



**Part 2A of Form ADV  
(Brochure)  
August 30, 2019**

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This brochure provides information about the qualifications and business practices of Foothill Capital Management, LLC. If you have any questions about the contents of this brochure, please contact us by telephone at (800) 446-1179. 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.

Foothill Capital Management, LLC is a registered investment adviser. Registration is mandatory for all persons meeting the definition of investment advisor and does not imply a certain level of skill or training.

Additional information about Foothill Capital Management, LLC is also available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). The CRD number for Foothill Capital Management, LLC is 298910.

## **Item 2 – MATERIAL CHANGES**

This item will be updated on an annual basis and will identify and discuss material changes that are made to the Brochure since our last annual update.

We will deliver to our clients a free annual updated Brochure that includes a summary of any material changes that are made to this and subsequent Brochures within 120 days of the close of our fiscal year (12/31).

Copies of this Brochure are available by contacting Diane Drake, Foothill Capital Management, LLC's Chief Compliance Officer at (800) 446-1179 or at [diane.drake@foothillcap.com](mailto:diane.drake@foothillcap.com).

The material changes made to this Brochure since our last update dated July 22, 2019 are the following:

- Item 4 – Advisory Business was updated to reflect our current regulatory assets under management.
- Item 5 – Fees and Compensation was updated to reflect our current fees for separately managed accounts.
- Item 14 – Client Referrals and Other Compensation was updated to reflect our use of consultants.

**Foothill Capital Management, LLC**  
**Firm Brochure**  
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#### **Item 4 - ADVISORY BUSINESS**

##### ***The Firm – Foothill Capital Management, LLC***

Established in 2018, Foothill Capital Management, LLC is an independent advisory firm registered with the U.S. Securities and Exchange Commission (the “SEC”). Foothill Capital Management has offices located in Fair Haven, New Jersey and Glendora, California and is incorporated under the laws of the State of Delaware as a limited liability company. Eric Banhazl is the Chairman of Foothill Capital Management.

Foothill Capital Management’s Management Committee is responsible for all operations of the Firm including, but not limited to, supervision of all Firm employees; adhering to all federal and state security regulations; the execution and supervision of all trading and advisory services provided to clients.

As used in this Brochure, the words “we”, “our”, “FCM” or “Advisor” refer to Foothill Capital Management, LLC. The words “you”, “your” and “client” refer to you as either a client or prospective client of Foothill Capital Management.

##### ***Services Provided***

##### **Investment Management Services**

FCM provides investment management services on a discretionary basis for registered investment companies, institutional investors, individual clients, and high net worth individuals. FCM is a co-investment advisor to the All Terrain Opportunity Fund (an open-end mutual fund) and investment advisor to the Cannabis Growth Fund.

Prior to engaging FCM to provide investment management services, clients are required to enter into a formal Investment Management Agreement with FCM setting forth the terms and conditions under which we will manage the client's investments, and the fees or other charges the client will pay. Separate custodial documents may also be required prior to establishing an account.

Upon signing FCM’s Investment Management Agreement, clients grant us limited discretionary authority to manage their portfolios on a discretionary basis, and to respond to inquiries from and communicate and share information with the client’s attorney, accountant and other professionals to the extent necessary in the furtherance of our services. Additionally, upon opening an account and in order to comply with our anti-money laundering policy, you will need to provide certain identifying documentation such as government issued identification, articles of incorporation, or other appropriate documentation to our clearing agent, Interactive Brokers LLC (“IB”). With respect to investments in the All Terrain Opportunity Fund and Cannabis Growth Fund, you will need to provide certain identifying documentation such as government issued identification, articles of incorporation or other appropriate documentation to the Funds’ transfer agent, UMB Fund Services, Inc.

Security transactions are generally executed through our clearing agent, IB member FINRA/SIPC/NYSE. However, we may utilize other broker/dealers and custodians when requested by the client. Clients of FCM must be aware that if they direct FCM to use a particular broker that it may limit our ability to achieve best execution, negotiate commissions with other brokers on behalf of the client, or limit the client's participation in block trading.

**Wrap Fees Programs**

FCM does not participate in any wrap fee programs.

**Regulatory Assets Under Management**

As of August 30, 2019, FCM managed \$31,305,771 on a discretionary basis.

**Item 5 - FEES AND COMPENSATION*****Investment Management Fees***

Approximately 100% of our revenue is generated from advisory fees. Our advisory fees are generally based on a percentage of assets under management and exclude costs that may be imposed by your custodian, broker-dealer, and other third-party managers.

**FCM Mutual Fund Fees**

The advisory fee FCM receives for serving as co-investment advisor to the All Terrain Opportunity Fund is 0.84%. The minimum investment is \$2,500. Please see the All Terrain Opportunity Fund's Prospectus for all fee details.

The advisory fee FCM receives for serving as advisor to the Cannabis Growth Fund is 0.85%. The minimum investment is \$2,500. Please see the Cannabis Growth Fund's Prospectus for all fee details.

**FCM Separately Managed Account Fees**

The standard fee schedule for all of FCM's products is as follows:

For accounts under \$50,000,000 – 0.85%

For accounts \$50,000,001 to \$100,000,000 – 0.75%

Accounts greater than \$100,000,000 – 0.65%

The investment management fees are payable quarterly in arrears, based upon the market value of the assets on the last day of the previous quarter as valued by the Custodian.

We generally require a minimum of \$1,000,000 for investment management services. Fees may be discounted or negotiated at our discretion. We may accept smaller accounts at our discretion but may require a minimum fee on such accounts. Smaller accounts are more difficult to diversify and often do not have the same number of securities as larger accounts in the same strategies. In addition, the fees as a percentage of assets under management will be higher than other clients. For investments that do not have a readily available market value, FCM may calculate its investment management fee based on the initial cost of the investments. In our discretion, FCM may waive the account minimum and/or charge a lower management fee based on various criteria (i.e. anticipated future additional assets, dollar amount of assets to be managed, related accounts, account composition, negotiations with client, etc).

