceed that number which would compromise the high standards established by Berkshire. In addition to regular review by the investment manager of each account, all accounts will be reviewed for accuracy on a monthly basis by office support staff. This review will follow strict procedures as approved by Berkshire’s President. Berkshire’s investment policy committee meets periodically to review all portfolios to ensure each account is structured in compliance with client investment policy guidelines.

The nature and frequency of your client report is determined primarily by your particular needs. Generally, clients receive quarterly reports containing the following information: (1) Portfolio Appraisal Report; (2) Realized Gain/ Loss Report; (3) Interest Dividend and Expense Report; (4) Purchase and Sale Report; (5) Performance Report and Performance History Report. Investors in limited partnerships offered privately and managed by the Berkshire will receive reports as described in the applicable offering documents.

We strongly encourage our clients to review their monthly statements received directly from their custodians and to report any discrepancies immediately.

### **Item 14: Client Referrals and Other Compensation**

Berkshire may, from time to time, compensate persons for client referrals. Persons introducing new client accounts to Berkshire may receive a portion of the advisory fee generated by the account for a period which varies on a case-by-case basis. Berkshire is aware of the special considerations set forth in Rule 206(4)-3 of the Investment Advisers Act of 1940, as amended, and as such, all referral arrangements will be conducted in accordance with the applicable rules and regulations. Under SEC Rule 206(4)-3, a solicitor referral arrangement between the investment adviser and third-party (non-employee) solicitor must be in writing and includes provisions related to the scope of the solicitor’s activities; a covenant by the solicitor to perform

such activities consistent with instructions of the investment adviser and in compliance with the Investment Advisers Act of 1940 and associated rules; and a covenant by the solicitor to provide the client with a copy of the investment adviser's Form ADV Part 2a separate written solicitor disclosure.

## **Item 15: Custody**

Berkshire is not a custodian but does engage in certain activities that result in being deemed to have custody or possession of client funds or securities under Advisers Act Rule 206(4)-2. In circumstances where Berkshire may be deemed to have custody, we will comply with the requirements of Rule 206(4)-2 to avert the requirement that we retain an independent public accountant to perform an annual verification of funds and securities in the Firm's custody.

In circumstances where the Berkshire is deemed to have custody or possession of client funds or securities we will ensure that:

- Qualified Custodian holds the client's assets;
- If the Firm opens an account with a qualified custodian on the client's behalf the Firm will notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information; and
- There is a reasonable basis for believing that the Qualified Custodian sends an account statement, at least quarterly, to the client that identifies the amount of funds and of each security in the account at the end of the period and sets forth all transactions in the account during that period.
- Limited partnerships, in which the Firm, or a subsidiary of the Firm, serves as general partner and investment adviser, are audited annually and the audited financial statements, prepared in accordance with generally accepted accounting principles, are sent to all limited partners within 120 days of the end of its fiscal year.
- Any trust's where a covered person serves as co-trustee has a co-trustee that is a bank or a trust company that meets the definition of a qualified custodian under rule 206(4)-2(d)(6) and is not a related person of the adviser; the qualified custodian delivers account statements directly to each co-trustee that is not itself the custodian and under the trust instrument or by law the withdrawal of any assets of the trust by the adviser requires the prior written consent of all of its co-trustee(s).

## **Item 16: Investment Discretion**

Berkshire provides both discretionary and nondiscretionary investment advisory services. The majority of our clients grant discretion, which allows us to manage portfolios and make investment decisions without client consultation regarding the securities and other assets that are

bought and sold for the account. In such accounts, we do not require client approval for the total amount of the securities and other assets to be bought and sold, the choice of executing brokers or the price and commission rates for such transactions. In some instances, clients may seek to limit or restrict our discretionary authority on these matters by imposing investment guidelines or restrictions on their account.

We make every effort to manage restricted portfolios along with other clients within similar mandates. However, it is possible that security selection and trade placement may be delayed for these portfolios while we determine whether a proposed investment decision complies with the account guidelines and restrictions or identify alternatives. Accounts subject to investment restrictions or directed broker agreements may forfeit some of the advantages that may result from aggregated orders and may be disadvantaged by the market impact of trading for other portfolios.

