

## Item 1: Cover Page

### **IMS Capital Management Inc.**

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*Building Wealth Wisely®*

### **SEC FORM ADV PART 2A**

### **“BROCHURE”**

February 13, 2024

This brochure provides information about the qualifications and business practices of IMS Capital Management, Inc. (“IMS” or the “Adviser” or “Advisor”). If you have any questions about the contents of this brochure, please contact us by telephone at (503) 788-4200. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission (“SEC”) or by any state securities authority.

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

IMS Capital Management is a registered investment advisor; however, registration with the SEC or any state securities authority does not imply a certain level of skill or training.

## Item 2: Material Changes

The material changes in this brochure from the last annual updating amendment of IMS Capital Management Inc. on 03/17/2023, are described below. Material changes relate to IMS Capital Management Inc. policies, practices or conflicts of interest.

- IMS Capital Management Inc. has removed TD Ameritrade as a custodian and replaced with Charles Schwab & Co., Inc. due to their merger. (Items 12, 14 and 17)

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## Item 4. Advisory Business

IMS is an Oregon corporation and a registered investment advisor (RIA) with the SEC. IMS was founded by Carl Marker in May of 1988. Mr. Marker is the principal owner and currently serves as the Chairman, CEO, Chief Investment Officer, Secretary and Director of the Board.

IMS primarily provides financial planning, portfolio management, wealth management services, pension consulting services, educational seminars and workshops, and newsletter/periodical publications to individuals, high net worth individuals, investment companies, pension and profit-sharing plans, charitable organizations, insurance companies, and other companies.

IMS is provided with financial and investment information by its clients to assist IMS in the selection of suitable investments. Recommendations made to clients are based on the specific goals, risk tolerance, tax status and financial situation of the client, as communicated by our clients to us. Clients may restrict investment in certain securities or types of securities unless they are invested in one of the three mutual funds managed by IMS.

The investments offered by IMS are primarily through four different strategies; a Capital Value Strategy and a Strategic Income Strategy, each offered through a mutual fund (IMSCX and IMSIX collectively referred to herein as the "IMS Funds"), or through separately managed accounts; and a Strategic Allocation Program (SAP) offered only through separately managed accounts.

As of December 31, 2022, IMS had assets under management in the approximate amount of \$ 343,442,757.00. Of that amount, approximately \$ 13,753,148.00 were non-discretionary assets and approximately \$ 329,689,609.00 were discretionary assets.

## Item 5. Fees and Compensation

Our Standard Fee Schedule is generally as follows:

Total Assets Under Management Per Acct	Annual Management Fee
\$0 to \$1,500,000	1.00%
\$1,500,001 to \$3,000,000	0.85%
\$3,000,001 to \$5,000,000	0.75%
\$5,000,001 to \$15,000,000	0.65%
\$15,000,001 to \$25,000,000	0.50%

The management fee schedule is used for the majority of accounts and the minimum account size is generally \$250,000; however, both are negotiable, at our discretion. The minimum account size may be lower on various separate account turnkey platforms, where service and distribution are provided by a third party.

Client agrees to pay a quarterly, semi-annual or annual fee to IMS for its services; the management fee can be deducted from the client's account or billed directly to the client. Fees are based on the stated percentage of the total value of accounts under management.

The management fee is calculated usually in one way. IMS shall determine the fair market value of assets held in the client's account on a daily basis, multiply the average daily value for the prior month by the yearly management fee divided by twelve. The quarterly fee is then calculated by summing up the three trailing monthly fees. These calculations are done for fees paid in arrears.

In the event a client closes or transfers out their account, the bill will be calculated on a prorated basis. Holdings in the IMS Funds are charged at the expense ratio for each fund and are not billed additionally by IMS at the fee schedule published above. The expense ratio is available in the IMS Fund's prospectus.

Management fees are not contingent upon investment results, usually. Fees are negotiable and may vary based on account size, type of investments, how active the account is, any specialized services requested, etc. IMS may provide financial planning and investment consultation services on an hourly basis, for a flat fee or on a retainer basis. IMS generally bills for these services at a rate of \$90 per hour. Flat and retainer fees are determined by the number of hours that are anticipated for the project. Fees are agreed upon in advance and are based on the nature of the services to be performed.