Upon signing our Investment Management Agreement, the client authorizes the custodian to deduct the Investment Management Fee from their Account(s) and remit the same to FCM pursuant to its invoice. We will send a quarterly invoice to the Custodian setting forth the amount of the investment management fee that is due for the quarter, and the investment management fees are directly deducted from the client's account(s). The custodian shall not be required to verify the Advisor's calculation of the management fee. To satisfy the payment of the management fee, funds

will be deducted directly from the Account(s), and if necessary, from liquidating holdings in the following order: (a) cash positions; (b) money market funds, or (c) current positions in the Account. It should be noted that some mutual funds and securities that are purchased and sold for the Account may have transaction fees, commissions, and/or redemption fees that will be charged to the client. These transaction fees, etc. are not shared with FCM and are paid directly to the broker/dealer or custodian.

All fees paid to FCM are separate and distinct from other fees the client may pay, including transaction fees, short term trading fees, underlying mutual fund fees and expenses paid to the fund by shareholders of the fund as outlined in each fund's prospectus, and custodial fees. In addition, clients may pay brokerage and transaction fees, commissions, transfer taxes, exchange fees, and any other charges that may be imposed with regard to the client's brokerage account.

### ***Termination of Investment Management Services***

A client may terminate FCM's Investment Management Agreement at any time by giving written notice to FCM or its Advisor at least thirty (30) days prior to the date of termination (the "Termination Date"). Effective on the Termination Date, the Advisor shall refrain, without liability, from taking any further action with respect to the Account. FCM will cease to be entitled to receive fees for any period following the Termination Date.

The client will have immediate access to the assets in his or her account(s), subject to any restrictions imposed by the broker/dealer or custodian of the accounts. Termination of FCM's Investment Management Agreement shall not affect either (a) the validity of any action taken by the Advisor pursuant to the Agreement, or (b) the liabilities and obligations of the parties with respect to any transactions effected prior to the Termination Date.

### ***Commission Business***

We do not provide services based on brokerage commissions. Clients who wish to invest in security products through FCM will maintain accounts with IB or other broker/dealers.

### ***How is the potential risk of conflict of interest mitigated?***

As a fiduciary, FCM is obligated to serve the client's best interest in all dealings and potential conflicts of interest are mitigated by our adherence to our Code of Ethics.

### ***Brokerage and Custodian Transaction Fees***

All security transactions placed with FCM's clearing agent IB are executed through the broker/dealers clearing firm. Advisory fees charged by FCM are separate and distinct from other fees the client may pay including but not limited to:

- Transaction fees such as ticket charges paid to the clearing agent or custodian
- Ticket Charges for transactions in Managed Accounts sponsored by the broker/dealer
- Commissions, if applicable
- Inactivity Fees
- Custodial fees for overnight mail, wire orders, checks returned for insufficient funds for those clients with check writing privileges
- Precious Metal Storage Fees
- Custodial maintenance and termination fees for IRA's
- Limited Partnerships & Private Placement Fees
- Other service fees under special circumstances

## **Item 6 - PERFORMANCE-BASED FEES AND SIDE-BY-SIDE MANAGEMENT**

We do not charge client fees based upon a share of capital gains or capital appreciation of the assets in the client's account.

## **Item 7 - TYPES OF CLIENTS**

FCM's clients are generally comprised of registered investment companies, institutional investors, individuals and high net worth individuals. FCM generally requires clients to have a minimum of \$25,000 in assets to participate in its investment management services. However, at our sole discretion, we may waive the account minimum.

## **Item 8 - METHODS OF ANALYSIS, INVESTMENT STRATEGIES AND RISK OF LOSS**

### ***Methods of Analysis***

FCM employs the following methods of analysis prior to purchasing or selling a security for a client's account:

*Fundamental analysis* - is a method of evaluating a security that entails attempting to measure its intrinsic value by examining related economic, financial and other qualitative and quantitative factors. In doing so, the portfolio manager attempts to study everything that can affect the securities value (like the overall economy and industry conditions) and company-specific factors (like financial condition and management). Based on the advisor's analysis he/she can produce a value for the security and compare it with the securities current price to determine what position to take (if any) regarding that security.

Fundamental analysis does not attempt to anticipate market movements. This presents a risk, as the price of a security can move up or down along with the overall market regardless of the economic and financial factors considered in evaluating the stock.

*Technical analysis* - is a method of evaluating securities by analyzing statistics generated by market activity, such as past prices and volume. When analyzing securities using technical analysis the portfolio manager does not attempt to measure a security's intrinsic value, but instead use charts and other tools to identify patterns that can suggest future activity.

Technical analysis does not consider the underlying financial condition of a company. This presents a risk in that a poorly-managed or financially unsound company may underperform regardless of market movement.

*Cyclical analysis* - is a method of analyzing securities that rise quickly when economic growth is strong and falls rapidly when growth is slowing down.

*Risks for all forms of analysis* - FCM's securities analysis methods rely on the assumption that the companies whose securities it purchases and sells, the rating agencies that review these securities, and other publicly-available sources of information about these securities, are providing accurate and unbiased data. While FCM is alert to indications that data may be incorrect, there is always a risk that its analysis may be compromised by inaccurate or misleading information.



*Due diligence meetings* – FCM's portfolio managers participate in conference calls and meetings with analysts, portfolio managers and strategist with money management firms and also receives research reports from such firms as Bloomberg, Alliance Bernstein, BlackRock, Goldman Sachs, Cantor Fitzgerald, PIMCO, Janus, ConvergeX, J.P. Morgan, Prudential, Pioneer, Eaton Vance, Wells Fargo and others.

