

**Item 1. Cover Page**

**Brochure of  
Niemann Capital Management, Incorporated**

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**September 23, 2017**

This brochure provides information about the qualifications and business practices of Niemann Capital Management, Incorporated (“NCM”). If you have any questions about the contents of this brochure, please contact us at (800) 622-1626. 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. Although NCM is an SEC-registered investment adviser, that registration does not imply a certain level of skill or training.

Additional information about NCM also is available on the SEC’s website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

## **Item 2. Material Changes**

NCM has added two new strategies, Risk-Managed ESG and Risk Managed ESG Gender Diversity, to the strategies it uses for its individually managed client accounts. Those strategies are described in Items 5 and 8.

NCM has changed the names of its other strategies to more accurately reflect their objectives. The strategies themselves have not changed, however. The new names are as follows:

Global Opportunity Strategy is now “Risk Managed Global Opportunity.”

Risk Managed Strategy is now “Risk Managed US Equity.”

Risk Managed Sector Strategy is now “Risk Managed Global Equity Sector.”

Risk Managed International Strategy is now “Risk Managed International Equity.”

Tactical Global Bond Strategy is now “Risk Managed Global Bond.”

Dynamic Strategy is now “Dynamic US Equity Core.”

Dynamic Sector Strategy is now “Dynamic Global Equity Sector.”

Dynamic International Strategy is now “Dynamic International Equity.”

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#### **Item 4.        Advisory Business**

NCM is a California corporation that has been in business since 1991. It serves as the investment adviser to discretionary individually managed accounts and provides non-discretionary investment advice to other investment advisers, investment companies, broker-dealers, accredited investors and others. NCM's founder, controlling owner and Chief Investment Officer is Donald Niemann. As of September 23, 2017, NCM had total discretionary assets under management of \$194,822,457. Its discretionary authority is limited, however, as described in Item 16.

NCM invests principally in exchange-traded funds (ETFs) on behalf of most of its discretionary individually managed client accounts, invests in mutual funds for certain accounts and manages variable annuities and variable life insurance products that are already held in clients' accounts when they become clients. NCM invests portfolios using the Risk Managed ESG and Risk Managed ESG Gender Diversity strategies primarily in equity securities of individual publicly traded companies. NCM is authorized, however, to enter into any type of investment transaction that it deems appropriate under the terms of the client's account agreement.

NCM may from time to time enter into written agreements with certain individuals and entities that act as Solicitors for NCM. These individuals and entities are called "Solicitors" in this Brochure and in written materials that NCM provides to clients and potential clients. To tailor NCM's services to the needs of each individually managed account, each Solicitor that refers a client to NCM interviews the client as to the client's investment experience, liquidity requirements, tolerance for risk and general financial information. On the basis of that interview, NCM allocates investments to the client in the client's chosen investment strategy. NCM also:

- Manages each client account based on the client's financial situation and investment objectives and in accordance with any restrictions that the client imposes on managing the account.
- At least annually, contacts each client to ask about any changes in the client's financial situation or investment objectives and whether the client desires to impose or modify any restrictions on managing the account.
- Notifies each client quarterly in writing to contact NCM if there are any changes in the client's financial situation or investment objectives, or if the client desires to impose or modify any restrictions on managing the account.
- Makes itself reasonably available to clients for consultation.

NCM also provides non-discretionary investment advice to other investment advisers in the form of model portfolios through the platform providers listed in Item 11. An investment adviser that uses such a model portfolio may use it to (a) manage the adviser's own client accounts, (b) directly invest the client assets of the adviser's third party investment adviser and financial institution clients or (c) manage the client accounts of

certain wrap account sponsors to which the adviser provides investment advisory services. As of September 23, 2017, the total amount of assets managed based on non-discretionary model portfolios provided by NCM was approximately \$216,903,846. NCM's relationship with each non-discretionary platform provider is terminable as provided in NCM's agreement with that provider.

The securities recommendations comprising these model portfolios are the same securities recommendations that NCM uses to invest the assets of its individually managed accounts. As discussed in Item 11, NCM rotates weekly the order in which discretionary accounts trade and recommendations are provided to non-discretionary platform providers, in an effort to prevent any group from being disadvantaged over time, but NCM has no control over when the users of its model portfolios implement such recommendations. In addition, NCM's agreement with one or more of its model portfolio platform providers states that NCM will provide changes to the model portfolios after NCM begins implementing those changes in its individually managed accounts or that users of the model portfolios may rebalance managed accounts based on those changes after NCM provides such advice. As a result, accounts managed by those users may trade based on NCM's recommendations after NCM's individually managed accounts and may not receive prices as favorable as NCM's individually managed accounts for the same securities. NCM addresses this conflict of interest by disclosing it.