Other fees the client might incur include: (i) annual account fees or other administrative fees, such as wire fees, charged by your custodian or broker-dealer; (ii) underwriting or dealer concessions or related compensation in connection with securities acquired in underwritten offerings; (iii) certain odd lot differentials, transfer taxes, brokerage fees, transaction fees, transaction fees mandated by the Securities Exchange Act of 1934, postage and handling fees, and charges imposed by law with regard to transactions in the client's account; and (iv) advisory fees and expenses of mutual funds (including money market funds), ETFs, closed-end investment companies or other managed investments, if any are held in client's account.

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

IMS has one accredited investor client from whom, in addition to a management fee as described in Item 5, IMS receives a percentage of realized gains as a performance fee. In addition, certain client accounts may have higher asset-based fees than other accounts. When IMS and its investment personnel manage more than one client account a potential exists for one client account to be favored over another client account. IMS and its investment personnel have a greater incentive to favor client accounts that pay IMS higher fees.

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

IMS offers investment advice and wealth management services to; individuals, high net worth individuals, insurance companies, investment companies, pension and profit-sharing plans, trusts, estates, charitable organizations, corporations and other business entities. Account minimums start at \$250,000 but are negotiable.

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

As set forth above, the investments offered by IMS are primarily through four different strategies; a Capital Value Strategy, a Dividend Growth Strategy and a Strategic Income Strategy, each offered through the IMS Funds and/or through separately managed accounts; and a Strategic Allocation Program (SAP) offered only through separately managed accounts. IMS will also develop a customized portfolio of fixed income and/or equity securities designed to meet the specific needs of the client. The methods of analysis include fundamental research, cyclical analysis as well as use of quantitative tools and investment approach.

The Capital Value Strategy's investment objective is growth. The portfolio invests in 40 to 60 domestic, seasoned and undervalued, primarily mid-cap and large-cap stocks, which have positive momentum characteristics. Stocks are carefully researched using proprietary tools and must fit into at least one of seven strategic focus areas.

The Strategic Income Strategy's investment objective is high current income. The portfolio invests primarily in bonds, yet it may hold other income-producing securities such as preferred stocks, dividend-paying common stocks, income trusts, REITs, etc. for opportunistic reasons. Bonds can be any maturity; however, the strategy generally has less exposure to rising interest rates than a typical bond fund. Dividends from the IMS Strategic Income Fund (IMSIX) are paid monthly.

The Strategic Allocation Program Strategy's investment objective is long-term growth. Risk is managed through diversification, the level of fixed income exposure and rebalancing adjustments that center around the seasonally strong and weak market cycles. A proprietary screening tool is used to select fund managers or ETFs across all major market capitalizations (small, mid and large-cap), investment styles (growth and value), domestic and international, which may include stocks, bonds, precious metals and REITs.

Each strategy retains market, interest rate and reinvestment risk. Also, our strategies are tilted towards value (over growth) which also is cyclical. Performance may be more volatile if a client's account employs margin.

The firm's research process employs a scoring model used to evaluate all companies on a consistent basis and a similar model for mutual funds and ETFs. Factors in the models include; fundamental financial ratios, organic growth, debt to equity levels, analyst sentiment, PEG ratios, percent down from high, capital expenditures (intensity & trend), reason for decline, product cycle length, seasoning (elapsed time since decline), repurchase cycle length, earnings surprises, barriers to competition, earnings revisions, immunity to product obsolescence, catalysts, expense ratios, earning ratios, sales charges (loads), manager duration, pre-tax total return, best and worst quarter, after-tax total yield, portfolio turnover and fund flow.

The firm employs a number of different sources for research including but not limited to financial newspapers and magazines, research materials prepared by others, corporate rating services, timing services, annual reports, prospectuses, filings with the SEC, company press releases, analysis tools, and networks integrating data, news and analytics.

IMS has been retained as investment manager to the IMS Funds and, subject to the authorization of the Trusts' Board of Trustees, provides a continuous program of supervision for the Funds' assets. Under its Investment Advisory Agreement with the IMS Funds, IMS is entitled to compensation for its management services to the IMS Funds, based on the IMS Funds' daily average net assets at the annual average rates, which are identified in the IMS Funds' prospectuses. The IMS retirement plan, principals of IMS, and employees of IMS may be shareholders of the IMS Funds. IMS may recommend to current and prospective clients that they invest in the IMS Funds as an alternative to a separately managed account.

