

Form ADV Part 2A: *Firm Brochure*

Item 1 – Cover Page

Up Capital Management, Inc.

Main Office:

Private Residence
Bulverde, Texas 76163
(916) 520-6420

Other Office Location:

341 Lincoln St.
Roseville, California 95678
(916) 520-6420
www.upcapitalmgmt.com

Date of Disclosure Brochure: March 2024

This disclosure brochure provides information about the qualifications and business practices of Up Capital Management, Inc. If you have any questions about the contents of this disclosure brochure, please contact Anton Bayer at (916) 520-6421 or anton@upcapitalmgmt.com. The information in this disclosure brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority.

Additional information about Up Capital Management, Inc. is also available on the Internet at www.adviserinfo.sec.gov. You can view the firm's information on this website by searching for Up Capital Management, Inc. or the firm's CRD number: 164692.

*Registration as an investment adviser does not imply a certain level of skill or training.

Item 2 – Material Changes

Since our most recent annual amendment filing in January 2023, the private residence of Anton Bayer is being used as the company's main office. The Roseville, California location is still a branch office where we meet clients.

The maximum fee we charge for ongoing advisement consultations to participants in retirement plans (401(k) plans, profit sharing plans, etc.) has increased from 1.00% to 1.50% annually.

The brochure has been updated to remove references to our advisory personnel being registered as insurance agents. No one affiliated with Up Capital Management sells insurance products and no one affiliated with Up Capital Management is currently registered as an insurance agent.

We removed all references to TD Ameritrade, Inc. due to the transition of moving our clients' managed accounts that had been held at TD Ameritrade, Inc. to Charles Schwab & Company Inc. In November 2019, the two firms announced they had entered into a definitive agreement for Charles Schwab & Company, Inc. to acquire TD Ameritrade in all-stock transaction. As a result of that acquisition, accounts previously held at TD Ameritrade are now Charles Schwab & Company, Inc. accounts. Subsequently, we updated this brochure to remove references to TD Ameritrade.

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Item 4 – Advisory Business

Up Capital Management, Inc. (“Advisor” or “we”) is an investment adviser registered since September 2012. We are a California corporation and our sole owner is Anton J. Bayer.

Introduction

Our investment advisory services are provided to you through an appropriately licensed and qualified individual who is an investment adviser representative (“representative”).

General Description of Advisory Services

The following are brief descriptions of our primary advisory services. A detailed description is provided in **Item 5 – Fees and Compensation** so that clients and prospective clients (“clients” or “you”) can review the services and description of fees more thoroughly.

For all advisory services provided, you should be aware that a conflict of interest exists between our interests and your interests. You are under no obligation to act on our recommendations and, if you do, are under no obligation to effect any transaction through us.

Asset Management Services. Advisor offers asset management services, which involves providing you with continuous and ongoing supervision over your specified accounts.

Financial Planning & Consulting Services. We offer advisory services in the form of financial plans. These services do not involve actively managing your accounts. Instead, full planning services focus on your overall financial situation while modular planning services focus on specific areas of concern to you.

We also offer consultations on any topic of interest to you and these consultations can last for a single meeting or involve several meetings. The consultations can include advisement on retirement benefit plan portfolios.

Retirement Plan Services. We offer services to retirement plan sponsors and to individual participants in retirement plans. These services can be both fiduciary and non-fiduciary.

Limits Advice to Certain Types of Investments

Advisor provides investment advice on the following types of investments:

- Mutual Funds
- Exchange Traded Funds (ETFs)
- Exchange-listed Securities
- Securities Traded Over-the-Counter
- Fixed Annuities
- Foreign Issues
- Warrants
- Corporate Debt Securities
- Commercial Paper
- Certificates of Deposit
- Municipal Securities
- Non Traded REITs
- Unit Investment Trusts
- Variable Annuities
- Variable Life Insurance
- US Government Securities

- Options Contracts on Securities
- Options Contracts on Commodities
- Futures Contracts on Tangibles
- Futures Contracts on Intangibles
- Private investments including those investing in real estate, limited partnerships investing in oil and gas interests, other entities that invest private equity, venture capital, publicly traded securities, futures, options, real estate loans, foreign investments, hedge funds, and various debt offerings. These types of investments (including private offerings sponsored or organized by Advisor's personnel) are often illiquid, which means that the investments can be difficult to trade and consequently limits a client's ability to dispose of such investments in a timely manner and at an advantageous price. Additionally, such investments may not have been registered pursuant to the Securities Act of 1933, and therefore the client will need to complete a subscription agreement showing the client is an "accredited" investor (as defined by applicable law and rules and regulations) and acknowledge that he or she has read and understands the private placement memorandum and is aware of the various risk factors associated with such an investment.

Although we generally provide advice only on the products previously listed, we reserve the right to offer advice on any investment product that may be suitable for each client's specific circumstances, needs, goals and objectives.

It is not our typical investment strategy to attempt to time the market, but we may increase cash holdings modestly as deemed appropriate based on your risk tolerance and our expectations of market behavior. We may modify our investment strategy to accommodate special situations such as low basis stock, stock options, legacy holdings, inheritances, closely held businesses, collectibles, or special tax situations.

Please refer to **Item 8 – Methods of Analysis, Investment Strategies and Risk of Loss** for more information.

No Participation in Wrap Fee Programs

A wrap-fee program is defined as any advisory program under which a specified fee or fees not based directly upon transactions in a client's account is charged for investment advisory services (which may include portfolio management and/or advice concerning the selection of other investment advisers) and the execution of client transactions. We do not offer or participate in wrap-fee programs. All of our services are provided on a non-wrap fee basis which means fees and expenses for execution of client transactions charged by the client's broker/dealer and/or custodian are billed directly to the client's account separately from our advisory fees.

Tailor Advisory Services to Individual Needs of Clients

Our advisory services are always provided based on your individual needs. This means, for example, that when we provide asset management services, you have the ability to impose restrictions on the accounts we manage for you, including specific investment selections and sectors. We work with you on a one-on-one basis through interviews and questionnaires to determine your investment objectives and suitability information.

When managing client accounts through our firm's asset management services programs, we may manage an account in accordance with one or more investment models. When client accounts are managed using models, investment selections are based on the underlying model and we do not develop customized (or individualized) portfolio holdings for each client. However, the determination to use a particular model or models is always based on each client's individual investment goals, objectives and mandates.

