



Form ADV Part 2A  
Firm Brochure  
March 29, 2024

This Brochure provides information about the qualifications and business practices of Erben Associates, LLC. If you have any questions about the contents of this Brochure, please contact us at 512.402.0250 or via email at [bworrell@erbenassociates.com](mailto:bworrell@erbenassociates.com). The information in this Brochure has not been approved or verified by the United States Securities and Exchange Commission, or by any state securities authority.

Erben Associates, LLC is a registered investment advisory firm. Registration of an investment advisory firm does not imply a particular level of skill or training.

Additional information about Erben Associates, LLC (CRD#148703) is also available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

## Erben Associates, LLC

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## ITEM 2

# Material Changes

### Annual Update

The Material Changes section of this brochure will be updated annually, or when material changes occur since the previous release of our Firm Brochure. This Item discusses only specific material changes that are made to this Brochure and provides our clients with a summary of such changes.

### Material Changes since the Last Update

Since our filing last annual amendment filed on July 5, 2023~~March 23, 2022~~, the following material changes were made to the brochure:

- We have updated our planning fees in item 5. ~~item 10 to include that certain associates of the firm are also IARs of an unaffiliated registered investment advisory firm.~~

### Full Brochure and Additional Information

Full Firm Brochure and additional information about Erben Associates, LLC are available via the SEC's website [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). The SEC's website also provides information about any persons affiliated with us who are registered or are required to be registered, as investment adviser representatives ("IAR").

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## Advisory Business

### FIRM INFORMATION

Erben Associates, LLC ("Erben Associates," "we," "us," "our"), a limited liability company formed in 2006, is a registered investment advisory firm located in Austin, Texas.

### PRINCIPAL OWNERS

Erben Associates is owned and controlled by James Erben, its Managing Director. Brittany Worrell is the Chief Compliance Officer.

### INVESTMENT ADVISORY SERVICES

#### Financial Planning and Consulting Services:

We provide financial planning services that find ways to help you understand your overall financial situation and help you set financial objectives. We provide advice in the form of a comprehensive Financial Plan. Clients purchasing this service will receive a written financial plan, providing the client with a detailed financial plan designed to achieve their stated financial goals and objectives. We accomplish this by helping you review your financial goals, tax and cash flow planning strategies, asset allocation, death and disability needs, risk management, retirement planning, and other areas and objectives.

We gather required information through in-depth personal interviews. Information gathered includes a client's current financial status, tax status, future goals, returns objectives and attitudes towards risk. We carefully review documents supplied by the client, including a questionnaire completed by the client, and prepare a written report. Should a client choose to implement the recommendations contained in the plan, we suggest the client work closely with his/her attorney, accountant, insurance agent, and/or stockbroker. Implementation of financial plan recommendations is entirely at the client's discretion.

We also provide general non-securities advice on topics that may include executive retention, business exit planning, business valuation, and estate planning.

Our financial plan recommendations are not limited to any specific product or service offered by a broker-dealer or insurance company and will generally include advice regarding exchange-listed and over-the-counter securities, corporate debt securities, certificates of deposit, municipal securities, United States governmental securities, variable life insurance, variable annuities, and mutual funds.

Typically, the financial plan will be presented to the client within six months of the contract date, provided that all information needed to prepare the financial plan has been promptly provided by the client.

#### Pension Consulting Services

We provide investment consulting services to certain 401(k) plan sponsors on a fee-only basis. Our services include asset allocation recommendations; fund selection advice and monitoring; general investment oversight; and educational services. Under this platform, we will require clients to retain the services of independent, third-party managers.

Pension Consulting Services are comprised of four distinct services. Clients may choose to use any or all of these services.

*Investment Policy Statement Preparation (hereinafter referred to as "IPS"):* We will meet with the client (in person or over the telephone) to determine an appropriate investment strategy that reflects the plan sponsor's stated investment objectives for management of the overall plan. Our firm then prepares a written IPS detailing those needs and goals, including an encompassing policy under which these goals are to be achieved. The IPS also lists the criteria for selection of investment vehicles as well as the procedures and timing interval for monitoring of investment performance.