In non-discretionary relationships, we make periodic investment recommendations to clients about the securities that should be bought or sold and the total amount of such transactions. Clients may ask Berkshire to place orders for the purchase or sale of the securities being recommended, either through executing brokers of our choice or according to the client's request. Orders placed by Berkshire will be aggregated with those discretionary clients in the same security, based on standard procedures. We will not, however, delay trading for discretionary client orders while a non-discretionary client considers and approves an investment recommendation. In addition, nondiscretionary clients will not share in the allocation of those trades that were completed before they approved an order. In cases where the non-discretionary client places its own orders without our involvement, procedures are adopted to ensure that we have a reasonable opportunity to trade a substantial portion of any current orders for discretionary accounts before an investment recommendation is passed to non-discretionary clients.

Client orders executed through the same broker dealer may be aggregated to achieve best execution. Generally clients will receive the average share price of all orders executed to fill the aggregated order. Individual transaction fees and commissions will not be affected. The client will incur the same transaction fee or commission charge regardless if the order was aggregated or executed individually. Aggregation saves time and all accounts receive same price. We will attempt to aggregate orders when it is determined it is prudent to place orders for the same security, at the same time, in one or more client accounts. Allocations for these orders are completed on a pro rata basis.

## **Item 17: Voting Client Securities**

Investment advisers are subject to specific rules related to voting authority over client securities. For example, advisers must provide clients with a description of their voting policies and procedures disclose where clients can get a full copy of the policies and procedures and disclose how they can obtain information about how their adviser voted with respect to their securities.



As a registered investment adviser that exercises proxy voting authority over client securities, we have a fiduciary duty to vote proxies in a timely manner and make voting decisions that are in our clients' best interests.

Berkshire Asset Management has adopted a Proxy Voting Policy, which reflects the policies of the firm and its investment management subsidiaries. The Proxy Voting Policy is a set of voting guidelines intended to maximize the value of the securities in our client accounts. It describes our approach to analyzing voting issues, identifies the persons responsible for determining how to vote proxies and includes procedures to address material conflicts of interests that may arise between Berkshire and clients relating to proxy voting.

The majority of our client's securities are voted with the aid of an outside vendor. In summary, this enables us to fully automate the process, vote according to independent research and recommendations by a number of different premier vote research firms.

Our Proxy Voting Policy provides further detail on the voting process and a range of specific voting issues. Clients may obtain a copy of the Proxy Voting Policy, the Proxy Voting Manual and information about how Berkshire voted with respect to their securities by contacting is:

Berkshire Asset Management, LLC  
Attn: Chief Compliance Officer  
46 Public Square, Suite 700  
Wilkes-Barre, PA 18701  
[mmillington@berkshiream.com](mailto:mmillington@berkshiream.com)

## **Item 18: Financial Information**

Not Applicable.

Berkshire does not require or solicit prepayment of more than \$1,200 in fees per client, six months or more in advance and therefore does not need to include a balance sheet with this Brochure. Neither Berkshire nor its management has reason to believe that anything would impair our ability to meet contractual commitments to clients. Neither Berkshire nor its management has been the subject of a bankruptcy petition at any time during the past ten years.



Berkshire Asset Management, LLC  
**FORM ADV PART 2B**

Berkshire Asset Management, LLC  
46 Public Square, Suite 700  
Wilkes-Barre, PA 18701  
[www.berkshiream.com](http://www.berkshiream.com)  
Phone: 570-825-2600  
March 26, 2013

*This supplement provides information about each of the people who provide our advice. It supplements our Disclosure Brochure. You should have received a copy of that Brochure. Please contact Marilyn Millington at 570-825-2600 or by email at [mmillington@berkshiream.com](mailto:mmillington@berkshiream.com) if you didn't receive our Brochure, or if you have any questions about the contents of this supplement.*

*This brochure has not been approved by the Securities and Exchange Commission (SEC) or any state securities authority. SEC Registration does not imply any level of skill or training.*



Kenneth J. Krogulski, CFA\*  
46 Public Square, Suite 700  
Wilkes-Barre, PA 18701

Item 2-Educational Background and Business Experience

Birth Year: 1957

Education: Indiana University of Pennsylvania, B.S., Finance, Wilkes University, MBS 1982

Business Background:

2002-present: Berkshire Asset Management, President, Chief Investment Officer, CEO and Managing Member

1990-2002: Berkshire Asset Management, Vice-President and Partner

1979-1990: First Eastern Bank, NA (now PNC Financial) Senior Portfolio Manager Strategist

Professional Designation: Chartered Financial Analyst (CFA) 1986\*

Item 3-Disciplinary Information

Mr. Krogulski has never had any disciplinary disclosures to be reported.