We will not enter into an investment adviser relationship with a prospective client whose investment objectives are considered incompatible with our investment philosophy or strategies or where the prospective client seeks to impose unduly restrictive investment guidelines.

Client Assets Managed by Advisor

As of December 31, 2023, our assets under management were \$177,335,051. \$116,159,435 of these assets are managed on a discretionary basis and \$61,175,616 are managed on a non-discretionary basis.

Item 5 – Fees and Compensation

In addition to the information provided in **Item 4 – Advisory Business**, this section provides additional details regarding our firm's services along with descriptions of each service's fees and compensation arrangements. Lower fees for comparable service may be available from other sources. The exact fees and other terms will be outlined in the client agreement between you and Advisor.

Asset Management Services

Up Management Portfolios Program

We are the sponsor of the Up Management Portfolios Program ("Up Management Program"), a program developed through an arrangement using LPL Financial Corporation as your broker/dealer and qualified custodian ("LPL")

Through the Up Management Program, we provide investment management services, including providing continuous investment advice to and making investments for you based on your individual needs. Through this service, we offer a customized and individualized investment program. A specific asset allocation strategy and suitability profile is crafted to focus on your specific goals and objectives. The investment profile defines your risk tolerance and investment objective. Your information should be updated regularly, but at a minimum every 2 years.

Up Management Program accounts are custodied at LPL in its capacity as a registered broker/dealer, member FINRA/SIPC. LPL is also an investment advisor registered with the SEC but does not serve as an investment advisor for you through the Up Management Program. LPL provides clearing, custody and other brokerage services for accounts established through the Up Management Program. Therefore, you are required to establish a brokerage account(s) through LPL. Separate accounts are maintained for you, and you retain all rights of ownership of you accounts (e.g., the right to withdraw securities or cash, exercise or delegate proxy voting, and receive transaction confirmations).

Up Management Program accounts allow you to authorize us to purchase and sell, on a discretionary or non-discretionary basis, portfolios consisting of securities and investments. We can limit our discretion with respect to your account and the securities eligible to be purchased for your account. See, **Limits Advice to Certain Types of Investments** under **Item 4 - Advisory Business**, relative to possible securities and investments utilized. See **Item 16 - Investment Discretion**, for information concerning discretionary authority.

During any month that there is activity in the Up Management Program account, you receive a monthly account statement from LPL showing account activity as well as positions held in the account at month end. Additionally, you receive a confirmation of each transaction that occurs within the Up Management Program account unless the transaction is the result of a systematic purchase, redemption or exchange. You also receive a detailed quarterly report showing performance, positions, and activity. All account data and statements are also available on-line through the account view portal through LPL.

The annual investment advisory fee charged generally varies between 0.50% - 2.0% of the assets held in the account and is negotiable depending on the market value of the account, composition of the account assets, complexity of your situation, the representative providing the services and your relationship with us. The annual fee is divided and paid monthly or quarterly in advance through a direct debit to your account. LPL is responsible for calculating and debiting all fees from your accounts. You must provide LPL with written authorization to debit advisory fees from your accounts and pay the fees to us. Fees are based on the account's asset value as of the last business day of the prior calendar month or quarter. Fees for accounts opened at any time other than the beginning of a month or quarter are prorated based on the number of days remaining in the initial billing period.

Prior to engaging us to provide investment management services, you are required to enter into a formal investment advisory agreement with us setting forth the terms and conditions, including the amount of investment advisory fees, under which we manage your assets and also a separate custodial/clearing agreement with LPL.

The minimum account size to open any Up Management Program account is \$100,000, although exceptions can be granted upon request if additional deposits are anticipated to the new account, your relationship to our firm and if you were referred to us from an existing client. In addition, family members can "household" accounts to reach the minimum account level required.

Brokerage expenses and/or transaction ticket fees charged by the qualified custodian are billed directly to you by the qualified custodian. We do not receive any portion of such commissions or fees from you or the qualified custodian. You will incur certain charges imposed by third parties other than us in connection with investments made through the account including, but not limited to, 12b-1 fees and surrender charges, and IRA and qualified retirement plan fees. The management fees charged by us are separate and distinct from the fees and expenses charged by investment company securities recommended to you and/or held in your accounts. We do not receive any portion of such fees. A description of these fees and expenses is available in each investment company security's prospectus.

Services continue until terminated. Either party can terminate the agreement for services at any time by providing written notice to the other party. If services are terminated within five business days of executing the client agreement, services are terminated without penalty. If services are terminated after the initial five day period, we provide you with a prorated refund of fees paid in advance. The refund is based on the number of days service is actually provided during the final billing period. Termination is effective 30 days from the time the other party receives written notification or such other time as may be mutually agreed upon, subject to the settlement of transactions in progress and the final refund of advisory fees. There is no penalty charge on termination.

Up Management Program

We have developed and sponsor the Up Management Program ("Up Program") through which we offer asset management services that include giving you continual investment advice and making investments based on your individual needs. Through this service, we offer a customized and individualized investment program with an asset allocation strategy and investment policy crafted to focus on your specific goals and objectives.

We require that your account be maintained at Charles Schwab & Company, Inc. ("Charles Schwab"), which provides brokerage and clearing services. Charles Schwab is a member of FINRA and SIPC. Charles Schwab acts as the qualified custodian of your account and maintains custody of your funds and securities. Advisor does not act as custodian and does not have direct access to your funds and securities except to have advisory fees deducted from your account with your prior written authorization.

The minimum account size to open any Up Program account is \$100,000, although exceptions can be granted upon request if additional deposits are anticipated to the new account and depending upon your relationship to our firm and if you were referred to us from an existing client. In addition, family members can "household" accounts to reach the minimum account level required.

You must appoint our firm as your investment adviser of record on specified accounts (collectively, the “account”). The account consists only of separate account(s) held by the qualified custodian under your name. You retain all rights of ownership (e.g., right to withdraw securities or cash, exercise or delegate proxy voting and receive transaction confirmations) of the Up Program accounts. The account is managed by us based on your financial situation, investment objectives and risk tolerance. We actively monitor the account and provide advice regarding buying, selling, reinvesting or holding securities, cash or other investments of the account.