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

All investing and trading activities involve a risk of loss, including the potential loss of capital. Although the Advisor will attempt to moderate these risks, no assurance can be given that the investment activities of an account we advise will achieve the investment objectives of such account or avoid losses. Past performance is not an indicator of future results. Direct and indirect investing in securities involves risk of loss that you should be prepared to bear. The Advisor does not represent or guarantee that our services or methods of analysis can or will predict future results, successfully identify market tops or bottoms, or insulate you from losses due to market corrections or declines. The Advisor cannot offer any guarantees or promises that your financial goals and objectives will be met.

Except as may otherwise be provided by law, the Advisor is not liable to clients for:

- Any loss that you may suffer by reason of any investment decision made or other action taken or omitted by us in good faith;
- Any loss arising from our adherence to your instructions or the disregard of our recommendations made to you; or
- Any act or failure to act by a custodian or other third party to your account.

The information included in this Brochure does not include every potential risk associated with an investment strategy, technique or type of security applicable to a particular client account. You are encouraged to ask questions regarding risks applicable to a particular strategy or investment product and read all product-specific risk disclosures. It is your responsibility to give us complete information and to notify the Advisor of any changes in financial circumstances or goals.

### ***Description of Material, Significant or Unusual Risks***

There are certain additional risks associated when investing in securities; including, but not limited to:

- **Market Risk:** Either the stock market as a whole, or the value of an individual company, goes down resulting in a decrease in the value of client investments. This is also referred to as systemic risk.
- **Inflation Risk:** The Firm's portfolios face inflation risk, which results from the variation in the value of cash flows from a financial instrument due to

inflation, as measured in terms of purchasing power. When inflation is present, a dollar today will not buy as much as a dollar next year, because purchasing power is eroding at the rate of inflation.

- **Interest Rate Risk:** The price of most fixed income securities moves in the opposite direction of the change in interest rates. For example, as interest rates rise, the prices of fixed income securities fall. If the Firm holds a fixed income security to maturity, the change in its price before maturity may have little impact on the Firm portfolios' performance. However, if the Firm determines to sell the fixed income security before the maturity date, an increase in interest rates could result in a loss.
- **Equity (stock) market risk:** Common stocks are susceptible to general stock market fluctuations and to volatile increases and decreases in value as market confidence in and perceptions of their issuers change. If you held common stock, or common stock equivalents, of any given issuer, you would generally be exposed to greater risk than if you held preferred stocks and debt obligations of the issuer.
- **Company Risk:** When investing in stock positions, there is always a certain level of company or industry specific risk that is inherent in each investment. This is also referred to as unsystematic risk and can be reduced through appropriate diversification. There is the risk that the company will perform poorly or have its value reduced based on factors specific to the company or its industry. For example, if a company's employees go on strike or the company receives unfavorable media attention for its actions, the value of the company may be reduced.
- **Liquidity Risk:** Certain assets may not be readily converted into cash or may have a very limited market in which they trade. You may experience the risk that your investment or assets within your investment may not be able to be liquidated quickly, thus, extending the period of time by which you may receive the proceeds from your investment. Liquidity risk can also result in unfavorable pricing when exiting (i.e. not being able to quickly get out of an investment before the price drops significantly) a particular investment and therefore, can have a negative impact on investment returns.
- **ETF and Mutual Fund Risk:** When investing in an ETF or mutual fund, a client will bear additional expenses based on the client's pro rata share of the ETF's or mutual fund's operating expenses, including the potential duplication of management fees. The risk of owning an ETF or mutual fund generally reflects the risks of owning the underlying securities the ETF or mutual fund holds. Clients will also incur brokerage costs when purchasing ETFs.
- **Risks Associated with Fixed Income:** When investing in fixed income instruments such as bonds or notes, the issuer may default on the bond and be unable to make payments. Further, interest rates may increase, and the principal value of your investment may decrease. Individuals who depend on set amounts of periodically paid income face the risk that inflation will erode their spending power.