Item 4-Other Business Activities

Mr. Krogulski is currently not actively engaged in any other investment related business or occupation.

Item 5-Additional Compensation

Mr. Krogulski receives compensation solely from his responsibilities at Berkshire and from no other source.

Item 6-Supervision

The Investment Policy Committee of Berkshire is responsible for overseeing the investment policies. Kenneth Krogulski is responsible for supervision of the investment staff and advisory activities. As managing member, president, CEO and CFO Kenneth Krogulski does not have a supervisor.

\* **CFA Charter Financial Advisor**

The Chartered Financial Analyst (CFA) charter is a professional designation established in 1962 and awarded by CFA Institute. To earn the CFA charter, candidates must: 1) pass three sequential, six-hour examinations; 2) have at least four years of qualified professional investment experience; 3) join CFA Institute as members; and 4) commit to abide by, and annually reaffirm, their adherence to the CFA Institute Code of Ethics and Standards of Professional Conduct. The CFA Program curriculum provides a comprehensive framework of knowledge for investment decision making and is firmly grounded in the knowledge and skills used every day in the investment profession. The three levels of the CFA Program test a proficiency with a wide range of fundamental and advanced investment topics, including ethical and professional standards, fixed-income and equity analysis, alternative and derivative investments, economics, financial reporting standards, portfolio management, and wealth planning. The CFA Program curriculum is updated every year. To learn more about the CFA charter, visit [www.cfainstitute.org](http://www.cfainstitute.org).



Gerard Mihalick, CFA\*  
46 Public Square, Suite 700  
Wilkes-Barre, PA 18701

Item 2-Educational Background and Business Experience

Birth Year: 1968

Education: Gettysburg College, B.A., Management and a concentration on Finance and Accounting

Business Background:

1995-present: Berkshire Asset Management, Vice-President

1994-1995: QCI Asset Management, Analyst

1994-1994: Fleet Investment Advisors, Portfolio Manager

Professional Designation: Chartered Financial Analyst (CFA)\*

Item 3-Disciplinary Information

Mr. Mihalick has never had any disciplinary disclosures to be reported.

Item 4-Other Business Activities

Mr. Mihalick is currently not actively engaged in any other investment related business or occupation.

Item 5-Additional Compensation

Mr. Mihalick receives compensation solely from his responsibilities at Berkshire and from no other source.

Item 6-Supervision

The Investment Policy Committee of Berkshire is responsible for overseeing the investment policies. Kenneth Krogulski is responsible for supervision of the investment staff and advisory activities.

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Michael Durkin Weaver, CFA\*  
46 Public Square, Suite 700  
Wilkes-Barre, PA 18701

Item 2-Educational Background and Business Experience

Birth Year: 1972

Education: University of Virginia, B.A., Economics

Business Background:

1999-present: Berkshire Asset Management, Vice-President

1996- 1999: Mellon Private Asset Management, Senior Portfolio Manager

Professional Designation: Chartered Financial Analyst (CFA)\*

Item 3-Disciplinary Information

Mr. Weaver has never had any disciplinary disclosures to be reported.

Item 4-Other Business Activities

Mr. Weaver is currently not actively engaged in any other investment related business or occupation.

Item 5-Additional Compensation

Mr. Weaver receives compensation solely from his responsibilities at Berkshire and from no other source.

Item 6-Supervision

The Investment Policy Committee of Berkshire is responsible for overseeing the investment policies.

Kenneth Krogulski is responsible for supervision of the investment staff and advisory activities.