### ***Investment Strategy - Tactical Asset Allocation***

FCM's overall investment strategy is to manage accounts to protect and grow the client's assets. To accomplish this, the Advisor and its portfolio managers employ a conservative tactical asset allocation investment strategy to manage client portfolios. The Advisor develops a target asset allocation. In developing the targets, the Advisor will set a higher (overweight) allocation target to sectors that are anticipated to outperform others and a lower (underweight) allocation target to sectors that are anticipated to under-perform. As market conditions change, the asset allocation targets will be reviewed and updated as appropriate.

To aid in our research, the Advisor subscribes and utilizes Kiplinger's, Goldman Sachs Research, Cantor Fitzgerald, ConvergeX, J.P. Morgan Research, Market Technicians Association, CBOE, CME Group, CNBC, Bloomberg, Business Insider, Zacks Investment Research, ETF.com, S&P Capital, The Street, Thompson Reuters, Argus Company, Jaywalk Consensus Report, S&P Dow Jones Indices, First Trust, Janus, other firms and the internet. The Advisor uses screening tools and research reports and participates in due diligent conference calls and meetings with analysts, portfolio managers and strategist with money management firms such as BlackRock, Goldman Sachs, JP Morgan, PIMCO, Pioneer, Wells Fargo, Eaton Vance, Janus, Cantor Fitzgerald, Alliance Bernstein and other companies. This information is used to for research. Investments generally consist of a variety of equity and fixed income mutual funds, Real Estate Investment Trusts (REITs), Exchange Traded Funds (ETFs), options, individual equities, bonds and other publicly traded securities.

The Advisor sells securities when the securities have higher than average gains; or if the future outlook for any given security turns unfavorable (i.e. waning performance, etc.).

### ***Risk Associated with Tactical Asset Allocation***

There is risk associated with any investment strategy, including tactical asset allocation. The client must be aware of the following risk associated with a tactical asset allocation strategy:

- There is no guarantee that the use of this strategy will provide a higher performance than the use of other investment strategies.
- This strategy relies on an accurate reading of market conditions and the future direction of the market. There is no guarantee that the anticipated asset allocation targets will outperform other sectors.
- Clients may see an increase in brokerage fee and expenses depending on the volume of trading activity by the Advisor in the account.
- Clients may be exposed to tax consequences due to capital gains/losses from the sale of securities to rebalance accounts. Some of the capital gains could be short-term, which are taxed at a higher rate.

### ***Risk of Loss***

Investors must be aware that there is a risk of loss with essentially any investment. If investors decide to invest their money, they assume risk. Investing in securities involves risk of loss that clients should be prepared to bear. The following is a list of some of the risk that a client may be exposed to:

*Systematic (Market) Risk* – These are risks that affect the entire market and cannot be avoided through diversification. This risk may be caused by events such as changing interest rates, a recession, or wars.

*Unsystematic Risk* – These are risks specific to a company or industry sector and may be avoided or mitigated by diversification.

*Credit Risk* – The risk that a company or municipality will not be able to repay its lenders. This is very important to those investing in fixed-income investments such as bonds.

*Country Risk* – This is risk associated with investing in foreign securities. This risk includes political, exchange rate, economic, sovereign and transfer risk (which is the risk of capital being locked up or frozen by government action.)

*Liquidity Risk* – The risk that a given security or asset cannot be traded quickly enough in the market to prevent a loss.

*Interest Rate Risk* – The risk of changing interest rates and their impact on interest-bearing assets, such as bonds. In general, as interest rates, the price of a fixed rate bond will decrease, and vice versa. If investors decide not to invest their money, they face the risk of loss of potential gains they would have earned had they been invested.

### ***Investment Strategy – Cannabis Growth***

We primarily invest client funds in equity securities, including micro, small, mid, and large capitalization companies, of companies engaged in the legal cannabis industry. These companies are located around the globe and are engaged exclusively in legal activities under national and local laws. The cannabis companies participate in the following activities: agriculture technology, ancillary products and services, biotechnology, consulting services, consumption devices, cultivation and retail, cannabis products and extracts, and industrial hemp. The securities may include stocks traded on a U.S. national exchange such as the New York Stock Exchange and the NASDAQ, foreign non-U.S. exchanges or other applicable venues. Investments also include REITs, ETFs, private placements, initial public offerings, and writing call and put options on individual securities, indexes and ETFs.

To aid in our research, the Advisor subscribes and utilizes CNBC, Bloomberg, 420 Investor, New Cannabis Ventures, The Arcview Group, Headset, Brightfield Group, New Frontier Data, CB Insights, Echelon Wealth Partners, Mondaq, Streetwise Reports, and Cowen. The Advisor uses screening tools and research reports and participates in due diligent conference calls and meetings with analysts, portfolio managers and strategist with money management firms such as BlackRock, Goldman Sachs, JP Morgan, PIMCO, Pioneer, Wells Fargo, Eaton Vance, Janus, Cantor Fitzgerald, Alliance Bernstein and other companies. This information is used to for research. Investments generally consist of a variety of individual equities, REITs, ETFs, options, and other publicly traded securities.

The Advisor sells securities when (i) the securities have achieved their investment expectations; (ii) the reasons for maintaining the position are no longer valid; (iii) a more attractive investment opportunity is found; (iv) general market conditions trigger a change in the Advisor's assessment criteria; (v) for other portfolio management reasons; or (vi) or if the future outlook for any given security turns unfavorable (i.e. waning performance, etc.)

### ***Risk Associated with Cannabis Growth Strategy***

There is risk associated with any investment strategy, including cannabis growth. The client must be aware of the following risk associated with a cannabis growth strategy:

- There is no guarantee that the use of this strategy will provide a higher performance than the use of other investment strategies.
- The cannabis industry is a very young, quickly evolving industry subject to rapidly evolving laws, rules and regulations, and increasing competition. This strategy may be highly volatile.
- Clients may see an increase in brokerage fee and expenses depending on the volume of trading activity by the Advisor in the account.
- Clients may be exposed to tax consequences due to capital gains/losses from the sale of securities to rebalance accounts. Some of the capital gains could be short-term, which are taxed at a higher rate.