*Selection of Investment Vehicles:* We assist plan sponsors in constructing appropriate asset allocation models. We will then review various mutual funds (both index and managed) to determine which investments are appropriate to implement the client's IPS. The number of investments to be recommended will be determined by the client, based on the IPS.

*Monitoring of Investment Performance:* We monitor client investments continually, based on the procedures and timing intervals delineated in the Investment Policy Statement. Although our firm is not involved in any way in the purchase or sale of these investments, we supervise the client's portfolio and will make recommendations to the client as market factors and the client's needs dictate.

*Employee Communications:* For pension, profit sharing and 401(k) plan clients with individual plan participants exercising control over assets in their own account ("self-directed plans"), we also provide quarterly educational support and investment workshops designed for the plan participants when the plan sponsor engages our firm to provide these services. The nature of the topics to be covered will be determined by us and the client under the guidelines established in ERISA Section 404(c). The educational support and investment workshops will NOT provide plan participants with individualized, tailored investment advice or individualized, tailored asset allocation recommendations.

**Manager of Managers Program:**

We offer advisory management services to clients through the Manager of Managers Program (hereinafter, "MMP").

Our firm will provide the client with an asset allocation strategy developed through personal discussions in which goals and objectives based on a client's circumstances are established. This asset allocation strategy is drafted into the client's Personal Investment Policy Statement.

We will then perform management searches of various unaffiliated registered investment advisers. Based on a client's individual circumstances and needs (as exhibited in the client's Personal Investment Policy Statement) we will determine which selected registered investment adviser's portfolio management style is appropriate for that client. Factors considered in making this determination include account size, risk tolerance, the opinion of each client and the investment philosophy of the selected registered investment adviser. Clients should refer to the selected registered investment adviser's disclosure document for a full description of the services offered. We will meet with the client on a regular basis, or as determined by the client, to review the account.

Once we determine which selected registered investment adviser(s) are most appropriate for the client, we will provide the selected registered investment adviser(s) with the client's Personal Investment Policy Statement. The selected registered investment adviser(s) will then create and manage the client's portfolio based upon the client's individual needs as exhibited in the client's Personal Investment Policy Statement.

We will monitor the performance of the selected registered investment adviser(s). If we determine that a particular selected registered investment adviser(s) is not providing sufficient management services to the client or is not managing the client's portfolio in a manner consistent with the client's Personal Investment Policy Statement, then we may suggest that the client contract with a different registered investment adviser and/or program sponsor. Under this scenario, our firm will reallocate the client's assets to a new registered investment adviser and/or program.

The management services provided by the selected registered investment adviser(s), the compensation to be paid, and other terms of the relationship between the client and the third party will be described in the selected registered investment adviser's disclosure documents and its managed account agreement. We will receive a portion of the investment advisory fee paid by the client to the third-party.

### **CLIENT INVESTMENT OBJECTIVES/RESTRICTIONS**

We tailor all of our financial planning and consulting recommendations to the individual needs of each client. All financial plans and consulting recommendations are tailored based on information gathered through client questionnaires, telephone, and in-person discussions. Our clients may impose restrictions on recommending certain securities or types of securities as indicated in the client's Personal Investment Policy Statement. Depending on the registered investment adviser selected, MMP clients may be permitted to impose restrictions on investing in certain securities or types of securities as indicated in the client's Personal Investment Policy Statement. Clients should refer to the selected registered investment adviser's disclosure document for additional information regarding restrictions.

### **WRAP FEE PROGRAMS**

Erben Associates does not participate in wrap fee programs; however, some of the third-party advisory programs we recommend are considered "wrap programs," in which the fee paid to the program sponsor includes the program sponsor's investment management fee, our solicitation fee, the advisory fees of independent managers selected within the programs, the execution of the client's portfolio transactions without commission charge, and/or custodial services for the client's assets. The disclosure brochure for each program will disclose if it is a wrap fee program.