NCM also manages discretionary accounts through the REACT Investment Solutions, LLC ("REACT") separately managed account program. NCM's Risk Managed Global Opportunity, Dynamic International Equity, Dynamic Global Equity Sector and Dynamic US Equity Core strategies are available through this program. Otherwise, REACT accounts are managed in the same manner as NCM's other client discretionary accounts. The fees that REACT pays to NCM are described in Item 5 and NCM's brokerage practices applicable to REACT accounts are described in Item 12.

## **Item 5. Fees and Compensation**

### ***Discretionary Account Management Fees***

NCM charges each individually managed client account (except for REACT accounts) an annual fee based on the amount of assets in the account. NCM typically calculates annual fees according to the following schedule for its Risk Managed US Equity, Risk Managed Global Equity Sector, Risk Managed International Equity, Risk Managed Global Opportunity, Dynamic US Equity Core, Dynamic Global Equity Sector and Dynamic International Equity strategies:

<i>Assets Managed</i>	<i>Annual Percentage Rate</i>
First \$500,000	2.30%
Second \$500,000	1.65%
Next \$2,000,000	1.10%

Amounts Over \$3,000,000 1.00%

The annual fees of the Risk Managed Global Bond strategy are 1.80%, and the annual fees of the Risk Managed ESG and Risk Managed ESG Gender Diversity strategies are 1.75%. These strategies do not offer tiered fee breaks.

Management fees are calculated and accrued daily. Each day, 1/365 of the annual management fee rate applicable to a client is accrued based on the value of the client's assets under management on that day. Fees are payable in arrears quarterly on the last day of each March, June, September, and December. If a client opens an account on a day that is not the first business day of a calendar quarter, fees for the quarter in which the account is opened are prorated.

#### ***Management Fees Paid by REACT Accounts***

REACT pays NCM an annual fee equal to 0.35% of the average daily aggregate value of the assets in the accounts that NCM manages through the REACT program. This fee is payable quarterly in arrears on or before the 45th day following the start of each calendar quarter. The quarterly fee rate is one-fourth of the annual rate.

#### ***Discretionary Account Performance Fees***

Instead of annual fees, NCM offers any qualified holder of an individually managed account (a client with a net worth that exceeds \$2,100,000, excluding the fair market value of a natural person's primary residence and with certain exceptions, indebtedness secured by that residence) the option of a performance fee equal to 20% of "New High Profits" generated in the client's account. New High Profits are calculated by subtracting the higher of the beginning account value or the highest account value on which a performance fee previously was charged from the current account value at the time the performance fee is charged, is adjusted for additions to and withdrawals from the account and includes both realized and unrealized gains and losses. Clients choosing to pay a performance fee understand that this fee arrangement may create an incentive for NCM to make investments that are riskier or more speculative than would be the case in the absence of a performance-based fee. NCM complies with Rule 205-3 under the Investment Advisers Act of 1940, to the extent required by applicable law.

#### ***General Information on Fees Paid by Discretionary Accounts***

ETFs, mutual funds and variable annuities charge various fees, all of which are disclosed in those funds' and annuities' prospectuses. Such fees are paid by investors and are reflected in the net asset values of the funds and annuities. Some mutual funds also charge short-term redemption fees that are billed to investors at the time of the event causing the fee. As discussed in Item 12, in lieu of trading commissions, most of NCM's clients pay their custodian a flat asset-based fee that is generally based on the amount of assets in the client's account managed by NCM, and NCM effects most trades for each of its clients with that client's custodian. If a security for an account is not available for purchase or sale through the account's custodian, including an individual stock purchased or sold for an account managed using the Risk Managed ESG or Risk Managed ESG Gender Diversity

strategy, a transaction in that security typically may be made at a different broker-dealer. Those broker-dealers charge commissions, markups and other clearing and settlement charges on those trades. Clients pay all of these fees in addition to NCM's advisory fees and any fees the account custodian may charge.

As discussed above, each account is responsible for its own costs and expenses, including trading costs and expenses (such as brokerage commissions, and clearing and settlement charges). NCM bears its own operating, general, administrative and overhead costs and expenses, other than the expenses described above. All or part of these costs and expenses may be paid, however, by securities brokerage firms that execute clients' securities trades, as discussed in Item 12 below.

In selecting ETFs and mutual funds for clients, NCM considers the nature and size of the fees charged by the ETFs and mutual funds. NCM selects an ETF or mutual fund for a client only if NCM believes that its performance, after all fees, will meet NCM's performance standards. Consequently, NCM may select ETFs and mutual funds that have higher or lower fees than other similar ETFs and mutual funds that charge redemption fees. When deciding whether to liquidate a mutual fund position, NCM considers any redemption fee that the mutual fund may charge. NCM may decide to sell a mutual fund even though it will result in the client being required to pay a redemption fee.

NCM manages variable annuities that are already in clients' accounts when the client becomes NCM's client, but NCM does not invest client assets in variable annuities or sell them out of client accounts.

NCM deducts its fees directly from each individually managed client's custodial account, except for REACT accounts. In certain circumstances, fees may be negotiable. NCM believes that its fees are competitive with fees charged by other investment advisers for comparable services, but comparable services may be available from other sources for lower fees than those charged by NCM.