We obtain certain information from you to determine your financial situation and investment objectives. You are responsible for notifying us of any updates regarding your financial situation, risk tolerance or investment objective and whether you wish to impose or modify existing investment restrictions; however we contact you at least annually to discuss any changes or updates regarding your financial situation, risk tolerance or investment objectives. We are always reasonably available to consult with you relative to the status of your account.

You grant us trading authority on your account and we manage your assets on a discretionary or non-discretionary basis. See **Item 16 - Investment Discretion**, for additional discussion on discretionary or non-discretionary authority. You have the ability to impose reasonable restrictions on the management of your accounts, including the ability to instruct us not to purchase certain securities.

We charge for management services based on a percentage of assets under management. Fees generally range from 0.5% to 2.0% and are billed in advance either monthly or quarterly, as we jointly determine. Fees are calculated based on the fair market value of the account as of the last day of the previous billing period. Fees are negotiable depending on the market value of the account, the composition of account assets, the complexity of your situation, the representative providing the services and your relationship with us.

Fees can be billed directly to you or deducted from your account. If billed directly, fees are due upon receiving our billing notice, which details the formula used to calculate the fees, the assets under management and the time period covered. If fees are deducted from your account, you must provide the qualified custodian with written authorization to debit the advisory fees from your account and pay the fees to us. We send you a billing statement prior to the time fee deduction instructions are sent to the qualified custodian. The billing statement details the formula used to calculate the fee, the assets under management and the time period covered. Fees for accounts opened any time other than the beginning of a billing period are prorated based on the number of days remaining in the initial billing period. You should review your account statements received from the qualified custodian and verify that appropriate investment advisory fees are being deducted. The qualified custodian does not verify the accuracy of the investment advisory fees deducted.

Brokerage commissions and/or transaction ticket fees charged by the qualified custodian are billed directly to you by the qualified custodian. We do not receive any portion of such commissions or fees from you or the qualified custodian. You will incur certain charges imposed by third parties other than us in connection with investments made through the account including, but not limited to, 12b-1 fees and surrender charges, and IRA and qualified retirement plan fees. The management fees charged by us are separate and distinct from the fees and expenses charged by investment company recommended to you and/or held in your accounts. A description of these fees and expenses are available in each investment company security's prospectus.

Asset management services continue until terminated by either party. Either party can terminate the services by providing the other party with written notice, which is effective 14 days after receipt of the notice. If services are terminated within five business days of executing the client agreement, services are terminated without penalty. If services are terminated after the initial five day period, we provide you with a prorated refund of fees paid in advance. The refund is based on the number of days service is actually provided during the final billing period. There is no penalty charge on termination.

Administrative Services Provided by ORION Advisor Services, LLC

Advisor has contracted with and pays Orion Advisor Services, LLC (referred to as "Orion") to utilize its technology platforms to support data reconciliation, performance reporting, fee calculation and billing, research, client database maintenance, quarterly performance evaluations, payable reports, web site administration, models, trading platforms, and other functions related to the administrative tasks of managing client accounts. Due to this arrangement, Orion will have access to client accounts, but Orion will not serve as an investment advisor to Advisor's clients. Advisor and Orion are not affiliated companies.

General Information on Management Services

Advisor manages investments for other clients and can give them advice or take actions for them or for our personal accounts that are different from the advice we provide to you or actions taken for you. We are not obligated to buy, sell or recommend to you any security or other investment that we buy, sell or recommend for any other clients or for our own accounts.

Conflicts will arise in the allocation of investment opportunities among accounts that we manage. We strive to allocate investment opportunities believed to be appropriate for your account(s) and other accounts advised by our firm among such accounts equitably and consistent with the best interests of all accounts involved. However, there can be no assurance that a particular investment opportunity that comes to our attention will be allocated in any particular manner. If we obtain material, non-public information about a security or its issuer that we may not lawfully use or disclose, we have absolutely no obligation to disclose the information to any client or use it for any client's benefit.

Advisor believes that its annual fees are reasonable in relation to: (1) services provided and (2) the fees charged by other investment advisers offering similar services/programs. However, our annual fees are higher than that charged by other investment advisers offering similar services/programs. In addition to our compensation, you will also incur charges imposed at the mutual fund level (e.g., advisory fees and other fund expenses).

Financial Planning & Consulting Services

Our financial planning and consulting services do not involve implementing any transaction on your behalf or the active and ongoing monitoring or management of your investments or accounts. You have the sole responsibility for determining whether to implement our financial planning and consulting recommendations. If you would like to implement any of our investment recommendations through us or retain us to actively monitor and manage your investments, you must execute a separate written agreement for our asset management services.

All fees charged for our financial planning and consulting services are negotiable based upon the services requested, the representative providing the services, the complexity of your situation, the composition of your account, other advisory services provided and the relationship you have with us.

Financial Plans

Advisor offers financial planning services, which involve preparing either a full or modular written financial plan covering specific or multiple topics. Full financial plans typically address the following topics: investment planning, retirement planning, insurance planning, tax planning, education planning, portfolios review, asset allocation and real estate planning. When providing financial planning and consulting services, the role of your representative is to find ways to help you understand your overall financial situation and help you set financial objectives. We also provide modular written financial plans which only cover those specific areas of concern mutually agreed upon by you and us. A modular written financial plan is limited or segmented and does not involve the creation of a full written financial plan. You should be aware that there are important issues that may not be taken into consideration when your

representative develops his or her analysis and recommendations under a modular written financial plan. Our written financial plans do not include specific recommendations of individual securities.

Financial plans are provided for both hourly and fixed fees. Hourly fees generally range from \$250 to \$400 per hour and we provide you with an estimate of the approximate hours needed to complete the plan. If we anticipate exceeding the estimated hours required, we contact you for authorization to complete the plan. Fixed fees generally do not exceed \$20,000 and are also negotiable based on the actual services requested, the complexity of your situation and the representative providing the services. At our sole discretion, we can also elect to waive advisory fees for financial planning services. Fees are billed directly to you and due upon receiving our detailed billing notice.

At our sole discretion, we will require a retainer of one-half of the quoted estimated fee (both hourly and fixed) to be paid at the time the client agreement is signed, with the remainder due upon presentation of the completed plan. Under no circumstances does Advisor require you to pay more than \$500 more than six months in advance. The amount of the fee for services is specified in the client agreement signed by you and us. Upon completion and delivery of the financial plan, fees are considered earned by us and any unpaid amount is immediately due.