### **ASSETS UNDER MANAGEMENT**

As of December 31, 202~~32~~, Erben Associates provided continuous and regular supervisory services of ~~\$22,394,386~~~~18,386,133~~ on a discretionary basis and ~~\$274,691,321~~~~225,525,777~~ on a non-discretionary basis.

## **ITEM 5**

## **Fees and Compensation**

### **FINANCIAL PLANNING/CONSULTING SERVICES FEES**

We charge clients fixed annual fees, ranging from ~~\$103,000~~ to ~~\$25100,000~~ per year, based on the complexity of the plan or project and the range of services we are retained to provide.

We will invoice fees semi-annually or quarterly, in equal parts, in advance or at the time of delivery of the plan, as agreed with each client.

The length of time it will take us to provide a financial plan will depend on each client's personal situation. Typically, however, the financial plan will be presented to the client within 90 days of the contract date, provided all information needed to prepare the financial plan has been promptly provided by the client.

## **PENSION CONSULTING SERVICES FEES**

Our fees for Pension Consulting Services are based on a percentage of assets under advisement and range from 17 basis points – 50 basis points on an annual basis depending on the size of the plan. Clients are billed in arrears at the end of each calendar quarter based upon the value (market value or fair market value in the absence of market value), of plan assets at the end of the previous quarter.

## **MANAGER OF MANAGERS PROGRAM FEES**

In each third-party adviser program, the adviser deducts the advisory fee from the client's account and then will forward a portion of the fee to our firm. We urge our clients to refer to selected third-party adviser's disclosure documents for exact fees and expenses charged by each such third-party adviser, as well as minimum account requirements, refund, and termination provisions. All refunds of fees paid under these third-party advisory programs must be obtained directly from the adviser, not from our firm. A complete description of each program can be found in disclosure materials prepared by the third-party adviser, which we will provide to the client at the time we recommend the program.

Fees we receive from each third-party adviser selected by the client will vary depending on the program, the instruments invested in within a program, the amount of assets invested, and specific fee negotiated between our firm and each third-party adviser. Typically, our firm's share of the total fee charged to the client by the third-party adviser will range from 0.50% to 1.00% of client's assets under management with the third-party adviser and under advisement with our firm.

Clients participating in a third-party advisory program that invests in mutual funds or securities offered by other registered investment companies should be aware that the investment companies pay investment advisory or management fees to investment advisers and others, and pay marketing or service fees (including without limitation so-called "12b-1 fees") to broker-dealers and others (including, in some cases, the third-party adviser or its affiliates) who provide services to or for the fund or its shareholders. These fees constitute indirect expenses ultimately borne by the client and are in addition to the investment advisory fees paid by the client to the third-party adviser.

## **GENERAL INFORMATION**

Fees and account minimums for all of our services are negotiable based upon certain criteria (i.e., anticipated future earning capacity, anticipated future additional assets, dollar amount of assets to be managed, related accounts, account composition, negotiations with client, etc.), and discounts, not generally available to our advisory clients, may be offered to family members and friends.

We may group certain related client accounts for the purposes of determining the annualized fee and/or minimum account size.

Under no circumstances will we earn fees in excess of \$1,200 more than six months in advance of services rendered.

Clients will have a period of five (5) business days from the date of signing the agreement to unconditionally rescind the agreement and receive a full refund of all fees. Thereafter, the client may terminate the agreement by providing us with 30 day written notice at our principal place of business prior to delivery of the plan or completion of other services. Upon termination, we will prorate fees to the date of termination and refund to the client the unearned portion of the fee we have collected.

## OTHER EXPENSES AND FEES

The fees discussed above include payment solely for our financial planning, consulting and MMP services provided by us and are separate to certain fees or charges that are imposed by third parties in connection with investments made on your behalf for your account. Third-party fees may include markdowns, markups, brokerage commissions, other transaction costs and/or custodial fees.