### ***Account Termination***

Except as may be negotiated in particular cases, for clients other than REACT accounts, NCM or the client may terminate NCM's services on fifteen days' written notice. Unless instructed otherwise, terminated individually managed account investments are liquidated and held in a money market fund. In all cases, expenses, the pro rata portion of the annual fee or the performance fee through the date of termination are charged to the client. All prepaid but unearned advisory fees are refunded to the client on termination of an account.

The account of a client that is part of the REACT program may be terminated as provided in that client's agreement with REACT. If NCM or REACT terminates the REACT program, the accounts of clients that are part of the REACT program will be managed as REACT determines.

### ***Fees Paid for Non-Discretionary Investment Advisory Services***

Each platform provider through which NCM provides model portfolios pays NCM a fee based on the amount of assets managed using those model portfolios. Such fees are negotiated with each provider based on the number and complexity of the models that NCM provides and are typically paid quarterly, either in advance or arrears, depending on the terms of NCM's agreement with each such provider.

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

NCM manages discretionary accounts that pay performance-based fees as described in Item 5 and accounts that do not pay performance-based fees. Typically, an account that does not pay performance-based fees pays a higher asset-based fee. NCM has a conflict of interest if, in any time period, one fee structure would cause higher fees to be paid to NCM than the other fee structure, because NCM would have an incentive to favor the account that would pay the higher fees. To address this conflict, NCM typically allocates to its discretionary accounts all investment opportunities within each strategy that it manages on a pro rata basis, based on the assets of each account managed according to that strategy. In addition, NCM has policies and procedures to review client account investment allocations on a regular basis.

#### **Item 7. Types of Clients**

NCM generally requires a minimum from \$25,000 up to \$100,000 to open an individually managed account, depending on the strategy that the client selects, but may waive this minimum. NCM's separate account clients may include individuals, trusts, pension plans and small businesses. NCM also provides non-discretionary investment advisory services to other investment advisers, investment companies, broker-dealers, accredited investors and others.

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

##### **Investment Strategy**

NCM uses an active asset allocation methodology. NCM collects and evaluates market data, and performs its proprietary quantitative analysis of that data daily. Through this methodology, NCM gauges the overall health of the market and identifies areas that it believes are performing well on a risk-adjusted basis. NCM then invests to take advantage of themes with favorable risk/reward relationships. In adverse market conditions, or in the absence of a prevailing trend or theme, NCM takes a defensive or cash position or rotates out of a weakening investment into one that is showing greater strength. By taking advantage of market opportunities as they present themselves, NCM strives to position clients for the greatest potential for long-term success.

To implement its asset allocation methodology, NCM currently offers several separately managed account strategies that primarily use ETFs, but also may use mutual funds. The Risk Managed ESG and Risk Managed ESG Gender Diversity strategies primarily use individual stocks. Each is designed to act differently throughout a market cycle.



### ***Risk Managed US Equity***

The objective of the Risk Managed US Equity (RMUSE) strategy is to exploit intermediate-term trends in the US equity market while seeking to limit risk. RMUSE is typically invested in a broad universe of domestic equity ETFs, and employs money market/cash positions during adverse market conditions to preserve assets. RMUSE can be fully invested, partially in cash or completely in cash. While RMUSE may limit the overall losses suffered during major declines, it may also limit returns in advancing markets. However, the strategy seeks to outperform the S&P 500 Total Return Index over complete market cycles. RMUSE is a growth strategy, emphasizing capital preservation over investment return.

### ***Risk Managed Global Equity Sector***

The objective of the Risk Managed Global Equity Sector (RMGES) strategy is to identify global sectors and industries and overweight those expected to outperform in the current market cycle while seeking to limit risk. RMGES is typically invested in a broad universe of global ETFs, and employs money market/cash positions during adverse market conditions to preserve assets. RMGES can be fully invested, partially in cash or completely in cash. While RMGES may limit the overall losses suffered during major declines, it may also limit returns in advancing markets. However, the strategy seeks to outperform the MSCI ACWI Index over complete market cycles. RMGES is a growth strategy, emphasizing capital preservation over investment return.

### ***Risk Managed International Equity***

The objective of the Risk Managed International Equity (RMIE) strategy is to exploit intermediate-term trends in the international equity market while seeking to limit risk. RMIE is typically invested in a broad universe of international equity ETFs, and employs money market/cash positions during adverse market conditions to preserve assets. RMIE can be fully invested, partially in cash or completely in cash. While RMIE may limit the overall losses suffered during major declines, it may also limit returns in advancing markets. However, the strategy seeks to outperform the MSCI ACWI ex USA Index over complete market cycles. RMIE is an aggressive growth strategy emphasizing capital preservation over investment return.