- **Reinvestment Risk:** This is the risk that future proceeds from investments may have to be reinvested at a potentially lower rate of return (i.e. interest rate). This primarily relates to bonds.
- **Call Risk:** Bonds that are callable carry an additional risk because they may be called prior to maturity depending on current interest rates thereby increasing the likelihood that reinvestment risk may be realized.
- **Credit Risk:** The price of a bond depends on the issuer's credit rating, or perceived ability to pay its debt obligations. Consequently, increases in an issuer's credit risk, may negatively impact the value of a bond investment.
- **Options Risk:** Options on securities may be subject to greater fluctuations in value than an investment in the underlying securities. Purchasing and writing put, and call options are highly specialized activities and entail greater than ordinary investment risks.
- **Speculation Risk:** The commodities markets are populated by traders whose primary interest is in making short-term profits by speculating whether the price of a security will go up or go down. The speculative actions of these traders may increase market volatility that could drive down the prices of commodities.
- **Geopolitical Risk:** The risk an investment's returns could suffer as a result of political changes or instability in a country. Instability affecting investment returns could stem from a change in government, legislative bodies, other foreign policy makers or military control.
- **Currency Risk:** Overseas investments are subject to fluctuations in the value of the dollar against the currency of the investment's originating country. This is also referred to as exchange rate risk.
- **Foreign Market Risk:** The securities markets of many foreign countries, including emerging countries, have substantially less trading volume than the securities markets of the United States, and securities of some foreign companies are less liquid and more volatile than securities of comparable United States companies. As a result, foreign securities markets may be subject to greater influence by adverse events generally affecting the market, by large investors' trading significant blocks of securities, or by large dispositions of securities, than as it is in the United States. The limited liquidity of some foreign markets may affect our ability to acquire or dispose of securities at a price and time it believes is advisable. Further, many foreign governments are less stable than that of the United States. There can be no assurance that any significant, sustained instability would not increase the risks of investing in the securities markets of certain countries.
- **Counterparty and Broker Credit Risk:** Certain assets will be exposed to the credit risk of the counterparties when engaging in exchange-traded or off-

exchange transactions. There may be a risk of loss of assets on deposit with or in the custody of a broker in the event of the broker's bankruptcy, the bankruptcy of any clearing broker through which the broker executes and clears transactions, or the bankruptcy of an exchange clearinghouse.

- **Leverage Risk:** Although the Advisor does not typically employ leverage in the implementation of its investment strategies, some ETPs and CEFs employ leverage. IMS Capital does have a few clients that use margins periodically. Leverage increases returns to investors if the investment strategy earns a greater return on leveraged investments than the strategy's cost of such leverage. However, the use of leverage exposes investors to additional levels of risk and loss that could be substantial.
- **Market Volatility:** The profitability of the portfolios substantially depends upon the Firm correctly assessing the future price movements of stocks, bonds, options on stocks, and other securities and the movements of interest rates. The Firm cannot guarantee that it will be successful in accurately predicting price and interest rate movements.
- **Management Risk:** Your investments will vary with the success and failure of our investment strategies, research, analysis and determination of portfolio securities. If you implement our financial planning recommendations and our investment strategies do not produce the expected results, you may not achieve your objectives.
- **Force Majeure Events Risk:** This is the risk that there may be an act of God, terrorist act, global health pandemic, failure of utilities or other similar circumstance not within the reasonable control of the Program that may have an unknown and potentially catastrophic effect on the global markets.
- **Accuracy of Public Information:** The Firm selects investments, in part, on the basis of information and data filed by issuers with various government regulators or made directly available to the Firm by the issuers or through sources other than the issuers. Although the Firm evaluates all such information and data and sometimes seeks independent corroboration when it's considered appropriate and reasonably available, the Firm is not in a position to confirm the completeness, genuineness, or accuracy of such information and data. In some cases, complete and accurate information is not available.
- **Trading Limitations:** For all securities, instruments and/or assets listed on an exchange, including options listed on a public exchange, the exchange generally has the right to suspend or limit trading under certain circumstances. Such suspensions or limits could render certain strategies difficult to complete or continue and subject the account to loss. Also, such a suspension could render it impossible for the Firm to liquidate positions and thereby expose the Client account to potential losses.
- **Recommendation of Particular Types of Securities:** In some cases, the Firm recommends mutual funds. There are several risks involved with these funds.

These funds have portfolio managers that trade the fund's investments in agreement with the fund's objective and in line with the fund prospectus.