Financial planning services terminate upon delivery of the written financial plan. However, either party can terminate services at any time by providing written notice to the other party. Termination is effective immediately upon receipt of the notice. If services are terminated within five business days of entering into the client agreement, services are terminated without penalty. Fees are prorated if services are terminated prior to completion and presentation of the plan. Hourly fees are calculated based on the number of hours expended to the date of termination multiplied by the agreed upon hourly rate. Fixed fees are calculated based upon the percentage of work completed at the effective date of termination. Any paid in but unearned fees are refunded to you immediately, and any prorated fees earned but unpaid are due immediately. Advisor sends a detailed billing statement to you.

Consultations

We also offer consultations in order to discuss financial planning issues when you do not need a written financial plan. We offer a one-time consultation, which covers mutually agreed upon areas of concern related to investments or financial planning. We also offer "as-needed" consultations, which are limited to consultations in response to a particular investment or financial planning issue raised or request made by you. Under an "as-needed" consultation, you must identify those particular issues for which you are seeking our advice or consultation.

Consultations are also provided for both hourly and fixed fees. Hourly fees generally range from \$250 to \$400 per hour and we provide you with an estimate of the approximate hours needed to complete the requested consultations. If we anticipate exceeding the estimated hours required, we contact you for authorization to complete the services. Fixed fees generally do not exceed \$20,000 and are also negotiable based on the actual services requested, the complexity of your situation and the representative providing the services. At our sole discretion, we can also elect to waive advisory fees for consulting services.

At our sole discretion, we will require a retainer of one-half of the quoted estimated fee (both hourly and fixed) to be paid at the time the client agreement is signed, with the remainder due upon completion of the consultations. Under no circumstances does Advisor require you to pay more than \$500 more than six months in advance. The amount of the fee for services is specified in the client agreement signed by you and us. Upon completion of the consultations, fees are considered earned by us and any unpaid amount is immediately due.

Fees are billed directly to you and due upon receiving our billing notice. You should notify us within ten days of receiving an invoice if you have questions about or dispute any billing entry.

Consultation services terminate upon completion of the requested consultations. "As-needed" consultations can also be terminated by either party at any time by providing written notice to the other party. Termination is effective immediately upon receipt of that notice. If services are terminated within five business days of entering into the client agreement, services are terminated without penalty. Fees are prorated if services are terminated prior to completion of the consultations. Hourly fees are calculated based on the number of hours expended to the date of termination multiplied by the agreed upon hourly rate. Fixed fees are calculated based upon the percentage of consultations completed at the effective date of termination. Any paid in but unearned fees are refunded to you immediately, and any prorated fees earned but unpaid are due immediately. Advisor sends a detailed billing statement to you.

Advisement Consultations

In addition to these services, we offer ongoing advisement consultations to participants in retirement plans (401(k) plans, profit sharing plans, etc.). When providing these services, we review your financial situation, goals and objectives as well as the investment options available in the retirement plan. We review your retirement plan account at quarterly intervals and make such recommendations from the list of available investment options in your retirement plan account as are deemed appropriate and consistent with your stated investment objectives and risk tolerance. These services do not constitute asset management services for your retirement plan account; we do not have investment discretion or trading authority over your retirement plan account. You determine whether or not to implement our advice, and it is your responsibility to implement any trades in your retirement plan account.

Advisement consultations are charged as either a fixed fee or a percentage of the assets under advisement. At our discretion, we can also elect to waive the fees for advisement consultations. Fixed fees generally do not exceed \$7,500 per year while percentage fees generally do not exceed 1.50% per year. Percentage fees are calculated based on the value of your retirement account on the last day of the current quarter. Fees are payable quarterly in arrears and are billed directly to you; fees are due upon receiving our billing notice. You should notify us within ten days of receiving an invoice if you have questions about or dispute any billing entry.

Advisement consultation services terminate upon completion of the consultations. However, either party can terminate services by providing written notice to the other party; termination is effective immediately upon receipt of the notice.

If services are terminated within five business days of entering into the client agreement, services are terminated without penalty. Fees are prorated if services are terminated prior to completion of the consultations. Fixed fees are calculated based upon the percentage of consultations completed at the effective date of termination. Percentage fees are calculated based upon the number of days that your portfolio assets were under advisement during the quarter. Whether billed directly or deducted from an account, fees are due immediately upon termination and Advisor sends a detailed billing statement to you.

Fee Offset

You can also elect to implement the advice of our representatives through one or more of our other advisory programs disclosed in this Disclosure Brochure. In this case, our representatives may waive or reduce the amount of the advisory fee as a result of earning additional ongoing fees. Any reduction is at their discretion and is disclosed to you prior to implementing any transactions or contracting for additional services.

Additional Information on Financial Planning and Consulting Fees

To the extent Advisor engages an outside professional (i.e. attorney, independent investment adviser or accountant) while providing financial planning and consulting services to you, we are responsible for paying the fees for the outside professional's services and you are not required to reimburse us for those payments. To the extent that you personally engage an outside professional, you are responsible for

paying the fees for the outside professional's services and we are not required to reimburse you for those payments. Fees for the services of an outside professional are in addition to and separate from the fees charged by Advisor. In no event are the services of an outside professional engaged without your express approval.

All fees paid to Advisor for financial planning and consulting services are separate and distinct from the commissions, fees and expenses charged by insurance companies associated with any disability insurance, life insurance and annuities subsequently acquired by you. If you sell or liquidate certain existing securities positions to acquire any insurance or annuity, you will also pay a commission and/or deferred sales charges in addition to the financial planning and consulting fees paid to Advisor and any commissions, fees and expenses charged by the insurance company for subsequently acquired insurance and/or annuities.

All fees paid to Advisor are also separate and distinct from the fees and expenses charged by mutual funds to their shareholders. These fees and expenses are described in each mutual fund's prospectus and generally include a management fee, other fund expenses and a possible distribution fee. If the fund also imposes sales charges, you will pay an initial or deferred sales charge. If you retain Advisor to implement the recommendations provided under these services, we may recommend load or no-load mutual funds that charge you 12b-1 fees. However, we do not receive any portion of such 12b-1 fees.

In addition, all fees paid to Advisor are separate and distinct from the commissions charged by a broker/dealer or asset management fees charged by an investment adviser to implement such recommendations.