### ***Risk Managed Global Bond***

The objective of Risk Managed Global Bond (RMGB) strategy is to exploit intermediate-term trends in both domestic and international markets while seeking to limit risk. RMGB is typically invested in positions from a broad universe of domestic and international fixed-income ETFs. The strategy employs money market/cash positions during adverse market conditions to preserve assets. RMGB can be fully invested, partially in cash or completely in cash. RMGB often does not follow U.S. fixed-income market trends. However, the strategy seeks to outperform the Barclays U.S. Aggregate Bond Index over complete market cycles. RMGB is most suitable for investors who seek

capital appreciation in all market conditions. RMGB is a moderate risk strategy that provides some income and the potential for moderate capital growth.

### ***Risk Managed Global Opportunity***

The objective of Risk Managed Global Opportunity (RMGO) strategy is to exploit intermediate-term trends in both domestic and international markets while seeking to limit risk. RMGO is typically invested in positions from a broad universe of domestic and international equity, bond and alternative ETFs. The strategy employs money market/cash positions during adverse market conditions to preserve assets. RMGO can be fully invested, partially in cash or completely in cash. RMGO often does not follow U.S. stock market trends. However, the strategy seeks to outperform the blended MSCI ACWI/Barclays U.S. Aggregate Bond Index over complete market cycles. RMGO is a growth strategy that employs multiple asset class options worldwide, and emphasizes capital preservation over investment return.

### ***Dynamic US Equity Core***

The objective of the Dynamic US Equity Core (DUSEC) strategy is to exploit intermediate trends in domestic markets by being fully invested in domestic equity ETFs. DUSEC takes an aggressive approach that seeks to outperform the S&P 500 Total Return Index over complete market cycles. DUSEC is typically diversified in a broad universe of domestic equity ETFs. DUSEC is an aggressive growth strategy that emphasizes investment return over capital preservation.

### ***Dynamic Global Equity Sector***

The objective of the Dynamic Global Equity Sector (DGES) strategy is to exploit intermediate-term trends from around the world by staying fully invested in leading industry and sector ETFs. DGES takes an aggressive approach that seeks to outperform its MSCI ACWI benchmark over complete market cycles. DGES is typically diversified from a broad universe of industry and sector ETFs from around the world. DGES is an aggressive growth strategy emphasizing investment return over capital preservation.

### ***Dynamic International Equity***

The objective of the Dynamic International Equity (DIE) strategy is to exploit intermediate-term trends in international markets by being fully invested in international equity ETFs. DIE takes an aggressive approach that seeks to outperform the MSCI ACWI ex USA Index over complete market cycles. DIE is typically diversified in a broad universe of international equity ETFs that encompass a variety of foreign countries and regions. DIE is an aggressive growth strategy that emphasizes investment return over capital preservation.

### ***Risk Managed ESG***

The Risk Managed ESG (RMESG) portfolio integrates environmental, social and governance analysis with Niemann's proprietary security selection process. The strategy

typically invests from a global universe of companies that NCM believes have attractive ESG scores. This strategy invests in stocks NCM believes are top ranked in the universe using NCM's proprietary quantitative methodology. Quantitative scores are typically updated weekly. When NCM believes stock market risk is excessive, its risk-managed overlay system has the ability to go up to 100% cash to protect investor assets. Market risk is generally monitored daily.

### ***Risk Managed ESG Gender Diversity***

The Risk Managed ESG Gender Diversity (RMESGGD) portfolio integrates gender diversity analysis with Niemann's proprietary security selection process. The strategy typically invests in stocks from a global universe of companies that NCM believes are gender diverse at the boardroom and executive levels. The portfolio invests in stocks NCM believes are top ranked in the universe using NCM's proprietary quantitative methodology. Quantitative scores are typically updated weekly. When NCM believes stock market risk is excessive, its risk-managed overlay system has the ability to go up to 100% cash to protect investor assets. Market risk is generally monitored daily.

The investment strategies summarized above represent NCM's current methods and intentions, are general in nature and are not exhaustive. There are no limits on the types of securities in which NCM may take positions on behalf of its clients, the types of positions that it may take, the concentration of its investments or the amount of leverage that it may use. NCM may use any trading or investment techniques, whether or not contemplated by the expected investment strategies described above. In addition, there are limitations in describing any investment strategy due to its complexity, confidentiality and indefinite nature. Depending on conditions and trends in securities markets and the economy generally, NCM may pursue any objectives or use any techniques that it considers appropriate and in clients' interests.

### **Risk Factors**

Investing in securities involves risk of loss that clients should be prepared to bear. Below are some of the risks that clients should consider before investing in any account that NCM manages. Any or all of such risks could materially and adversely affect investment performance, the value of any account or any security held in an account, and could cause clients to lose substantial amounts of money. Below is only a brief summary of some of the risks that a client may encounter. A potential client should discuss with NCM's representatives any questions that such person may have before opening an account.

- Client accounts may not achieve their investment objectives. A strategy may not be successful and clients may lose some or all of their investment.
- Investor sentiment on the market, an industry or an individual security is not predictable and can adversely affect an account's investments.