While these investments generally provide diversification there are some risks involved especially if the fund is concentrated in a particular sector of the market, uses leverage, or concentrates in a certain type of security (i.e. foreign equities). The returns on mutual funds can be reduced by the costs to manage the funds. And the shares rise and fall in value according to the supply and demand. Open end funds may have a diluted effect on other investors' interest due to the structure of the fund while closed end funds have limited shares which rise and fall in value according to supply and demand in the market. In addition, closed end funds are priced daily and as a result they may trade differently than the daily net asset value (NAV).

- **Firm's Investment Activities:** The Firm's investment activities involve a significant degree of risk. The performance of any investment is subject to numerous factors which are neither within the control of nor predictable by the Firm. Such factors include a wide range of economic, political, competitive and other conditions (including acts of terrorism and war) that may affect investments in general or specific industries or companies. The markets may be volatile, which may adversely affect the ability of the Firm to realize profits on behalf of its Clients. As a result of the nature of the Firm's investing activities, it is possible that the Firm's results may fluctuate substantially from period to period.
- **Material Non-Public Information:** By reason of their responsibilities in connection with other activities of the Firm and/or its principals or employees, certain principals or employees of the Firm and/or its affiliates may acquire confidential or material non-public information or be restricted from initiating transactions in certain securities. The Firm will not be free to act upon any such information. Due to these restrictions, the Firm may not be able to initiate a transaction that it otherwise might have initiated and may not be able to sell an investment that it otherwise might have sold.
- **Legal and Regulatory Risks:** The regulation of the U.S. and non-U.S. securities and futures markets investment funds has undergone substantial change in recent years and such change may continue. In particular, in light of the recent market turmoil there have been numerous proposals, including bills that have been introduced in the U.S. Congress, for substantial revisions to the regulation of financial institutions generally. Some of the additional regulation includes requirements that private fund managers register as investment advisers under the Advisers Act and disclose various information to regulators about the positions, counterparties and other exposures of the private funds managed by such managers. Further, the practice of short selling has been the subject of numerous temporary restrictions, and similar restrictions may be promulgated at any time. Such restrictions may adversely affect the returns of Underlying Investment Funds that utilize short selling. The effect of such regulatory change on the accounts and/or the underlying investment funds, while impossible to predict, could be substantial and adverse.

## Item 9. Disciplinary Information

There are no legal or disciplinary events that are material to the evaluation of our advisory business or the integrity of our management.

## Item 10. Other Financial Industry Activities and Affiliations

Doug Kintzinger, a board member and advisor of IMS currently sits on the Board of Directors for NextJob, Inc. and Hampton Affiliates - all non-investment related, privately held companies. To the extent there are any conflicts of interest between these entities and IMS and/or Doug Kintzinger, such conflicts are disclosed.

IMS sponsored the organization of and has an active interest in the IMS Funds. The IMS Funds are diversified, open-end series of 360 Funds, a Delaware statutory business trust and are commonly referred to as mutual funds.

On occasion, IMS also acts as a consultant to retirement plans.

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

The Advisor has adopted a Code of Ethics (“Code”) for the purpose of instructing its personnel of their ethical obligations and to provide rules for their personal securities transactions. The Adviser and its personnel owe a duty of loyalty, fairness and good faith towards their clients, and the obligation to adhere not only to the specific provisions of the Code but to the general principles that guide the Code. The Code of Ethics covers a range of topics that includes general ethical principles, reporting personal securities trading, exempted transactions, prohibited purchases, reporting ethical violations, distribution of the Code of Ethics and review and enforcement processes. The Adviser will provide a copy of the Code to any client or prospective client upon request by contacting us by telephone at (503) 788-4200.

The owners and/or employees of IMS may own shares of the IMS Funds. Employees are allowed to buy and sell securities that are held in IMS’ discretionary client accounts as long as the employee adheres to the practices outlined in the “Transactions Involving Securities Held in IMS Strategies” section of the Code. The Advisor recognizes that the personal investment transactions of members and employees of our firm demand the application of a Code of Ethics and require that all such transactions be carried out in a way that does not endanger the interest of any client. At the same time, we believe that if investment goals are similar for clients and for members and employees of our firm, it is logical and even desirable that there be common ownership of some securities. Therefore, in order to prevent conflicts of interest, we have in place a set of procedures (including a pre-clearing procedure) with respect to transactions effected by our members, officers and employees for their personal accounts. Employee trading in securities, other than those that meet the definition of exempt securities, require CCO pre-approval to trade. Policies and procedures have been adopted to prevent the misuse of material non-public information and to detect and prevent insider trading. IMS and its employees’ transactions are monitored to ensure there is no violation of these policies and procedures.