Fund companies may place restrictions on an account for violating the Fund's short-term trading policy. While this is possible, the Advisor intends to avoid processing trades in client's accounts that would subject the client to short-term trading fees or account restrictions.

### ***Risk of Loss***

Investors must be aware that there is a risk of loss with essentially any investment. If investors decide to invest their money, they assume risk. Investing in securities involves risk of loss that clients should be prepared to bear. The following is a list of some of the risk that a client may be exposed to:

*Systematic (Market) Risk* – These are risks that affect the entire market and cannot be avoided through diversification. This risk may be caused by events such as changing interest rates, a recession, or wars.

*Unsystematic Risk* – These are risks specific to a company or industry sector and may be avoided or mitigated by diversification.

*Country Risk* – This is risk associated with investing in foreign securities. This risk includes political, exchange rate, economic, sovereign and transfer risk (which is the risk of capital being locked up or frozen by government action). Many of the risks with respect to foreign investments are more pronounced for investments in issuers in developing or emerging market countries. Emerging market countries tend to have more government exchange controls, more volatile interest and currency exchange rates, less market regulation, and less developed economic, political and legal systems than those of more developed countries. In addition, emerging market countries may experience high levels of inflation and may have less liquid securities markets and less efficient trading and settlement systems.

*Liquidity Risk* – The risk that a given security or asset cannot be traded quickly enough in the market to prevent a loss.

*Cannabis Related Risks* – This is risk associated with investing in the cannabis industry. The cannabis industry is a very young, quickly evolving industry subject to rapidly evolving laws, rules and regulations, and increasing competition. These changes may cause companies in the cannabis industry to shrink or suddenly close, while others may be forced to change their business model to survive. The companies in which the Fund invests are subject to various laws, regulations and guidelines relating to the manufacture, management, transportation, storage and disposal of cannabis, as well as being subject to laws and regulations relating to

health and safety, the conduct of operations and the protection of the environment. Even if a company's operations are permitted under current law, they may not be permitted in the future, in which case such company may not be in a position to carry on its operations in its current locations. Additionally, controlled substance legislation differs between countries and legislation in certain countries may restrict or limit the ability of certain companies in which the Fund invests to sell their products.

Companies involved in the cannabis industry face intense competition, may have limited access to the services of banks, may have substantial burdens on company resources due to litigation, complaints or enforcement actions, and are heavily dependent on receiving necessary permits and authorizations to engage in medical cannabis research or to otherwise cultivate, possess or distribute cannabis. Since the use of cannabis is illegal under United States federal law, federally regulated banking institutions may be unwilling to make financial services available to growers and sellers of cannabis.

### ***Cybersecurity Risk***

In addition to the risks described above that primarily relate to the value of investments, there are various operational, systems, information security and related risks involved in investing, including but not limited to 'cybersecurity' risk. Cybersecurity attacks include electronic and non-electronic attacks that include but are not limited to gaining unauthorized access to digital systems to obtain client and financial information, compromising the integrity of systems and client data (e.g., misappropriation of assets or sensitive information), or causing operational disruption through taking systems off-line (e.g., denial of service attacks). As the use of technology has become more prevalent, we and the client accounts we manage have become potentially more susceptible to operational risks through cybersecurity attacks. These attacks in turn could cause us and client accounts (including funds) we manage to incur regulatory penalties, reputational damage, additional compliance costs associated with corrective measures, and/or financial loss. Similar adverse consequences could result from cybersecurity incidents affecting issuers of securities in which we invest, counterparties with which we engage in transactions, third-party service providers (e.g., a client account's custodian), governmental and other regulatory authorities, exchange and other financial market operators, banks, brokers, dealers and other financial institutions and other parties.

While cybersecurity risk management systems and business continuity plans have been developed and are designed to reduce the risks associated with these attacks, there are inherent limitations in any cybersecurity risk management system or business continuity plan, including the possibility that certain risks have not been identified. Accordingly, there is no guarantee that such efforts will succeed, especially since we do not directly control the cybersecurity systems of issuers or third-party service providers.

### ***Securities Lending Risk***

Each Fund may lend its portfolio securities to broker-dealers and banks provided that it may not lend securities if, as result, the aggregate value of all securities loaned would exceed 33 1/3% of its total assets. Any such loan must be continuously secured by collateral in cash or cash equivalents maintained on a current basis in an amount at least equal to the market value of the securities loaned by that Fund. Each Fund would continue to receive the equivalent of the interest or dividends paid by the issuer on the securities loaned, and would also receive an additional return that may be in the form of a fixed fee or a percentage of the collateral. Each Fund would have the right to call the loan and obtain the securities loaned at any time on notice of not more than five business days. Each Fund would not have the right to vote the securities during the existence of the loan, but would call the loan to permit voting of the securities if, in the Adviser's judgment, a material event requiring a shareholder vote would otherwise occur before the loan was repaid. In the event of bankruptcy or other default of the borrower,

each Fund could experience both delays in liquidating the loan collateral or recovering the loaned securities and losses.

### **Item 9 - DISCIPLINARY INFORMATION**

We are required to disclose in this Brochure facts about any legal or disciplinary events that have occurred in the last ten (10) year that are material to a client's or prospective client's evaluation of our advisory business or the integrity of our management. We do not have legal or disciplinary information to disclose.

### **Item 10 - OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS**

FCM does not have any related persons that are one of the following:

- Broker-dealer, municipal securities dealer, or government securities dealer or broker
- Other investment adviser or financial planner
- Futures commission merchant, commodity pool operator, or commodity trading advisor
- Banking or thrift institution
- Accountant or accounting firm
- Lawyer or law firm
- Insurance company or agency
- Pension consultant
- Real estate broker or dealer
- Sponsor or syndicator of limited partnerships.