- An account may hold, or may hold ETFs or mutual funds that hold, securities that disappoint earnings expectations and decline, and may hold inverse funds that short securities that beat earnings expectations and rise.
- An account managed by NCM is likely to have higher portfolio turnover and transaction costs than a similar account managed by another investment adviser. These costs reduce investments and potential profit or increase loss.
- NCM may not be able to obtain complete or accurate information about an investment and may misinterpret the information that it does receive. NCM also may receive material, non-public information about an issuer that prevents it from trading securities of that issuer for a client when the client could make a profit or avoid loss.
- NCM causes clients to invest in securities of non-U.S. issuers, or ETFs or mutual funds that invest in non-U.S. issuers. The risks of these investments include political risks; economic conditions of the country in which the issuer is located; limitations on foreign investment in any such country; currency exchange risks; withholding taxes; limited information about the issuer; limited liquidity; and limited regulatory oversight.
- An account's investments may not be sufficiently diversified. Therefore, a loss in any one position, industry or sector in which a client account has invested may cause significant losses.
- The Risk Managed ESG and Risk Managed ESG Gender Diversity strategies may not achieve their goals of investing in companies that meet those strategies' environmental, social, governance and gender diversity goals. Those strategies also may not perform better or as well as strategies that do not consider social justice goals.
- NCM and its affiliates and agents generally are not responsible to any client for losses incurred in an account unless the conduct resulting in such loss breached NCM's fiduciary duty to the client.
- NCM may provide some clients more frequent or detailed reports than it provides to other clients.
- If the assets that NCM and its affiliates manage grow too large, it may adversely affect performance, because it is more difficult for NCM to find attractive investments as the amount of assets that it must invest increases.
- NCM's activities could cause adverse tax consequences to clients, including liability for interest and penalties.
- NCM's activities may cause an account that is subject to the Employee Retirement Income Security Act of 1974 to engage in a prohibited transaction under that Act.

- Counterparties such as brokers, dealers, custodians and administrators with which NCM does business on behalf of clients may default on their obligations. For example, a client may lose its assets on deposit with a broker if the broker, its clearing broker or an exchange clearing house becomes bankrupt.

## **Item 9. Disciplinary Information**

Not applicable.

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

### ***Niemann Analytics, Inc.***

Donald Niemann, NCM's founder, controlling owner and Chief Investment Officer, is also the sole owner of Niemann Analytics, Inc., an SEC-registered investment adviser that acts as a sub-adviser to NCM.

### ***Online Advisors, Inc.***

Donald Niemann and Richard West, a shareholder of NCM and its Chief Compliance Officer, are owners of Online Advisors Inc., a software development company created specifically to provide technology development to be used by money managers, financial advisers and broker/dealers. NCM uses the services of Online Advisors Inc.

NCM's relationships with Niemann Analytics, Inc. and Online Advisors Inc. create a conflict of interest with NCM's clients because Mr. Niemann and Mr. West have an interest in causing NCM to do business with these entities instead of other service providers that might provide better services that are more beneficial to clients. Nevertheless, clients do not pay higher fees to NCM as a result of its use of these service providers instead of, or in addition to, other service providers. NCM addresses these conflicts by disclosing them.

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

NCM has adopted a Code of Ethics in compliance with Rule 204A-1 under the Investment Advisers Act of 1940, that establishes standards of conduct for NCM's supervised persons. The Code of Ethics includes general requirements that NCM's supervised persons comply with their fiduciary obligations to clients and applicable securities laws, and specific requirements relating to, among other things, personal trading, insider trading, conflicts of interest and confidentiality of client information. It requires supervised persons to comply with personal trading restrictions and periodically to report their personal securities transactions and holdings to NCM's Compliance Officer, and requires the Compliance Officer to review those reports. It also requires supervised persons to report any violations of the Code of Ethics promptly to the Compliance Officer. Each supervised person of NCM receives a copy of the Code of Ethics and any amendments to it and must acknowledge in writing having received those materials. Annually, each supervised person must certify that he or she complied with the Code of Ethics during the preceding

year. Clients and prospective clients may obtain a copy of NCM's Code of Ethics by contacting NCM.

Under NCM's Code of Ethics, NCM and its access persons<sup>1</sup> may personally invest in securities of the same classes as NCM purchases for clients and may own securities of issuers whose securities NCM subsequently purchases for clients. This practice creates a conflict of interest in that any access person can use his or her knowledge about actual or proposed securities transactions and recommendations for a client account to profit personally by the market effect of such transactions and recommendations. To address this conflict, NCM and its access persons must obtain pre-approval before engaging in most securities transactions. In addition, an access person typically may not buy or sell a security for his or her own account until after orders for client accounts in that security have been filled and there is no buying or selling program in progress. NCM and its shareholders, directors, officers and employees may also buy or sell specific securities for their own accounts based on personal investment considerations aside from company or industry fundamentals, which NCM does not believe appropriate to buy or sell for clients.