Lower fees for comparable services may be available from other sources.

Newsletters

Advisor occasionally prepares general, educational and informational newsletters provided to clients and prospective clients free of charge. The newsletters are always offered on an impersonal basis and do not focus on the needs of a specific individual.

Seminars and Workshops

Advisor may occasionally provide seminars in areas such as financial planning, retirement planning, estate planning, college planning and charitable planning. Seminars are always offered on an impersonal basis and do not focus on the individual needs of participants. Seminars may be provided at no charge or, depending upon the topic and complexity of the presentation, a fee of up to \$500 per person may be charged. If a fee is charged, it is payable at the door.

Advisor also offers educational, informative and motivational workshops to the public as well as to associations, family foundations and employers. Workshops are always offered on an impersonal basis and do not focus on the individual needs of the participants. Workshops may be provided at no charge or for a fee of up to \$500 per person (depending upon the topic, length, materials provided and anticipated participants. If a fee is charged, we provide payment terms and cancellation procedures to sponsors and anticipated participants.

Retirement Plan Services

Advisor offers retirement plan services to retirement plan sponsors and to individual participants in retirement plans. For a corporate sponsor of a retirement plan, our retirement plan services can include, but are not limited to, the following services:

Fiduciary Consulting Services

Advisor offers the following fiduciary retirement plan consulting services:

- Investment Policy Statement Preparation. Advisor helps you develop an investment policy statement. The investment policy statement establishes the investment policies and objectives for the plan. You have the ultimate responsibility and authority to establish such policies and objectives and to adopt and amend the investment policy statement.
- Non-Discretionary Investment Advice. Advisor provides you with general, non-discretionary investment advice regarding assets classes and investment options, consistent with your plan's investment policy statement.
- Investment Selection Services. Advisor provides you with recommendations of investment options consistent with ERISA section 404(c).
- Investment Due Diligence Review. Advisor provides you with periodic due diligence reviews of the plan's reports, investment options and recommendations.
- Investment Monitoring. Advisor assists in monitoring investment options by preparing periodic investment reports that document investment performance, consistency of fund management and conformation to the guidelines set forth in the investment policy statement. Advisor makes recommendations to maintain or remove and replace investment options.
- Default Investment Alternative Advice. Advisor provides you with non-discretionary investment advice to assist in developing qualified default investment alternative(s) ("QDIA"), as defined in DOL Reg. Section 2550.404c-5(e)(4)(i), for participants who are automatically enrolled in the plan or who otherwise fail to make an investment election. You retain the sole responsibility to provide all notices to participants required under ERISA Section 404(c)(5).
- Individualized Participant Advice. Upon request, Advisor provides one-on-one advice to plan participants regarding their individual situations.

Advisor acknowledges that in performing the fiduciary consulting services listed above it is acting as a "fiduciary" as such term is defined under Section 3(21)(A)(ii) of *Employee Retirement Income Security Act of 1974* ("ERISA") for purposes of providing non-discretionary investment advice only. Advisor acts in a manner consistent with the requirements of a fiduciary under ERISA if, based upon the facts and circumstances, such services cause Advisor to be a fiduciary as a matter of law. However, in providing the fiduciary consulting services, Advisor (a) has no responsibility and does not (i) exercise any discretionary authority or discretionary control respecting management of client's retirement plan, (ii) exercise any authority or control respecting management or disposition of assets of client's retirement plan or (iii) have any discretionary authority or discretionary responsibility in administering client's retirement plan or interpreting client's retirement plan documents, (b) is not an "investment manager" as defined in Section 3(38) of ERISA and does not have the power to manage, acquire or dispose of any plan assets and (c) is not the "Administrator" of client's retirement plan as defined in ERISA.

Fiduciary Management Services

Advisor offers clients with the following fiduciary retirement plan management services:

- Discretionary Investment Selection Services. Advisor monitors the investment options of the plan and adds or removes investment options for the plan. Advisor has discretionary authority to make all decisions regarding the investment options that will be made available to plan participants.
- Default Investment Alternative Management. Advisor develops and actively manages qualified default investment alternative(s) ("QDIA"), as defined in DOL Reg. Section 2550.404c-5(e)(4)(i), for participants who are automatically enrolled in the plan or who otherwise fail to make an investment election.

- Investment Management via Model Portfolios. Advisor provides discretionary management via model portfolios. Advisor manages model portfolios which are investment options available to plan participants. If a plan has elected to include Advisor's model portfolios as available options for the qualified retirement plan, then each plan participant has the option to elect or not elect the model portfolios managed by Advisor and is allowed to impose reasonable restrictions upon the management of each account by written instructions to Advisor.

If you elect to utilize any of Advisor's fiduciary management services, then Advisor is acting as an investment manager to the plan, as defined by ERISA Section 3(38), with respect to our fiduciary management services, and Advisor hereby acknowledges that it is a fiduciary with respect to our fiduciary management services.

Non-Fiduciary Services

Advisor offers clients the following non-fiduciary retirement plan consulting services:

- Participant Education. Advisor provides education services to plan participants about general investment principles and the investment alternatives available under the plan. Advisor's assistance in participant investment education is consistent with and within the scope of DOL Interpretive Bulletin 96-1. Education presentations do not take into account the individual circumstances of each participant and individual recommendations will not be provided unless otherwise agreed upon. Plan participants are responsible for implementing transactions in their own accounts.
- Participant Enrollment. Advisor assists you with group enrollment meetings designed to increase retirement plan participation among employees and investment and financial understanding by the employees.
- Due Diligence Review. Advisor provides you with periodic due diligence reviews of your plan's fees and expenses and your plan's service providers.
- Fiduciary File Set-up. Advisor helps you establish a "fiduciary file" for the plan which contains trust documents, custodial/brokerage statements, investment performance reports, services agreements with investment management vendors, the investment policy statement, investment committee minutes, asset allocation/asset liability studies, due diligence fields on funds/money managers and monitoring procedures for funds and/or money managers.
- Benchmarking. Advisor provides you benchmarking services and provides analysis concerning the operations of the plan.

Although an investment adviser is considered a fiduciary under the *Investment Advisers Act of 1940* and required to meet the fiduciary duties as defined by the Advisers Act, the services listed here as non-fiduciary should not be considered fiduciary services for the purposes of ERISA since Advisor is not acting as a fiduciary to the plan as the term "fiduciary" is defined in Section 3(21)(A)(ii) of ERISA.