Further, in order to monitor compliance with our personal trading policy, the Advisor has a quarterly securities transaction reporting system for all of our associates. Upon employment or affiliation and at least annually thereafter, all supervised persons will sign an acknowledgement that they have read, understand, and agree to comply with our Code of Ethics. The Advisor also reserves the right to disapprove any proposed transaction that may have the appearance of improper conduct.

The Advisor or individuals associated with the Advisor may buy and sell some of the same securities for its own account that the Advisor buys and sells for its clients, subject to the timing limitations stated in the Code.

Where appropriate the Advisor will purchase a security for all of its existing accounts for which the investment is appropriate before purchasing any of the securities for their own account and, likewise, when it determines that securities should be sold, where appropriate will cause these securities to be sold from all of its advisory accounts prior to permitting the selling of the securities from its accounts. In some cases, Advisor may buy or sell securities for its own account for reasons not related to the strategies adopted by the Advisor's clients. All buys and sells in the Advisor's account must be cleared through the Chief Compliance Officer before they are initiated.

## Item 12. Brokerage Practices

Except to the extent that the Client directs otherwise, the Advisor may use its discretion in recommending a broker-dealer. The Client is not obligated to effect transactions through any broker-dealer recommended by Advisor. In recommending broker-dealers, Advisor will generally seek "best execution." In recommending a broker-dealer, the Advisor will comply with its fiduciary duty to obtain best execution and with the Securities Exchange Act of 1934 and will take into account such relevant factors as (a) price, (b) the broker-dealer's facilities, reliability and financial responsibility, (c) the ability of the broker-dealer to effect transactions, particularly with regard to such aspect as timing, order size and execution of order, (d) the research and related brokerage services provided by such broker or dealer to the Advisor, notwithstanding that the account may not be the direct or exclusive beneficiary of such services and (e) any other factors the Advisor considers to be relevant.

Clients with separately managed accounts may request that a particular broker process their securities transactions or IMS will suggest brokers. When recommending a broker IMS will consider a number of factors including price and execution for a particular transaction. In the case where a client chooses the broker-dealer for custody and trade execution, there is a possibility that the client may not be able to achieve best or the same execution as the other clients the firm is trading for. When feasible IMS may group or block various client orders (have the ability to but do not practice this for the most part) to more efficiently execute orders and receive reduced commission rates. Such block orders may be executed at various prices, and where block orders are not executed in total, IMS attempts to allocate executed trades on a basis which will be fair to clients over time. Clients who choose their own broker may not be able to benefit from blocked trades. IMS considers, among other things, the size of the order, the broker's ability to effect and settle the transaction promptly and reliably, integrity, and financial condition in determining the broker's execution capability.

Generally, in addition to a broker's ability to provide "best execution," we may also consider the value of "research" or additional brokerage products and services a broker-dealer has provided or may be willing to provide. This is known as paying for those services or products with "soft dollars." Because many of the services or products could be considered to provide a benefit to the firm, and because the "soft dollars" used to acquire them are client assets, the firm could be considered to have a conflict of interest in allocating client brokerage business; and it could receive valuable benefits by selecting a particular broker or dealer to execute client transactions and the transaction compensation charged by that broker or dealer might not be the lowest compensation the firm might otherwise be able to negotiate. In addition, the firm could have an incentive to cause clients to engage in more securities transactions than would otherwise be optimal in order to generate brokerage compensation with which to acquire products and services.

The firm's use of soft dollars is intended to comply with the requirements of Section 28(e) of the Securities Exchange Act of 1934. Section 28(e) provides a "safe harbor" for investment managers who use commissions or transaction fees paid by their advised accounts to obtain investment research services that provide lawful and appropriate assistance to the manager in performing investment decision-making responsibilities.