Because NCM manages more than one account, there may be conflicts of interest over its time devoted to managing any one account and allocating investment opportunities among all accounts that it manages. For example, NCM selects investments for each client based solely on investment considerations for that client. Different clients may have differing investment strategies and expected levels of trading. NCM may buy or sell a security for one type of client but not for another, or may buy (or sell) a security for one type of client while simultaneously selling (or buying) the same security for another type of client. NCM may give advice to, and take action on behalf of, any of its clients that differs from the advice that it gives or the timing or nature of action that it takes on behalf of any other client. NCM is not obligated to acquire for any account any security that NCM or its shareholders, directors, officers or employees may acquire for its or their own accounts or for any other client, if in NCM's absolute discretion, it is not practical or desirable to acquire a position in such security for that account.

In addition, the securities recommendations comprising NCM's model portfolios are the same securities recommendations that it uses to invest the assets of its individually managed accounts. As discussed in Item 12, NCM's discretionary accounts are typically held in custody at either Fidelity Brokerage Services ("Fidelity"), a subsidiary of Fidelity Investments, or Schwab Institutional ("Schwab"), a division of Charles Schwab & Co. NCM currently provides its non-discretionary recommendations through Envestnet Asset Management, Inc. ("Envestnet"), Envestnet|Placemark UMA Marketplace ("Placemark"), Mid Atlantic Capital Group ("Mid Atlantic"), Adhesion Wealth Advisor Solutions, Inc. ("Adhesion") and EQIS Capital Management, Inc. ("EQIS"). Each week that NCM engages in trading and providing non-discretionary recommendations, NCM rotates the order in which it trades for discretionary accounts and provides recommendations to its

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<sup>1</sup> "Access person" generally means a person who (1) (a) is an NCM shareholder, director, officer or employee, or any person who provides advice to client accounts on NCM's behalf and (b) (i) has access to non-public information about securities purchases or sales by client accounts, or (ii) is involved in making securities recommendations to clients or has access to such recommendations that are non-public, or (2) or has any interest in an organization other than NCM that is engaged in any securities or financial business.

non-discretionary platform providers in an effort to prevent any group from being disadvantaged over time. For example, in any particular week in which there are trades, accounts held at Schwab may trade first, accounts at Fidelity second, recommendations made to Envestnet third, Mid Atlantic fourth, Adhesion fifth, EQIS sixth and Placemark last. The next week in which there are trades, Fidelity accounts would trade first, recommendations would be made to Placemark second, Envestnet third, Mid Atlantic fourth, Adhesion fifth, EQIS sixth, Schwab accounts would trade last, and the rotation would continue thusly.

NCM has no control over when users of its model portfolios implement the advice that they receive. In addition, NCM's agreement with one or more of its model portfolio platform providers states that NCM will provide changes to the model portfolios it provides after NCM begins implementing those changes in its individually managed accounts, or that users of the model portfolios may rebalance managed accounts based on those changes after NCM provides such advice. As a result, accounts managed by those users may trade after NCM's individually managed accounts and may not receive prices as favorable as those accounts for the same securities. NCM addresses this conflict of interest by disclosing it.

## **Item 12. Brokerage Practices**

NCM suggests that clients select either Fidelity or Schwab as the custodian for accounts that NCM manages. REACT accounts are held in custody at Fidelity. Fidelity & Schwab prepare trade confirmations and monthly statements for each account.

The investment advisory agreement of each individually managed discretionary account provides that NCM has discretion over selecting the broker to be used for client transactions. In most cases, however, NCM executes through Schwab trades for client accounts held in custody at Schwab and executes through Fidelity trades for client accounts held at Fidelity.

Each NCM client account held in custody at Fidelity or Schwab pays that custodian a flat asset-based fee (the "ABP Fee") that is generally based on the amount of assets in that account, in lieu of transaction-based commissions, for most brokerage services that Fidelity or Schwab, as the case may be, provide to that account. The annual ABP Fee schedules of Fidelity and Schwab are below.

### Fidelity

#### Account Assets:

From 0.00	To 500,000.00	0.20% Plus
From 500,000.01	To 1,000,000.00	0.15% Plus
From 1,000,000.01	To 2,000,000.00	0.10% Plus
From 2,000,000.01	To 3,000,000.00	0.07% Plus
From 3,000,000.01	To 5,000,000.00	0.05% Plus
Amounts over 5,000,000		0.01%

Fidelity does not charge a minimum ABP Fee.

## Schwab

### Account Assets:

From 0.00	To 500,000	0.20% Plus
From 500,001	To 1,000,000	0.15% Plus
From 1,000,001	To 2,000,000	0.10% Plus
From 2,000,001	To 3,000,000	0.07% Plus
From 3,000,001	To 5,000,000	0.05% Plus
Amounts over 5,000,000		0.03%

Schwab charges a minimum annual ABP Fee of \$250.