The exact services provided to clients are listed and detailed in the Qualified Retirement Plan Agreement.

All recommendations of investment options and portfolios are submitted to the client for ultimate approval or rejection. Therefore, it is always the client's responsibility to accept Advisor's investment recommendations and then physically make changes to the plan itself.

In the event a client contracts with Advisor for one-on-one consulting services with plan participants, the services are consultative in nature and do not involve Advisor implementing recommendations in individual participant accounts. It is the responsibility of each participant to implement changes in the participant's individual accounts. Advisor can also meet with individual participants to discuss their specific investment risk tolerance, investment time frame and investment selections.

Retirement plan consulting services are not management services, and Advisor does not serve as administrator or trustee of the plan. Advisor does not act as custodian for any client account or have access to client funds or securities (with the exception of some accounts, having written authorization

from the client to deduct our fees). In addition, we do not implement any transactions in a retirement plan or participant's account. For retirement plan consulting services, the retirement plan or the plan participant who elects to implement any recommendations made by us is solely responsible for implementing all transactions.

Advisor discloses to you, to the extent required by ERISA Regulation Section 2550.408b-2(c), any change to the information that we are required to disclose under ERISA Regulation Section 2550.408b-2(c)(1)(iv) as soon as practicable, but no later than sixty (60) days from the date on which we are informed of the change (unless such disclosure is precluded due to extraordinary circumstances beyond our control, in which case the information will be disclosed as soon as practicable).

In accordance with ERISA Regulation Section 2550.408b-2(c)(vi)(A), we disclose within thirty (30) days following receipt of a written request from the responsible plan fiduciary or plan administrator (unless such disclosure is precluded due to extraordinary circumstances beyond our control, in which case the information is disclosed as soon as practicable) all information related to the Qualified Retirement Plan Agreement and any compensation or fees received in connection with the Agreement that is required for the plan to comply with the reporting and disclosure requirements of Title 1 of ERISA and the regulations, forms and schedules issued thereunder.

If we make an unintentional error or omission in disclosing the information required under ERISA Regulation Section 2550.408b-2(c)(1)(iv) or (vi), we disclose to you the correct information as soon as practicable, but no later than thirty (30) days from the date on which we learn of such error or omission.

Fees for retirement plan services can be charged as a fixed fee or as a percentage of plan assets. The fixed fee generally ranges from \$500 to \$75,000 per year while percentage fees range from 0.05% to 1.00% annually. All fees are negotiable based upon the services provided, the representative providing the services, the size and complexity of the plan, the potential for additional deposits to the plan and the number of participants. The exact services and fees are specified in the Agreement that we both sign before any services are provided. At our sole discretion, you will be required to pay a portion of the fixed fee at the time the Agreement is signed. However, at no time do we require payment of more than \$500 in fees more than six months in advance. Upon completion of the services, the fixed fee is considered earned by Advisor and any unpaid amount is immediately due. Retirement plan sponsors can elect to pay all or a portion of fees for the individualized services provided by us to the plan participants.

Depending upon the plan, fees can be billed monthly or quarterly and can be billed in advance or arrears. Percentage fees are calculated based on the average daily balance of the account during the previous billing period (for advance) or the current billing period (for arrears). For accounts opened mid-period, fees are prorated based on the number of days service is provided during the initial billing period.

Fees for financial planning and consultation retirement planning are billed directly to clients and due upon receiving our billing notice. Fees for management retirement plan services can be deducted from the client's account or billed directly to the client. If billed directly, fees are due upon receipt of our billing notice. If management fees are automatically deducted from an existing account, clients are required to provide the custodian with written authorization to deduct the fees from the account and pay the fees to Advisor. We provide the custodian with a fee notification statement.

Retirement plan services are for a term of 1 year. Either party can terminate the services at any time by providing the other party with written notice. Services terminate thirty days following receipt of the termination notice. If services are terminated within five business days of signing the client agreement, services are terminated without penalty. Fees are prorated as of the effective date of termination. Any prepaid but unearned fees are promptly refunded to the client at the effective date of termination. Any prorated fees earned but unpaid are due immediately.

Advisor does not reasonably expect to receive any other compensation, direct or indirect, for its services. If we receive any other compensation for such services, we (i) offset that compensation against our stated fees and (ii) disclose to you the amount of such compensation, the services rendered for such compensation and the payer of such compensation.

Item 6 – Performance-Based Fees and Side-By-Side Management

Performance-based fees are defined as fees based on a share of capital gains on or capital appreciation of the assets held in a client's account. Advisor does not charge or accept performance-based fees and, therefore, this section is not applicable to us.

Item 7 – Types of Clients

Advisor generally provides investment advice to the following types of clients:

- Individuals
- High net worth individuals
- Pension and profit sharing plans
- Trusts, estates, or charitable organizations
- Corporations or business entities other than those listed above

Minimum Investment Amounts Required

Advisor requires a minimum of \$100,000 in order to open an account in either the Up Management Program or the Up Program. Exceptions can be granted to this minimum depending upon anticipated additional deposits to the account, your relationship to our firm and if you were referred to us from an existing client. In addition, family members can aggregate or "household" accounts to reach the minimum requirement level. There is no minimum account value for sub-account management services.

There are no minimum accounts levels required or advisory fees charged or financial planning and consulting services. There are no minimum plan asset value requirements or advisory fees charged for retirement planning services.

Item 8 – Methods of Analysis, Investment Strategies and Risk of Loss

Methods of Analysis

Advisor uses the following methods of analysis in formulating investment advice:

- Charting - This is a set of techniques used in technical analysis in which charts are used to plot price movements, volume, settlement prices, open interest, and other indicators, in order to anticipate future price movements. Users of these techniques, called chartists, believe that past trends in these indicators can be used to extrapolate future trends.

Charting is likely the most subjective analysis of all investment methods since it relies on proper interpretation of chart patterns. The risk in relying on chart patterns is that the next day's data can always negate the conclusions reached from prior days' patterns. Also, relying on chart patterns bears the risk of a certain pattern being negated by a larger, more encompassing pattern that has not shown itself yet.