As required by Section 28(e), the firm will make a good faith determination that the amount of commission or other fees paid is reasonable in relation to the value of the brokerage and research services provided. That is, before placing orders with a particular broker, we generally determine, considering all the factors described below, that the compensation to be paid is reasonable in relation to the value of all the brokerage and research products and services provided. In making this determination, we typically consider not only the particular transaction or transactions, and not only the value of brokerage and research services and products to a particular client, but also the value of those services and products in our performance of our overall responsibilities to all of our clients. In some cases, the commissions or other transaction fees charged by a particular broker-dealer for a particular transaction or set of transactions may be greater than the amounts another broker-dealer who did not provide research services or products might charge.

"Research" products and services we may receive from broker-dealers may include economic surveys, data, and analyses; financial publications; recommendations or other information about particular companies and industries (through research reports and otherwise); and other products or services (e.g., computer services and equipment, including hardware, software, and data bases) that provide lawful and appropriate assistance to the firm in the performance of its investment decision-making responsibilities. Consistent with Section 28(e), brokerage products and services (beyond traditional execution services) consist primarily of computer services and software that permit us to effect securities transactions and perform functions incidental to transaction execution. We generally use such products and services in the conduct of our investment decision-making generally, not just for those accounts whose commissions may be considered to have been used to pay for the products or services. Services we have paid with "soft-dollars" in the last fiscal year include; Bloomberg for fixed income research; Morningstar for mutual fund and stock screening and ValueLine.

The firm may use some products or services not only as "research" and as brokerage (i.e., to assist in making investment decisions for clients or to perform functions incidental to transaction execution) but for our administrative and other purposes as well. In these instances, we make a reasonable allocation of the cost of the products and services so that only the portion of the cost that is attributable to making investment decisions and executing transactions are paid with commission dollars and we bear the cost of the balance. Our interest in making such

an allocation differs from clients' interest, in that we have an incentive to designate as much as possible of the cost as research and brokerage in order to minimize the portion that the firm must pay directly.

Although shares of mutual funds can be purchased and redeemed without payment of transactions fees, we may, consistent with our duty of best execution, determine to cause client accounts to pay transaction fees that may be higher than those obtainable from other broker-dealers when purchasing shares of certain mutual funds in order to obtain "research". This research may not be used for the exclusive benefit of the clients who pay transaction fees in purchasing mutual fund shares.

A broker-dealer through which the firm wishes to use soft dollars may establish "credits" arising out of brokerage business done in the past, which may be used to pay, or reimburse the firm for, specified expenses. In other cases, a broker-dealer may provide or pay for the service or product and suggest a level of future business that would fully compensate it. The actual level of transactional business the firm does with a particular broker-dealer during any period may be less than such a suggested level, but may exceed that level and may generate unused soft dollar "credits." We do not exclude a broker-dealer from receiving business simply because the broker-dealer has not been identified as providing soft dollar research products and services, although we may not be willing to pay the same commission to such broker-dealer as we would have paid had the broker-dealer provided such products and services.

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

Mutual and index funds receive a quarterly performance review and they are also reviewed for performance relative to their peer groups and other factors on an annual basis. Security positions are reviewed as frequently as daily. IMS' personnel perform reviews of all separately managed accounts no less than quarterly.

There is currently no limit on the number of accounts that can be reviewed by any individual at IMS. Accounts are reviewed for consistency with the investment strategy and performance. Reviews may also be triggered by changes in a client's personal, tax, and financial status and market events.

Clients receive a quarterly summary from IMS in addition to their monthly or quarterly statements from their custodians. The IMS summary includes an overview of the account performance, allocation, positions and amounts invested. Clients are also sent confirmations following each brokerage account transaction unless confirmations have been waived.

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

Schwab provides IMS with access to Schwab' institutional trading and custody services, which are typically not available to Schwab retail investors. These services generally are available to independent investment advisers on an unsolicited basis, at no charge to them so long as a total of at least \$10 million of the adviser's clients' assets are maintained in accounts at Schwab. Schwab includes brokerage services that are related to the execution of securities transactions, custody, research, including that in the form of advice, analyses and reports, and access to mutual funds and other investments that are otherwise generally available only to institutional

investors or would require a significantly higher minimum initial investment. For IMS client accounts maintained in its custody, Schwab generally does not charge separately for custody services but is compensated by account holders through commissions or other transaction-related or asset-based fees for securities trades that are executed through Schwab or that settle into Schwab accounts.