The appropriateness of ABP Fees for any client account depend on, among other things, the frequency of trading and the number and size of the trades in that account. NCM believes that ABP Fees benefit all clients, but if the number of transactions in a client account is low enough during any ABP Fee billing period, the ABP Fee that account pays to Fidelity or Schwab during that period may exceed the commissions the account would have paid if the account paid Fidelity or Schwab transaction-based commissions. NCM monitors trading activity in client accounts to determine whether the ABP Fees that clients pay to Fidelity and Schwab remain appropriate. These reviews include an assessment of relevant fees, such as custodial fees, commissions and ticket charges a client would have paid on an unbundled basis compared to ABP Fees.

In cases where a desired security for an account held in custody at Fidelity or Schwab is not available for purchase or sale through that custodian, a transaction in that security typically may be made at a different broker-dealer. These firms may include Wallach Beth Capital and The Benchmark Company. When transactions are made through one of these other brokers, clients who pay ABP Fees pay transaction fees to these brokers in addition to the ABP Fee. Therefore, NCM has an incentive to execute most trades for a client account held in custody at Fidelity through Fidelity and for a client account held in custody at Schwab through Schwab. By using Schwab and Fidelity to execute client brokerage transactions in this manner, NCM may not be able to achieve the most favorable execution for certain client transactions, and this practice may cost the client more money than if NCM were to select other brokers for those transactions. In addition, not all investment advisers direct client brokerage to clients' custodians in this manner.

Fidelity or Schwab may charge short- or long-term redemption fees or sales charges in connection with mutual fund shares (including ETFs) that NCM purchases or sells for clients' accounts. NCM does not receive any of these short- or long-term redemption fees or charges. Clients pay all of these fees in addition to NCM's advisory fees and any other fees that Fidelity or Schwab may charge.

When NCM selects a broker for any securities transaction or series of transactions, NCM may consider a number of factors, including, for example:

- net price, clearance, settlement and reputation;
- financial strength and stability;



- efficiency of execution and error resolution;
- block trading and block positioning capabilities;
- willingness to execute related or unrelated difficult transactions in the future;
- special execution capabilities;
- order of call;
- offering to NCM on-line access to computerized data regarding clients' accounts; and
- computer trading systems.

NCM may also purchase from a broker or allow a broker to pay for the following (each a "soft dollar" relationship):

- research reports, services and conferences, including third-party research fees;
- technical data;
- periodical subscription fees;
- consultations;
- performance measurement data;
- on-line pricing;
- news wire and data processing charges; and
- quotation services.

NCM may receive soft dollar credits based on principal, as well as agency, securities transactions with brokers or direct a broker that executes transactions to share some of its commissions with a broker that provides soft dollar benefits to NCM.

NCM may pay a brokerage commission in excess of that which another broker might charge for effecting the same transaction in recognition of the value of the brokerage, research, other services and soft dollar relationships provided by the broker. In such a case, NCM determines in good faith that such commission is reasonable in relation to the value of such brokerage, research, other services and soft dollar relationships, viewed in terms of either the specific transaction or NCM's overall responsibilities to the portfolios over which it exercises investment authority. An account may, however, pay higher brokerage commissions than are otherwise available. Nevertheless, the research and other benefits resulting from the brokerage relationship benefit all accounts managed by NCM or NCM's operations as a whole. NCM does not allocate soft dollar benefits to client accounts proportionately to the soft dollar credits that the accounts generate.

NCM's relationships with brokerage firms that provide soft dollar services influence its judgment and create conflicts of interest in allocating brokerage business between firms that provide soft dollar services and firms that do not. If NCM selects a broker, NCM has an incentive to select or recommend the broker based on NCM's interest in receiving soft dollar services rather than clients' interest in receiving the most favorable execution. These conflicts of interest are particularly influential to the extent that NCM uses soft dollars to pay expenses it would otherwise be required to pay itself.

NCM addresses these conflicts of interest by evaluating quarterly the trade execution services that it receives from the brokers that it uses to execute trades for clients. Such evaluation includes comparing those services to the services available from other brokers. NCM considers, among other things:

- alternative market makers and market centers;
- the quality of execution services;
- the value of continuing with various soft dollar services;
- adding brokers to, or removing them from, the lists of approved brokers that NCM uses;
- increasing or decreasing targets for each broker; and
- the appropriate level of commission rates.

NCM may aggregate securities sale and purchase orders for a client with similar orders being made contemporaneously for other accounts that NCM manages or with accounts of its affiliates. In such event, NCM may charge or credit a client the average transaction price of all securities purchased or sold in such transactions. As a result, however, the price may be less favorable to the client than it would be if NCM were not executing similar transactions concurrently for other accounts. NCM may also cause a client to buy or sell securities directly from or to another client, if such a cross-transaction is in the interests of both clients.