FCM is affiliated with Mutual Fund Administration, LLC ("MFAC"), co-administrator to the All Terrain Opportunity Fund and Cannabis Growth Fund. MFAC and FCM are controlled by Banhazl, LP. Eric Banhazl has a controlling interest in Banhazl, LP.

FCM's Chief Investment Officer, Korey M. Bauer, publishes articles on industry related websites such as SeeItMarket.com. These websites provide analysis on stocks, bonds, futures, commodities and currencies. Technical analysis and investing tips are also provided on the websites. Mr. Bauer is not compensated for the articles that are published on these websites.

Castle Financial & Retirement Planning Associates, Inc. ("Castle Financial"), a registered investment adviser, and FCM serve as the All Terrain Opportunity Fund's co-investment advisors. Al Procaccino is the President, Chief Executive Officer and Chief Compliance Officer of Castle Financial. Mr. Procaccino and Mr. Bauer have been the portfolio managers for the All Terrain Opportunity Fund since its inception in 2014. Mr. Procaccino is Mr. Bauer's father-in-law. In addition, FCM shares office space with Castle Financial, although they operate independently.

#### ***Registration as a Futures Commission Merchant, Commodity Pool Operator, or a Commodity Trading Advisor***

FCM is not registered as a futures commission merchant, commodity pool operator, or a commodity trading advisor.

#### ***Recommending and/or Selecting Other Investment Advisors***

FCM does not select or advise our clients regarding other advisors or third-party managers. We manage all client assets entrusted to us.

## **Item 11 - CODE OF ETHICS, PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS AND PERSONAL TRADING**

### ***Code of Ethics Disclosure***

FCM has adopted a Code of Ethics Policy. The Code set forth a standard of business conduct for the Firm and all persons associated with the Firm. The purpose of this Code is to set out ideals for integrity, objectivity, competence, fairness, confidentiality, professionalism and diligence for the Firm and its associated persons to espouse in the interest of the Firm and investor protection. In particular, the Code is designed to:

- Protect the clients by deterring misconduct.
- Protect FCM's reputation.
- Guard against violations of the securities laws.
- Establish procedures to ensure that associated persons of the firm conduct themselves ethically at all times.

In an effort to meet the above obligations, the Code sets out policies and procedures that FCM's associated persons are expected to follow in the following areas:

- Compliance
- Privacy and Confidentiality
- Personal securities transactions and reporting
- Insider trading
- Conflicts of interest / outside business activities
- Gifts and Entertainment
- Reporting violations and sanctions
- Record keeping
- Political Contributions

All employees of FCM shall handle his or her personal securities transactions in such a manner as to avoid any conflict of interest or any abuse of position of trust and responsibility. All employees must submit a trade authorization before a trade in a reportable security is placed. All employees must quarterly acknowledge all trades placed and annually acknowledge all security holdings. No employee of FCM shall acquire any securities in an initial public offering. No employee of FCM shall acquire any securities in private placements without advance approval.

Clients and prospective clients may obtain a complete copy of FCM's Code of Ethics upon request by contacting us in writing at 740 River Road, Suite 208, Fair Haven, New Jersey 07704 or calling our office at (800) 446-1179.

In accordance with Section 204A of the Investment Advisers Act of 1940, FCM also maintains and enforces written policies and procedures reasonably designed to prevent the misuse of material non-public information by FCM or any access persons of FCM with regards to their personal securities transactions.

### ***Privacy Statement***

FCM also protects the personal non-public information of its clients and employees and is expected to exercise diligence and care in maintaining and protecting the client's non-public confidential information. FCM holds all personal information provided to the Firm in the strictest confidence. The records that we maintain include all personal information that the Advisor collects from clients in connection with any of the services provided by FCM. We do not disclose information to non-affiliated third parties, except as permitted by law, and does not anticipate doing so in the future.

If FCM were to anticipate such a change in its Firm's policy, it would be prohibited under the law from doing so without speaking with the client first. FCM has established the following procedures to mitigate any real or perceived infringements of the client's rights of privacy:

- FCM limits employee and agent access of information to only:
  - 1) Those who have a business or professional reason for knowing (i.e. broker/dealer or custodian);
  - 2) Non-affiliated parties as permitted by law (i.e. federal regulations permit us to share a limited amount of information about you with a brokerage firm in order to execute securities transactions on your behalf, or so that our firm can discuss your financial situation with your accountant or attorney.); or
  - 3) Those required by judicial or regulatory process.
- FCM maintains a secure office and computer environment to ensure that client's information is not placed at unreasonable risk.
- The categories of non-public personal information that the Advisor collects from clients depend upon the scope of the client's engagement. It will include information about their personal finances, information about transactions between the client and third parties, and information from consumer reporting agencies.
- For unaffiliated third parties that require access to the client's personal information, including financial services companies, service providers, and auditors, FCM also requires strict confidentiality in their agreements with them and expects them to keep this information private. Federal and state regulators may also review the Firm's records as permitted by law.
- The disclosure information contained in any document completed by the client for processing and/or transmittal by FCM in order to facilitate the commencement, continuation or termination of a business relationship between the client and a non-affiliated third party service provider (i.e., broker/dealer, investment advisor, account custodian, insurance company, etc.), including information contained in any document completed and/or executed by the client for FCM (i.e., advisory agreement, client information form, etc.), shall be deemed as having been automatically authorized by the client with respect to the corresponding non-affiliated third party service provider.
- FCM does not provide personally identifiable information to mailing list vendors or solicitors for any purpose.
- Personally identifiable information about a client and/or employees will be shredded if it is no longer needed.
- Personally identifiable information about a client will be maintained during the time that they are a client and for the required time thereafter that such records are required to be maintained by federal and state securities laws and regulations. After this required period of record retention, all such information will be destroyed.

FCM's Privacy Notice is initially given to all clients upon signing an Investment Management Agreement and sent to all clients annually thereafter.