Schwab also makes available to IMS other products and services that benefit IMS but may not benefit its clients' accounts. These benefits may include national, regional or IMS specific educational events organized and/or sponsored by Schwab. Other potential benefits may include occasional business entertainment of personnel of IMS by Schwab personnel, including meals, invitations to sporting events, including golf tournaments, and other forms of entertainment, some of which may accompany educational opportunities. Other of these products and services assist IMS in managing and administering clients' accounts. These include software and other technology (and related technological training) that provide access to client account data (such as trade confirmations and account statements), facilitate trade execution (and allocation of aggregated trade orders for multiple client accounts, if applicable), provide research, pricing information and other market data, facilitate payment of IMS's fees from its clients' accounts (if applicable), and assist with back-office training and support functions, recordkeeping and client reporting. Many of these services generally may be used to service all or some substantial number of IMS's accounts. Schwab also makes available to IMS other services intended to help IMS manage and further develop its business enterprise. These services may include professional compliance, legal and business consulting, publications and conferences on practice management, information technology, business succession, regulatory compliance, employee benefits providers, and human capital consultants, insurance and marketing. In addition, Schwab may make available, arrange and/or pay vendors for these types of services rendered to IMS by independent third parties. Schwab may discount or waive fees it would otherwise charge for some of these services or pay all or a part of the fees of a third-party providing these services to IMS. IMS is independently owned and operated and not affiliated with Schwab..

In addition, IMS has a referral arrangement with a prior owner of a company purchased by IMS. The prior owner is not a current employee of IMS, however IMS pays the prior owner up to 40% of its advisory fee for each successful client introduction/referral.

## Item 15. Custody

IMS does not have physical custody of client funds or securities. However, investment advisers are deemed to have "custody" of client funds if they have the ability to directly debit advisory fees from client accounts. Because IMS has authorization to directly debit certain client's account(s) for payment of advisory fees, IMS is deemed to exercise limited custody over client assets. IMS is responsible for assuring that the account's independent, qualified custodian will provide account statements directly to clients at least quarterly, and that the client's statement will clearly label the advisor's fee.

Qualified custodians that hold client assets will provide account statements directly to clients at their address of record at least quarterly. The statement will indicate all amounts disbursed from the account including the amount of management fees paid directly to IMS. Clients are encouraged to carefully review the statements provided by their custodians.



## Item 16. Investment Discretion

IMS has the authority to determine the amounts of each and the specific securities to be bought or sold without obtaining client consent in its capacity as a portfolio manager for the IMS Funds or separately managed accounts. In this capacity IMS will also select the broker-dealers for trade execution for the funds at its discretion. In selecting a broker for any transaction or series of transactions, IMS may consider a number of factors, including, for example, net price, the financial stability and reputation of the broker, the quality of the investment research, investment strategies, special execution capabilities, clearance, settlement, custody, recordkeeping and other services provided by such broker. Allocation of investment opportunities among the IMS Funds and separately managed accounts may be compromised if one receives preferential treatment.

Separately managed account clients may have the ability to view IMS Fund holdings before the general public. Any restrictions or limitations on the Adviser's discretionary authority for separately managed accounts must be made in writing.

## Item 17. Voting Client Securities

For all IMS Program accounts, the client should know that IMS will not vote any proxies for securities or exercise voting rights pertaining to investment in a client's account (including without limitation matters relating to conversions, exchanges, mergers, stock splits, rights offerings, recapitalizations and reorganizations). IMS also will not act for clients in any legal proceedings, including bankruptcies or class actions, involving securities held or previously held by a client's account. It is the client's responsibility to vote any proxies for securities, exercise voting rights, or take any legal actions pertaining to investments in his or her account. Ordinarily, the custodian will forward proxies or other communications pertaining to investments in client's account to client. Client should contact IMS if he or she does not receive proxies or other mailings pertaining to the investments in the account.

Client also should understand that IMS will not be responsible or liable for Schwab, Fidelity or other custodians' failure to send proxies or related communications on a timely basis.

Proxies for the IMS Funds are outsourced to Broadridge, who uses Glass Lewis & Co standard recommendations for votes and records the proxy votes that they do on behalf of IMS. Broadridge offers a website which is reviewed by the CCO to ensure proxies are voted.

## Item 18. Financial Information

IMS does not have any financial commitments that might impair our current or future ability to meet our contractual commitments to clients and we have not been the subject of a bankruptcy petition at any time during the past ten years.