Also, all fees paid to us for our services are separate from the expenses charged by exchange-traded funds and mutual funds to their shareholders. These fees and expenses will be used to pay management fees for the funds, other fund expenses, account administration, and a possible distribution fee. Exchanged traded funds and mutual funds can be invested in directly by you without our services. However, you would not receive our services to assist you in determining which products or services are most suitable for your financial situation and objectives. You should review both the fees we charge and the fees charged by the fund(s) to understand the total fees to be paid fully.

## OTHER COMPENSATION

Certain of our associated persons are also registered securities representatives and licensed insurance agents. In this capacity, the IARs may recommend securities, insurance, advisory, or other products, and receive normal securities transactions and insurance commissions if products are purchased through them in this capacity. Thus, a conflict of interest exists between the interests of these individuals and those of the advisory clients, creating an incentive for them to recommend investments and products based on the compensation received, rather than on a client's needs. However, clients are under no obligation to act upon any of these recommendations. Although our recommendations may include products offered by third parties, these recommendations are not limited to such products as all financial planning advice provided is of a generic nature. Clients have the option to purchase securities and insurance products recommended by the IARs through other agents not affiliated with our firm. Please refer to Item 10 of this Brochure for a more detailed explanation of how our firm handles and mitigates these conflicts of interest.

### ITEM 6

## Performance-Based Fees

We do not charge any performance-based fees which are fees based on a share of capital gains on or capital appreciation of your assets.

### ITEM 7

## Types of Clients Description

We provide our investment advisory services to:

- Individuals
- High Net Worth Individuals
- Pension and profit sharing plans
- Trusts
- Estates or charitable organizations
- Corporations



- Other business entities

We generally require a minimum fixed fee of \$3,000 per year for financial planning services and a minimum account size of \$100,000 for MMP clients. These account minimums are negotiable.

## ITEM 8

# Methods of Analysis, Investment Strategies, and Risk of Loss

## METHODS OF ANALYSIS

Although our firm does not generally provide advice on specific securities, we do employ charting and fundamental analysis to formulate client recommendations.

**Fundamental Analysis** – We evaluate economic and financial factors to determine if a security may be underpriced, overpriced or fairly priced. This method entails assessing a security by attempting to determine its intrinsic value by examining related financial, economic, and other qualitative and quantitative factors. Fundamental analysis requires an in-depth look at all factors that can affect the security's value, from macroeconomic factors (like the overall economy and industry conditions) to individually specific factors (like the financial situation and management of companies). The overall objective of performing the fundamental analysis is to determine a value that an investor can use to determine what sort of position to take with that security. This method of security analysis is contrary to technical analysis. Fundamental analysis involves using real data to evaluate a security's value. Although most analysts use fundamental analysis to value stocks, this method of valuation can be used for just about any type of security.

Fundamental analysis does not attempt to anticipate market movements. This presents a potential 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. Therefore, unforeseen market conditions and/or company developments may result in significant price fluctuations that can lead to investor losses.

**Charting** - This is a type of technical analysis where we review various charts of market and security activity in an attempt to identify when the market is moving up or down and predicting how long trends may last and when that trends might reverse.

Technical analysis does not attempt to measure a security's intrinsic value but instead, use charts and other tools to determine the patterns that can suggest future activity. Technical analysts believe that the historical performance of stocks and markets are indications of future performance. This presents a risk in that a poorly-managed or financially unsound company may underperform regardless of market movement.

## POTENTIAL RISKS

Our securities analysis method relies on the assumption that the companies whose securities we purchase and sell, the rating agencies that review these securities, and other publicly-available sources of information about these securities, are providing accurate and unbiased data. While we are alert to indications that data may be incorrect, there is always a risk that our analysis may be compromised by inaccurate or misleading information.

Investing involves different levels of risk that can result in loss of any profits and/or principal you have not realized. We formulate our advice in a manner consistent with your pre-determined risk tolerance and suitability profile. However, we cannot guarantee that our efforts will be successful. Investing in securities involves the risk of loss clients should be prepared to bear.