### ***Personal Trading Practices***

FCM and/or employees may have an interest in securities or may buy, sell, or hold a position in securities, which may also be recommended to the Clients. As a fiduciary, FCM and its access persons owe its clients the loyalty to refrain from effecting personal securities transactions that might conflict with the client's best interests. Conflicts arise when the Advisor, employees, or other access persons take advantage of investment opportunities that should have been exercised for clients or when they use their knowledge of pending client transactions to place their trades before their client's transactions.

FCM has established the following guidelines to mitigate conflicts of interest when placing personal security transactions. Members of FCM's Investment Committee are prohibited from investing in individual stock transactions but may invest in shares of open-end mutual funds. All access persons of FCM must (i) disclose all accounts for which they have beneficial ownership, and (ii) pre-clear securities trades in these accounts. Pre-clearance and approval by the firm's CCO and is required before the execution of any trade of reportable securities.

## **Item 12 - BROKERAGE PRACTICES**

### ***Recommending Broker/Dealers to Clients***

Currently, FCM recommends IB to their clients. IB and other custodians maintain custody of the client's assets and effects brokerage transactions on behalf of FCM's advisory client's accounts. FCM is independently owned and operated and is not affiliated with or a related person of IB.

FCM considers of a number of factors prior to selecting or recommending broker/dealers, including but not limited to, their familiarity with the securities to be sold or purchased, their execution skills, order-flow capabilities, their commission rates or other fee schedules, their custodial services, their level of net capital (financial strength) and excess SIPC and other insurance coverage. FCM routinely compares order execution disclosure information at IB to other broker dealers to ensure that IB remain competitive in providing best execution for their clients.

While broker-dealers may charge commissions higher than those obtainable from other broker/dealers, FCM will only cause its clients to pay brokerage commissions which it has determined, in good faith, to be reasonable in relation to the value of the brokerage and other services provided by such securities broker-dealers. FCM will base its decision upon the particular transactions involved and its overall responsibilities with respect to all clients' investment management accounts.

### ***Research and Other Benefits***

FCM does not engage in any soft dollar arrangements.

### ***Brokerage for Client Referrals***

It is the practice of some broker/dealers to give client referrals to investment advisors as an incentive for directing business through them. FCM's clearing agent and custodian do not participate in this business philosophy. Nor does FCM seek broker/dealers with this business philosophy to recommend to their clients as this would create a conflict of interest.

### ***Directed Brokerage***

FCM may utilize other broker/dealers and custodians when requested by the client or when the client's retirement plan is maintained and the custodian is selected by the Plan's sponsor. FCM's clients must be aware that if they direct FCM to use a particular broker/dealer that it may limit FCM's ability to achieve best execution, negotiate commissions with other brokers on behalf of the client, or limit the client's participation in block trading. As a result, clients may pay higher commissions, have higher transaction cost, or receive less favorable prices.

### ***Best Execution***

We routinely compare order execution disclosure information of IB to other broker dealers to ensure that remains competitive with other broker/dealers in providing best execution for their client's security transactions. The commissions and/or transaction fees charged by IB may be higher or lower than those charged by other broker-dealers. The commissions paid by FCM's clients shall



comply with FCM's duty to obtain "best execution." However, a client may pay a commission that is higher than another qualified broker-dealer might charge to effect the same transaction where FCM determines, in good faith, that the commission is reasonable in relation to the value of the brokerage and services received. In seeking best execution, the determinative factor is not the lowest possible cost, but whether the transaction represents the best qualitative execution, taking into consideration the full range of broker-dealer services, including among others, the value of research provided, execution capability, commission rates, and responsiveness. Consistent with the foregoing, while FCM will seek competitive rates, we may not necessarily obtain the lowest possible commission rates for our client's transactions. FCM conducts best execution meetings at least annually.

### ***Trade Order Aggregation and Allocation Procedures***

When consistent with the best interests of FCM's clients, orders being placed at the same time for the accounts of two or more clients may be "batched" or placed as an aggregated order for execution. This practice may enable FCM to seek more favorable executions and net prices for the combined order. Any orders placed for execution on an aggregated basis are subject to FCM's Trade Order Aggregation and Allocation Policy and Procedures. Pursuant to this policy orders to purchase or sell securities for all accounts managed by FCM, including accounts of FCM or its affiliates, may be aggregated or "batched" for execution, provided the policy and procedures set forth below are followed.

- (1) Transactions for a client's account may not be aggregated for execution if the practice is prohibited by, or inconsistent with, that client's investment management agreement with FCM or FCM's Trade Order Aggregation and Allocation Policy and Procedures.
- (2) The portfolio manager must determine that the purchase or sale of the particular security involved is appropriate for the client and consistent with the client's investment objectives and with any investment guidelines or restrictions applicable to the client's account.
- (3) The portfolio manager must reasonably believe that the order aggregation will benefit and will enable FCM to seek best execution for each client participating in the aggregated order. This requires a reasonable good faith judgment at the time the order is placed for execution. It does not mean that the determination made in advance of the transaction must always prove to have been correct in the light of twenty-twenty hindsight. Best execution includes the duty to seek the best quality execution, as well as the best net price.
- (4) Prior to entry of an aggregated order, the portfolio manager must specify to trading the targeted percentage of each client account that the portfolio manager is instructing the trader to increase or decrease in a specific security (the "initial target allocation") The order ticket or other written statement should indicate both the minimum and maximum amount (either in dollars or number of securities) that the portfolio manager will accept for each account.
- (5) If the order cannot be executed in full at the same price or time, the securities actually purchased or sold by the close of each business day must be allocated *pro rata* among the participating client accounts in accordance with the initial order ticket or other written statement of allocation. However, adjustments to this *pro rata* allocation may be made to avoid having odd amounts of shares held in any client account, or to avoid deviations from pre-determined minimum/maximum holdings limits established for any account.
- (6) Each client that participates in the order must do so at the average price for all the transactions and must share in average commissions or other transaction costs on a *pro rata* basis.