#### **Item 13. Review of Accounts**

Individually managed discretionary accounts are reviewed as transactions occur in those accounts. Reviewers for all such managed accounts include: NCM's research staff, trading staff and operations staff. All reviews are supervised by appropriate officers or staff. Such clients receive confirmations and monthly statements from the custodians that hold their accounts. Clients that have insurance contracts receive statements directly from the carrier. Except for REACT accounts, NCM sends quarterly reports to each client holding an individually managed discretionary account describing the value and performance of the client's account. NCM also provides such clients with confidential internet access that shows daily account valuations, performance, current holdings and transactions. NCM can prepare additional reports at a client's request.

NCM delivers to REACT quarterly portfolio reports and semi-annual and annual performance statements as requested by REACT. REACT is responsible for delivering any quarterly portfolio reports, quarterly fee statements, semi-annual and annual performance statements to clients that are part of the REACT program.

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

NCM pays each Solicitor (defined in Item 4) cash or a portion of the advisory fees paid by clients that such Solicitor refers to NCM. In such cases, this practice is disclosed in writing to the client, and NCM complies with the other requirements of Rule 206(4)-3 under the Investment Advisers Act of 1940.

When a Solicitor that is a registered investment adviser or supervised person of an investment adviser or broker recommends that a client retain NCM to manage the client's account, the Solicitor is responsible for obtaining information from the client about the client's financial condition and investment goals to determine that it is suitable for the client to engage NCM. After the client engages NCM, NCM is responsible for selecting particular investments that are appropriate for the investment strategy selected by the client. When a Solicitor is not so registered, NCM is responsible for determining that an NCM trading strategy is suitable for the client. NCM may consult with Solicitors from time to time on marketing and sales ideas.

Some Solicitors receive commissions or other compensation in connection with the sale of variable insurance policies or variable annuity contracts to their clients' accounts and subsequently refer the accounts to NCM to manage the policies or contracts. NCM cannot prevent a Solicitor from receiving such compensation and NCM does not receive any of such compensation. In all cases, any such variable annuity or variable insurance product has already been purchased for the account by the time it is referred to NCM for management. NCM does not recommend or sell, or have any influence or control over or participate in the recommendation or sale of, variable annuity or variable insurance products. NCM does not receive any compensation from the sale or recommendation of such products. NCM receives only the account management fees that it subsequently receives for managing accounts holding any such products.

#### **Item 15. Custody**

The custodian of each individually managed account sends account statements at least quarterly to the client. Each client should carefully review those statements and compare them to the statements that the client receives from NCM.

Richard West, a shareholder of NCM and its Chief Compliance Officer, is the trustee of NCM's employee 401(k) program.

#### **Item 16. Investment Discretion**

NCM has discretionary authority to manage investment accounts on behalf of clients pursuant to a limited power of attorney in each client's account agreement. Such discretion is limited by the requirement that clients advise NCM of:

- the investment objectives of the account;
- any changes or modifications to those objectives; and
- any specific investment restrictions relating to the account.

A client must promptly notify NCM in writing if the client considers any investments recommended or made for the account to violate such objectives or restrictions. A client may at any time direct NCM to sell any securities or take such other lawful actions as the client may specify to cause the account to comply with the client's investment objectives.

In addition, a client may notify NCM at any time not to invest any funds in the client's account in specific securities or specific categories of securities.

#### **Item 17. Voting Client Securities**

NCM votes all proxies on behalf of each account over which it has proxy voting authority based on its determination of such account's best interests. In determining whether a proposal serves an account's best interests, NCM considers a number of factors, including:

- the proposal's economic effect on shareholder value;
- the threat that the proposal poses to existing rights of shareholders;
- the dilution of existing shares that would result from the proposal;
- the effect of the proposal on management or director accountability to shareholders; and
- if the proposal is a shareholder initiative, whether it wastes time and resources of the company or reflects the grievance of one individual.

NCM abstains from voting proxies when NCM believes that it is appropriate to do so.

If a material conflict of interest over proxy voting arises between NCM and a client, NCM will vote all proxies in accordance with the policy described above. If NCM determines that this policy does not adequately address the conflict of interest, it will notify the client of the conflict and request that the client consent to NCM's intended response to the proxy solicitation. If the client consents to NCM's intended response or fails to respond to the notice within a reasonable time specified in the notice, NCM will vote the proxy as described in the notice. If the client objects in writing to NCM's intended response, NCM will vote the proxy as the client directs.

A client can obtain a copy of NCM's proxy voting policy and a record of votes that it has cast on behalf of the client by contacting NCM.

#### **Item 18. Financial Information**

Not applicable.

#### **Privacy Policy**

- NCM collects non-public personal information about its clients from the following sources:
  - information received from clients on applications or other forms, and
  - information about clients' transactions with NCM, its affiliates or others.
- NCM does not disclose any non-public personal information about its clients or former clients to anyone, except as permitted by law.

- NCM restricts access to non-public personal information about its clients to its employees who need to know that information to provide services to clients.
- NCM maintains physical, electronic and procedural safeguards that comply with federal standards to guard clients' personal information.

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