## ITEM 9

### Disciplinary Information

As of the date of this brochure, we have not been subject to any disciplinary, legal, or regulatory events related to past or present investment clients. There has been no disciplinary, legal, or regulatory events related to us or any of our management persons.

## ITEM 10

### Other Financial Activities and Affiliations

#### FINANCIAL INDUSTRY ACTIVITIES

Erben Associates is neither registered nor does it have an application pending to register as a broker-dealer.

Neither Erben Associates nor its management persons are registered or as an application pending to register as a futures commission merchant, commodity pool operator or commodity trading advisor. is not registered as a securities broker-dealer, or a futures commission merchant, commodity pool operator or commodity trading advisor.

#### AFFILIATIONS

Some of the firm's IARs are also registered representatives, licensed to sell securities. As a registered representative of an unaffiliated broker-dealer, he or she may earn additional compensation in the form of commissions for the sale of general securities products such as stocks, bonds, mutual funds, exchange-traded funds, and a variable annuity to investment advisory clients. As such, your IAR may suggest that you implement investment advice by purchasing securities products through a commission-based account introduced through our unaffiliated broker-dealer. In the event that you elect to purchase these products through our unaffiliated broker-dealer, your IAR, in the capacity as a registered representative, and the broker-dealer will receive the standard and customary commission compensation in connection with the particular product purchased.

Certain associates of the firm are also IARs of an unaffiliated registered investment advisory firm and can provide additional investment advisory services that are not available with our firm. As a registered IAR of an affiliated/unaffiliated investment adviser, he or she can earn additional fee-based compensation by providing investment recommendations for the sale of general securities products such as stocks, bonds, mutual funds, exchange-traded funds, real estate investment trusts, pooled investment vehicles, and/or a variable annuity to investment advisory clients.

Certain of the firm's IARs are also insurance agents licensed to sell insurance products. A conflict of interest exists in that these services pay a commission which conflicts with the IAR's fiduciary duties. Erben Associates does not require its IARs to encourage clients to implement investment advice through our insurance product recommendations. Clients have the right to implement insurance product recommendations through the insurance agency and agent of their choice. We require that all IARs

disclose this conflict of interest when such recommendations are made. We also require IARs to disclose that the client has the right to purchase recommended products from individuals not affiliated with us.

### **SELECTION OF OTHER INVESTMENT ADVISERS**

We may recommend or select third-party managers for our clients and receive compensation from the third-party managers; thus, a material conflict of interest exists between our interests, and those of our clients in that Erben Associates has an incentive to direct clients to third-party managers that provide us with a larger fee. Erben Associates will always act in the best interest of our clients when making recommendations or selecting third-party managers. The client always has the right to decide whether to act on our recommendations and whether to utilize the services of the recommended third-party manager. The client always has the right to utilize the professional of his or her choice. The relationship will be disclosed in each contract between the client and each third-party manager. All third-party managers will be properly licensed and registered as investment advisers in the proper jurisdictions. The fees shared will not exceed any limit imposed by any regulatory agency.

## **ITEM 11**

# **Code of Ethics, Participation in Client Transactions and Personal Trading**

### **CODE OF ETHICS**

Erben Associates has developed a code of ethics that will apply to all of our supervised persons. We and our IARs must act in a fiduciary capacity when providing investment advisory services to you. As a fiduciary, it is an investment adviser's responsibility to provide fair and full disclosure of all material facts and to act solely in the best interest of each of our clients at all times. Erben Associates has a fiduciary duty to all clients. This fiduciary duty is considered the core underlying principle of our code of ethics, which also covers our insider trading, and personal securities transactions policies and procedures. We require all of our supervised persons to conduct business with the highest level of ethical standards and to comply with all federal and state securities laws at all times. Upon employment or affiliation and at least annually thereafter, all supervised persons will acknowledge that they have read, understand and agree to comply with our Code of Ethics.