- (7) If the order will be allocated in a manner other than that stated in the initial target allocation, a written explanation of the change must be provided to and approved by the Compliance Committee no later than the morning following the execution of the trade.
- (8) Client account records must reflect separately for each account the transactions which have occurred, including aggregated transactions, and the securities which are held for each account.
- (9) Funds and securities for aggregated orders should be clearly identified on FCM's records and to the brokers or other intermediaries handling the transactions, by the appropriate account numbers for each participating client.
- (10) No client or account will be favored over another.

For each aggregated order, the books and records of FCM will separately reflect the securities bought, sold and held by each account.

### **Item 13 - REVIEW OF ACCOUNTS**

FCM's Investment Committee reviews accounts on an ongoing basis for compliance with client stated investment guidelines and restrictions. On an ongoing basis, our Investment Committee reviews economic and market conditions, performs due diligence, and reviews performance of the portfolios. FCM's Compliance Committee reviews accounts on a monthly basis for compliance with client stated investment guidelines and restrictions.

Clients are provided with transaction confirmation notices and regular summary account statements showing total value, positions by cost and current market value directly from the broker/dealer, custodian, independent managers, and or program sponsors for the client's accounts. Clients are urged to carefully review those statements. Shareholders of All Terrain Opportunity Fund and Cannabis Growth Fund receive quarterly statements showing, among other things, number of shares purchased, price per share, and current account value.

### **Item 14 - CLIENT REFERRALS AND OTHER COMPENSATION**

#### **Client Referrals**

Although we may market our business via newsletter, e-mail and our website to potential clients, we predominantly rely on client referrals to introduce new clients to us. It is our policy not to compensate clients for referring potential clients to their business, because the client would be considered a solicitor and would have to satisfy requirements under Rule 206(4)-3 of the Advisers Act before a cash referral fee could be paid to them.

#### **Consultants**

We may enter into business or other relationships with consultants that could raise a material conflict between the interests of the adviser and its clients, either directly or through the consultant. For example, before providing an adviser with exposure to their clients, a consultant may require the adviser to pay a fee (directly or indirectly such as, for example, through a subscription service) (a "referral fee"). In addition, an adviser may provide a consultant with marketing-type information, including investment performance results, in a request for proposal or otherwise that is subject to the anti-fraud provisions of the Advisers Act. Payments of referral fees to consultants are subject to FCM's conflicts of interest policy. Payment of a referral fees to a consultant must be approved by FCM's CCO. All performance

information is reviewed by the Investment Committee prior to its distribution to a consultant.

### **Item 15 - CUSTODY**

Due to increased regulatory concerns over advisors with custody, it is FCM's intention to have custody over client assets only to the extent that it requests the client's custodian to deduct advisory fees directly from the client's account(s). FCM is not permitted to exercise custody in any other form over client assets or accounts.

#### ***Account Custodian***

FCM will not act as custodian for any client accounts. FCM's personnel will assist the client in preparing paperwork to open a new custodial account, but only the client is permitted to authorize, by their signature, the opening of the account.

Once the account is established, it is the custodian's responsibility to send client account statements, transaction confirmations, proxy material, and any other information related to their account. FCM will not route original custodial statements to its clients on behalf of a custodian. FCM is responsible, within reason, to ensure that clients receive custodial statements directly from the custodian. To meet this responsibility, the Advisor will receive duplicate copies of its clients' statements. Clients should carefully review statements received from the custodian(s). Any client that does not receive an account statement from the custodian should call FCM immediately so that the Advisor can have another statement sent to the client.

#### ***Handling Client Assets***

Due to custody regulations, FCM can only handle or forward checks clearly made payable to a third party, such as the client's independent custodian. FCM may not handle or forward any other client check or security certificate received by the Firm. All such instruments must be returned to the client within three (3) business days and may not be forwarded to any other party other than the client or the client's representative.

Clients must be aware that if they personally deliver securities certificates to FCM's office, FCM is not allowed to physically handle the securities certificates. FCM may provide direction to a client in completing the transfer and shipping paperwork to help ensure that the securities certificates are properly deposited with the client's custodian. However, it is the client's responsibility to deposit overnight pouches with the respective carriers for forwarding of securities certificates to their designated custodian. Securities certificates inadvertently received in the mail will be returned to the client within three business days.

#### ***Other Custody Related Issues***

We have invoked the following restrictions to ensure that custody is not inadvertently obtained:

- We may not serve as trustee over a client's account, unless the client is an immediate family member of the Advisor.
- We will not accept signatory power over any client's checking or custodial account(s).
- We will not hold client securities in FCM's name or in bearer form.
- Proceeds from sales or redemptions of client securities will not be directed to the custody of FCM except to pay for advisory fees (as noted above).

- We will not require clients to prepay more than \$500 in fees six months or more in advance.

#### **Item 16 - INVESTMENT DISCRETION**

FCM's Investment Management Agreements with our clients provide that we will manage their accounts with discretionary authority to make purchase and sale decisions without obtaining their consent or approval for each transaction. This includes the authority to select the type and amount of securities to be bought or sold, the broker or dealer to execute the transactions and the commissions to be paid. Our discretionary authority is exercised consistent with written investment objectives and restrictions of the strategy for the client's account. For registered investment companies, our authority is limited by certain federal securities and tax laws.

#### **Item 17 - VOTING CLIENT SECURITIES**

For our clients for whom we vote proxies, we retain the final authority and responsibility for the voting. We consistently apply our proxy voting policies and document the reasons for our votes. Our form of Investment Management Agreement provides clients with an alternative as to whether we or the client will be responsible for proxy voting. However, FCM does not vote proxies for securities not selected by us but that are nevertheless held in a client account or where FCM otherwise is not vested with discretionary authority over securities held in a client account. In the event we do not have the authority to vote proxies on a client's behalf, clients should instruct their custodian to send proxies directly to them. Any proxies erroneously received by FCM for the client will be forwarded to the client. Clients are welcome to contact FCM with questions regarding proxy ballots or other solicitations.