**\* CFA Charter Financial Advisor**

The Chartered Financial Analyst (CFA) charter is a professional designation established in 1962 and awarded by CFA Institute. To earn the CFA charter, candidates must: 1) pass three sequential, six-hour examinations; 2) have at least four years of qualified professional investment experience; 3) join CFA Institute as members; and 4) commit to abide by, and annually reaffirm, their adherence to the CFA Institute Code of Ethics and Standards of Professional Conduct. The CFA Program curriculum provides a comprehensive framework of knowledge for investment decision making and is firmly grounded in the knowledge and skills used every day in the investment profession. The three levels of the CFA Program test a proficiency with a wide range of fundamental and advanced investment topics, including ethical and professional standards, fixed-income and equity analysis, alternative and derivative investments, economics, financial reporting standards, portfolio management, and wealth planning. The CFA Program curriculum is updated every year. To learn more about the CFA charter, visit [www.cfainstitute.org](http://www.cfainstitute.org).





Gregory Cameron Weaver, CFA\*  
46 Public Square, Suite 700  
Wilkes-Barre, PA 18701

Item 2-Educational Background and Business Experience

Year of Birth: 1974

Education: University of Central Florida, B.S. in Business Administration and Finance, 1998

Business Background:

2007-present: Berkshire Asset Management, Vice President

2004-2007: M&T Investment Group, Wealth Manager

2004-2004: Trust Company of the West, Investment Representative

Professional Designation: Chartered Financial Analyst (CFA)\*

Item 3-Disciplinary Information

Mr. Weaver has never had any disciplinary disclosures to be reported.

Item 4-Other Business Activities

Mr. Weaver is currently not actively engaged in any other investment related business or occupation.

Item 5-Additional Compensation

Mr. Weaver receives compensation solely from his responsibilities at Berkshire and from no other source.

Item 6-Supervision

The Investment Policy Committee of Berkshire is responsible for overseeing the investment policies.

Kenneth Krogulski is responsible for supervision of the investment staff and advisory activities.

**\* CFA Charter Financial Advisor**

The Chartered Financial Analyst (CFA) charter is a professional designation established in 1962 and awarded by CFA Institute. To earn the CFA charter, candidates must: 1) pass three sequential, six-hour examinations; 2) have at least four years of qualified professional investment experience; 3) join CFA Institute as members; and 4) commit to abide by, and annually reaffirm, their adherence to the CFA Institute Code of Ethics and Standards of Professional Conduct. The CFA Program curriculum provides a comprehensive framework of knowledge for investment decision making and is firmly grounded in the knowledge and skills used every day in the investment profession. The three levels of the CFA Program test a proficiency with a wide range of fundamental and advanced investment topics, including ethical and professional standards, fixed-income and equity analysis, alternative and derivative investments, economics, financial reporting standards, portfolio management, and wealth planning. The CFA Program curriculum is updated every year. To learn more about the CFA charter, visit [www.cfainstitute.org](http://www.cfainstitute.org).

Marilyn D. Millington  
46 Public Square, Suite 700  
Wilkes-Barre, PA 18701

Item 2-Educational Background and Business Experience

Birth Year: 1963

Education: King's College, B.S. in Accounting, 1984; Executive educational certificate programs at the John F. Kennedy School of Government, Harvard University and the Judge School of Management, Cambridge University

Professional Designation: Series 65, Registered Investment Adviser and Series 63, State Uniform Securities Representative. Series 24, Registered Supervisory Principal (lapsed 6/30/2007), Series 7 Registered Representative (lapsed 6/30/2007)\*\*

Business Background:

2003-Present: Vice President and Chief Compliance Officer

2002 -2003: PNC Advisors Wealth Management, Vice President and Client Relationship Manager

1999-2002: Prudential Retirement Services, Director of Marketing and Communications

1998-1999: Smith Barney, Financial Consultant

Item 3-Disciplinary Information

Ms. Millington has never had any disciplinary disclosures to be reported.

Item 4-Other Business Activities

Ms. Millington is currently not actively engaged in any other investment related business or occupation.

Item 5-Additional Compensation

Ms. Millington receives compensation solely from his responsibilities at Berkshire and from no other source.

Item 6-Supervision

The Investment Policy Committee of Berkshire is responsible for overseeing the investment policies. Kenneth Krogulski is responsible for supervision of the investment staff and advisory activities.

\*\*Exams administered by the Financial Industry Regulatory Authority (FINRA) (previously the National Association of Securities Dealers (NASD)).

Completion of the Series 65 Exam will qualify an investment professional to operate as an Investment Advisor Representative in certain states. The exam focuses on topic areas that are important for an investment advisor to know when providing investment advice. These areas include topics such as retirement planning, portfolio management strategies, and fiduciary obligations.