Our Code of Ethics is available to clients and prospective clients upon request.

### **RECOMMENDATIONS INVOLVING A MATERIAL FINANCIAL INTEREST**

As disclosed in both Item 5 and Item 10, certain of the firm's IARs are registered representatives and insurance agents. Please refer to Items 5 and 10 for additional discussions regarding conflicts of interests.

### **PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS**

There may be instances where an IAR will recommend to investment advisory clients or prospective clients the purchase or sale of securities in which an IAR, its affiliates or other clients may also have a position or interest. Certain affiliated accounts may trade in the same securities with client accounts on an aggregated

basis. Generally, in such circumstances, the affiliated and client accounts will share execution costs equally. Completed trade orders will be allocated according to the instructions from the initial trade order. Partially filled trade orders will be allocated on a pro-rata basis. Any exceptions will be explained in the trade order.

### **PERSONAL TRADING**

Employees are permitted to have personal securities accounts as long as personal investing practices are in line with fiduciary standards and regulatory requirements, and do not conflict with their duty to Erben Associates and our clients. Erben Associates monitors and controls personal trading through pre-approval of all personal securities transactions or blackout periods imposed upon employees trading in the same securities as Erben Associates, LLC. We forbid any officer or employee, either personally or on behalf of others, to trade on material, nonpublic information or to communicate such information to others in violation of the law.

## **ITEM 12**

### **Brokerage Practices**

We do not have any soft-dollar arrangements and do not receive any soft-dollar benefits. Since our firm does not manage client accounts and does not implement securities transactions, we have no brokerage discretion, do not request or require that a client uses a particular broker to execute transactions, and have no trade aggregation policy.

For clients in need of brokerage or custodial services, we may recommend the use of certain broker-dealers and/or custodians, where appropriate to client needs. The recommendation could create a conflict of interest if the IAR is licensed as a registered representative with the recommended firm. We will only recommend firms if their prices, commissions, products, and services are competitive in the brokerage marketplace. However, a client is not under any obligation to effect trades through any recommended broker. All clients are free to select any broker-dealer of his or her choice. In these situations, we may be unable to achieve most favorable execution for client transactions. Directing brokerage may cost clients more money in that the client may pay higher brokerage commissions because we may not be able to aggregate orders to reduce transaction costs, or the client may receive less favorable prices.

## **ITEM 13**

### **Review of Accounts**

James Erben, Danny McGovern, and Brittany Worrell are responsible for performing all client account reviews. There is currently no limit on the number of accounts that can be reviewed by an employee.

### **PERIODIC REVIEWS**

We will review financial planning client accounts at different stages during the year depending on the nature and terms of the specific engagement. Typically, we will review a client's financial plan at least semi-annually or more frequently if the review request is initiated by the client.

Clients who retain us for consulting services will have their accounts reviewed as contracted at the inception of the advisory relationship.

Clients who retain us for pension consulting services will have their Investment Policy Statement reviewed whenever the client advises us of a change in circumstances regarding the needs of the plan. We will also review the investment options of the plan according to the agreed upon time intervals established in the IPS. Such review will generally occur quarterly.

We will continuously monitor the performance of the registered investment adviser(s) selected to manage client portfolios within MMP and formally review these accounts at least quarterly.

### **REVIEW TRIGGERS**

We conduct periodic reviews to evaluate current market, economic and macroeconomic events and how these may affect client accounts. Additional reviews may be triggered by these events or by events in the client's financial, personal, or tax status.

### **REGULAR REPORTS**

Financial planning clients will receive a completed financial plan. We may also provide additional reports such as an updated plan throughout the year, as necessary or as requested by the client.

Consulting clients will receive reports from us as contracted from the inception of the advisory relationship.

Clients receiving our pension consulting services will receive reports as contracted for at the inception of the advisory relationship or based on the terms set forth in the client's Investment Policy Statement.