We utilize ProxyEdge (Broadridge) to vote proxies on behalf of the All Terrain Opportunity Fund and Cannabis Growth Fund.

For each proxy, FCM maintains all related records as required by applicable law. We provide our clients with our complete proxy voting policies and procedures upon request. Clients may obtain copies of our written proxy voting policies and procedures, as well as information on how proxies were voted for their accounts by requesting such information from FCM at the address and phone number listed on the cover of this brochure. FCM will not disclose proxy votes for a client to other clients or third parties unless specifically requested in writing by the client. However, to the extent that FCM serves as sub-adviser to another adviser to a client, FCM will be deemed to be authorized to provide proxy voting records on such client accounts to such other adviser.

The proxy voting record for the All Terrain Opportunity Fund and Cannabis Growth Fund, during a 12-month period ended June 30, are available on the SEC's website at <http://www.sec.gov>. A copy of our proxy voting policies and procedures is included in the All Terrain Opportunity Fund's and Cannabis Growth Fund's Statement of Additional Information and are available to clients upon request.

#### **Item 18 - FINANCIAL INFORMATION**

As previously discussed in this brochure, FCM provides investment management services on a discretionary basis for which the clients are billed quarterly in arrears. Neither FCM nor its portfolio managers have ever petitioned or been subject to bankruptcy proceedings, and there are no financial conditions that would prevent FCM from meeting any contractual commitment to its clients.



**Part 2B of Form ADV  
(Brochure Supplement)  
July 22, 2019**

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Tactical Asset Allocation Cannabis Growth	Managing Director and Chief Investment Officer: Korey Bauer
Tactical Asset Allocation Cannabis Growth Sales, Marketing and Client Service	Managing Director: Max Banhazl

This brochure supplement provides information that supplements Foothill Capital Management, LLC's Brochure (Part 2A of Form ADV). Please contact us if you have not received our Brochure or if you have any questions about the contents of this supplement. Additional information is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). The CRD number for Foothill Capital Management, LLC is 298910.

## **Item 2 – EDUCATIONAL BACKGROUND AND BUSINESS EXPERIENCE**

### ***Korey Bauer***

**Year of Birth:** 1989

**Educational Background:** Mr. Bauer earned a B.A. from Marist College.

**Business Experience:** Mr. Bauer is a Managing Director and Chief Investment Officer of Foothill Capital Management and a member of the firm's Investment Committee. He is the Portfolio Manager for the Tactical Allocation and Cannabis Growth strategies. He has also co-managed the All Terrain Opportunity Fund since 2014. From 2014 to 2018, Mr. Bauer was President, Chief Executive Officer and Chief Compliance Officer of Bauer Capital Management LLC. Previously, Mr. Bauer was Senior Vice President, Analyst and Market Technician at Castle Financial & Retirement Planning Associates, Inc. from 2011 until 2014. Mr. Bauer served as Portfolio Manager of the Catalyst Macro Strategy Fund from March 2014 to November 2014.

### ***Max Banhazl***

**Year of Birth:** 1987

**Educational Background:** Mr. Banhazl earned a B.A. from University of California, Santa Barbara.

**Business Experience:** Mr. Banhazl is Managing Director, Sales, Marketing and Client Service and a Research Analyst of Foothill Capital Management. Mr. Banhazl has over seven years of mutual fund and financial services experience. He is a founding member of Foothill Capital Management. As Managing Director, Mr. Banhazl's primary responsibilities include marketing, distribution, portfolio research and analysis. Mr. Banhazl started his career at UMB Fund Services in 2011 as an investor services representative. Previously, he was Assistant Vice President of Mutual Fund Administration, LLC from 2012 to 2018. Mr. Banhazl is a registered representative of IMST Distributors, LLC.

## **Item 3 – DISCIPLINARY INFORMATION**

The individuals listed in this Brochure Supplement do not have any history of disciplinary events.

## **Item 4 – OTHER BUSINESS ACTIVITIES**

The individuals listed in this Brochure Supplement do not engage in any investment-related business outside of Foothill Capital Management, LLC. Mr. Banhazl is a registered representative of IMST Distributors, LLC, the distributor for the All Terrain Opportunity Fund and Cannabis Growth Fund.

## **Item 5 – ADDITIONAL COMPENSATION**

The individuals listed in this Brochure Supplement receive compensation for providing advisory services solely from their responsibilities at Foothill Capital Management, LLC. Mr. Banhazl is not compensated by IMST Distributors, LLC.

## **Item 6 – SUPERVISION**

In addition to the individual supervisory oversight identified below, Foothill Capital Management, LLC has adopted, and periodically updates, a Compliance Program that outlines for each employee

the various rules and regulations they are required to adhere to. Compliance routinely tests the Compliance Manual to help ensure both firm and individual adherence to our Compliance Program.

**Mr. Bauer** is a member of the firm's Investment Committee and is supervised by Ms. Joy Ausili and Ms. Rita Dam, members of Foothill Capital Management's Executive Committee, through frequent interactions. Mr. Bauer's portfolios are monitored through automated and manual compliance controls, reports provided to firm management and also through a periodic review of the portfolios by the firm's Management Committee. The contact information Ms. Ausili and Ms. Dam is 740 River Road, Suite 208, Fair Haven, New Jersey 07704 or by calling (800) 446-1179.

**Mr. Banhazl** is a member of the firm's Investment Committee and is supervised by Ms. Joy Ausili and Ms. Rita Dam, members of Foothill Capital Management's Executive Committee, through frequent interactions. Mr. Banhazl's portfolios are monitored through automated and manual compliance controls, reports provided to firm management and also through a periodic review of the portfolios by the firm's Management Committee. The contact information Ms. Ausili and Ms. Dam is 740 River Road, Suite 208, Fair Haven, New Jersey 07704 or by calling (800) 446-1179.