MMP clients will receive reports from us as contracted for at the inception of the advisory relationship. Generally, these clients will receive a monthly and/or quarterly statement.

## **ITEM 14**

## **Client Referrals and Other Compensation**

Our firm acts as a solicitor for various registered investment advisers, and for doing so, receives an initial and/or an ongoing solicitation fee for referring clients to these advisers. These solicitation arrangements create a conflict of interest to the extent that we have an incentive to refer clients to those third-party investment advisers to pay us the highest referral fee. We address this conflict of interest in the following ways:

1. We clearly disclose the existence of solicitation arrangements to existing and prospective clients in our disclosure documents so that can assess the inherent conflicts of interest and make a fully informed investment decision;
2. We provide the following written disclosures to prospective clients prior to the execution of an advisory agreement with the third-party investment adviser:
  - a. The name of the third-party investment adviser;
  - b. The nature of the relationship, including any affiliation, between us and the investment adviser;

- c. A statement that we will be compensated for our solicitation services by the investment adviser; and
  - d. The terms of such compensation arrangement, including a description of the compensation paid or to be paid to us.
- 3. We continuously monitor the performance of third-party advisers we recommend to ensure that client investment objectives are being met; and
- 4. We observe all rules promulgated under Section 206(4)-3 of the Investment Advisers Act of 1940 and/or similar applicable state laws and regulations.

We currently pay referral fees to individuals and/or entities, including some employees, for referring advisory clients to our firm. If a client is introduced to us by a solicitor, we may pay that solicitor an ongoing referral fee constituting a percentage of the referred client's advisory fee paid to our firm for the duration of the advisory relationship. Payment of referral fees for prospective client referrals creates a potential conflict of interest to the extent that such a referral is not unbiased and the solicitor is, at least partially, motivated by financial gain.

## ITEM 15

### Custody

We do not have actual or constructive custody of client accounts.

## ITEM 16

### Investment Discretion

#### DISCRETIONARY AUTHORITY FOR TRADING

Generally, if you are participating in our MMP program, upon receiving your written authorization via our executed investment advisory agreement, we will maintain trading authorization over your designated account and may also implement trades on a discretionary basis.

When discretionary authority is granted, we will have the limited authority to determine the type of securities to be purchased, sold or exchanged and a number of securities that can be bought, sold or exchanged for your portfolio without obtaining your consent for each transaction.

If you do not grant this limited investment discretion, your IAR will be required to contact you and get affirmation regarding our investment recommendations such as the security being recommended, the number of shares, whether the security should be bought or sold before implementing changes in your account.

Once the above factors are agreed upon, we will be responsible for making decisions regarding the timing of buying or selling an investment and the price at which the investment is bought or sold. If your accounts are managed on a non-discretionary basis, it is critical that you respond promptly. If we do not receive a response to our request immediately, the timing of trade implementation may lead to an adverse impact where we may not achieve the optimal trading price.

On a case by case basis, you may place reasonable restrictions on the types of investments that may be purchased or sold in your account so long as the restrictions are explicitly set forth or included as an attachment to the investment advisory agreement.

#### **ITEM 17**

### **Voting Client Securities**

We do not have the authority to vote proxies as it pertains to the issuers of securities held in your account. The responsibility for voting your securities places increased liability to us and does not add enough value to the services provided to you to justify the additional compliance and regulatory costs associated with voting your securities.

Therefore, you are responsible for voting all proxies for securities held in accounts managed by us. Typically, our qualified custodian will forward you your proxy information. Although we do not vote your proxies, you can contact us if you have a question about a particular proxy.

#### **ITEM 18**

### **Financial Information**

We are not required to include a balance sheet for our most recent fiscal year. We are not subject to a financial condition that is reasonably likely to impair our ability to meet contractual commitments to our clients.

We are currently not in, nor have been historically in a financially precarious situation or the subject of a bankruptcy petition.

Under no circumstances will Erben Associates earn fees in excess of \$1,200 more than six months in advance of services rendered.