- Cyclical - This method analyzes the investments sensitive to business cycles and whose performance is strongly tied to the overall economy. For example, cyclical companies tend to make products or provide services that are in lower demand during downturns in the economy and in higher demand during upswings. Examples include the automobile, steel, and housing industries. The stock price of a cyclical company often rises just before an economic upturn begins and falls just before a downturn begins. Investors in cyclical stocks try to make the largest gains by buying the stock at the bottom of a business cycle, just before a turnaround begins.

While most economists and investors agree that there are cycles in the economy that need to be respected, the duration of such cycles is generally unknown. An investment decision to buy at the bottom of a business cycle may actually turn out to be a trade that occurs before or after the bottom of the cycle. If done before the bottom, then downside price action can result prior to any gains. If done after the bottom, then some upside price action may be missed. Similarly, a sell decision meant to occur at the top of a cycle may result in missed opportunity or unrealized losses.

- Fundamental - This is a method of evaluating a security by attempting to measure its intrinsic value by examining related economic, financial and other qualitative and quantitative factors. Fundamental analysts attempt to study everything that can affect the security's value, including macroeconomic factors (like the overall economy and industry conditions) and individually specific factors (like the financial condition and management of a company). The end goal of performing fundamental analysis is to produce a value that an investor can compare with the security's current price in hopes of figuring out what sort of position to take with that security (underpriced = buy, overpriced = sell or short). Fundamental analysis is considered to be the opposite of technical analysis. Fundamental analysis is about 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.

The risk associated with fundamental analysis is that it is somewhat subjective. While a quantitative approach is possible, fundamental analysis usually entails a qualitative assessment of how market forces interact with one another in their impact on the investment in question. It is possible for those market forces to point in different directions, thus necessitating an interpretation of which forces will be dominant. This interpretation may be wrong and could therefore lead to an unfavorable investment decision.

- Technical - This is a method of evaluating securities by analyzing statistics generated by market activity, such as past prices and volume. Technical analysts do 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 analysts believe that the historical performance of stocks and markets are indications of future performance.

Technical analysis is even more subjective than fundamental analysis in that it relies on proper interpretation of a given security's price and trading volume data. A decision might be made based on a historical move in a certain direction that was accompanied by heavy volume; however, that heavy volume may only be heavy relative to past volume for the security in question, but not compared to the future trading volume. Therefore, there is the risk of a trading decision being made incorrectly since future trading volume is an unknown. Technical analysis is also done through observation of various market sentiment readings, many of which are quantitative. Market sentiment gauges the relative degree of bullishness and bearishness in a given security, and a contrarian investor utilizes such sentiment advantageously. When most traders are bullish, then there are very few traders left in a position to buy the security in question, so it becomes advantageous to sell it ahead of the crowd. When most traders are bearish, then there are very few traders left in a position to sell the security in question, so it becomes advantageous to buy it ahead of the crowd. The risk in utilization of such sentiment technical measures is that a very bullish reading can always become more bullish, resulting in lost opportunity if the money manager chooses to act upon the bullish signal by selling out of a position. The reverse is also true in that a bearish reading of sentiment can always become more bearish, which may result in a premature purchase of a security.

There are risks involved in using any analysis method.

To conduct analysis, Advisor gathers information from financial newspapers and magazines, inspection of corporate activities, research materials prepared by others, corporate rating services, timing services, annual reports, prospectuses and filings with the SEC, and company press releases.

Investment Strategies

Advisor uses the following investment strategies when managing client assets and/or providing investment advice:

- Long term purchases: Investments held at least a year.
- Short term purchases: Investments sold within a year.
- Frequent trading: This strategy refers to the practice of selling investments within 30 days of purchase.
- Tactical asset allocation: Allows for a range of percentages in each asset class (such as Stocks = 40-50%). The ranges establish minimum and maximum acceptable percentages that permit the investor to take advantage of market conditions within these parameters. Thus, a minor form of market timing is possible, since the investor can move to the higher end of the range when stocks are expected to do better and to the lower end when the economic outlook is bleak.
- Strategic asset allocation: Calls for setting target allocations and then periodically rebalancing the portfolio back to those targets as investment returns skew the original asset allocation percentages. The concept is akin to a “buy and hold” strategy, rather than an active trading approach. Of course, the strategic asset allocation targets may change over time as the client’s goals and needs change and as the time horizon for major events such as retirement and college funding grow shorter.
- Investment Models: Advisor uses the following investment models:
 - Current Income Model: This model risk category is conservative for investors with priority to earn income with a low tolerance for risk.
 - Income with Moderate Growth: This model risk category is moderately conservative for investors with priority to earn income with partial allocation to moderate growth.
 - Moderate Growth: This model risk category is moderate growth for investors with priority for moderate growth.
 - Growth: This model risk category is growth for investors with priority for growth.

Advisor primarily uses the tactical method of analysis and strategy.

Primarily Recommend One Type of Security

Advisor does not primarily recommend one type of security to clients. Instead, we recommend any product that may be suitable for each client relative to that client’s specific circumstances and needs.

Risk of Loss

Past performance is not indicative of future results. Therefore, you should never assume that future performance of any specific investment or investment strategy will be profitable. Investing in securities (including stocks, mutual funds, and bonds, etc.) involves risk of loss. Further, depending on the different

types of investments there may be varying degrees of risk. You should be prepared to bear investment loss including loss of original principal.

Because of the inherent risk of loss associated with investing, Advisor is unable to represent, guarantee, or even imply that our services and 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. There are certain additional risks associated with investing in securities through our investment management program, as described below:

- 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.
- 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.
- Fixed Income Risk. When investing in bonds, there is the risk that the issuer will default on the bond and be unable to make payments. Further, individuals who depend on set amounts of periodically paid income face the risk that inflation will erode their spending power. Fixed-income investors receive set, regular payments that face the same inflation risk.
- 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.
- ETF and Mutual Fund Risk – When investing in an ETF or mutual fund, you will bear additional expenses based on your pro rata share of the ETF's or mutual fund's operating expenses, including the 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. You will also incur brokerage costs when purchasing ETFs.
- Management Risk – Your investment with our firm varies with the success and failure of our investment strategies, research, analysis and determination of portfolio securities. If our investment strategies do not produce the expected returns, the value of the investment will decrease.
- Investment Models Risk – Assets held in a model portfolio based on your risk tolerance (i.e., conservative, moderate, growth, etc.) are still subject to the various risks previously discussed. For example, a defensive investor may have a large allocation towards cash and fixed income with only a small (if any) allocation towards equities and property. If market conditions result in low or falling rates of interest, an investor may not be able to participate in any parallel rise in equity prices.
- Real Estate Investments - Investments will be subject to the risks generally incident to the ownership of real property and loans, including: uncertainty of cash flow to meet fixed and other obligations; uncertainty in capital markets as it relates to both procurements of equity and debt; adverse changes in local market conditions, population trends,

neighborhood values, community conditions, general economic conditions, local employment conditions, interest rates, and real estate tax rates; changes in fiscal policies; changes in applicable laws and regulations (including tax laws); uninsured losses; delays in foreclosure; borrower bankruptcy and related legal expenses; and other risks that are beyond the control of the General Partner. There can be no assurance of profitable operations because the cost of owning the properties may exceed the income produced, particularly since certain expenses related to real estate and its ownership, such as property taxes, utility costs, maintenance costs and insurance, tend to increase over time and are largely beyond the control of the owner. Moreover, although insurance is expected to be obtained to cover most casualty losses and general liability arising from the properties, no insurance will be available to cover cash deficits from ongoing operations.

Item 9 – Disciplinary Information

There are no legal or disciplinary events that are material to a client's or prospective client's evaluation of our business or integrity.

Item 10 – Other Financial Industry Activities and Affiliations

Advisor is not and does not have a related person that is a(n):

- Broker/dealer, municipal securities dealer, government securities dealer or broker
- Investment company or other pooled investment vehicle (including a mutual fund, closed-end investment company, unit investment trust, private investment company or "hedge fund" and offshore fund)
- Another investment adviser or financial planner
- A futures commission merchant
- Commodity pool operator or commodity trading advisor
- Banking or thrift institution
- Accountant or accounting firm
- Lawyer or law firm
- Real estate broker or dealer

Advisor is an independent registered investment registered adviser and only provides investment advisory services. We are not engaged in any other business activities and offer no other services except those described in this Disclosure Brochure. However, while Advisor does not sell products or services other than investment advice, our representatives sell other products or provide services outside of their role as investment adviser representatives with us.

Sponsor or Syndicator of Privately Offered Limited Partnerships and Limited Liability Companies

Anton Bayer is actively involved in activities related to forming and soliciting interests in private securities offerings. For example, some private offerings may be established to invest directly in one or more companies (i.e. private equity) and some of which are organized primarily for the purpose of investing in one or more real estate investments. These are separate businesses for separate compensation.

Currently, Anton Bayer is affiliated with separate companies formed for real estate investment and construction purposes. Mr. Bayer is a 50% Member and investor in Harris Bay, LLC, an entity formed for real estate investment purposes and real estate development. Mr. Bayer works part-time for Harris Bay, LLC serving as Manager. Mr. Bayer is 40% Member and investor of Creo Arc, LLC a San Antonio based architectural company. Mr. Bayer works part time for Creo Arc, LLC serving as its Manager. Mr. Bayer is 25% Member and investor in Divergent Capital, Inc an entity formed to provide commercial lending services. Mr. Bayer works part time for Divergent Capital, Inc serving as a Director and Officers.

Mr. Bayer is also part-time consulting with Cairos International Group, LLC, a private company formed for entertainment investment purposes. Although he is not a paid employee or paid consultant, Mr. Bayer is an investor and actively involved in the activities performed by Cairos International Group only as it pertains to the RRFH, LLC partnership and in no other capacity for any other activities by Cairos International Group.

Members or partners (i.e. investors) in private offerings funded and/or organized by Anton Bayer are former or current clients of Advisor. Advisor will not charge advisory fees to clients on any of the funds under advisement or management by the firm once the funds are used to purchase interests in private offerings organized or sponsored by Anton Bayer. Because Advisor charges its fees quarterly or monthly in advance, any fees on funds that are invested in private offerings organized or sponsored by Antony Bayer during a quarter will be refunded to the client on a pro rata basis.

Clients are never obligated or required to invest in private offerings organized or sponsored by Advisor personnel but are solicited based on their goals and risk tolerance. Only accredited investors are sought to invest in these private offerings. Accredited investors must have a net worth (excluding the equity of their home) of at least \$1,000,000 and where the investment in the private offering is less than 10% of the investor's assets.

We have a conflict of interest when recommending private offerings sponsored or organized by Anton Bayer over other alternatives. We recommend such offerings based on the fact that Anton Bayer have formed or helped formed such investment opportunities and not based solely on the client's interest of receiving the most favorable investment recommendations. We control for this conflict by not charging a separate fee for managing our individual client assets invested in private offerings.

An investment in these interests is highly speculative. Clients are advised not to make an investment in these interests unless they are prepared for the possibility of loss of the entire investment and able to afford such total loss.

Please refer to Item 4 and Item 8 for risks associated with investing in private securities and real estate. Please refer to Item 11 for additional disclosures related to the private securities organized and sponsored by Advisor personnel.

Nyle Bayer affiliation with Helios Quantitative Research

Nyle B. Bayer is the Director, Disruptive Content with Helios Quantitative Research, LLC, an algorithm based consulting firm formed to provide investment research, practice integration and training to other financial and investment advisors. In this role, Nyle creates written content about investing that is distributed by Helios Quantitative Research, LLC to its financial and investment advisor clients.

Helios Quantitative Research, LLC is not a registered investment adviser firm, but is owned by an investment adviser representative registered with Clear Creek Financial Management, LLC.

Up Capital Management is not affiliated with Helios Quantitative Research, LLC or Clear Creek Financial Management, LLC.

Nyle's affiliation with Helios Quantitative Research, LLC is considered completely separate and distinct from his role with Up Capital Management. Clients of Up Capital Management are not solicited to be clients of Helios Quantitative Research, LLC. We have established strict internal controls and procedures designed to prohibit the sharing of client information from Up Capital Management to Helios Quantitative Research.

Nyle Bayer is employed with Up Capital Management as our co-Portfolio Manager and as an investment advisor representative, though he no longer has any advisory clients and works solely with Anton Bayer in assisting with the investment allocation of the model portfolios. His primary employment is with Helios Quantitative Research and he is considered to work for Up Capital Management on a contract basis.

Item 11 – Code of Ethics, Participation in Client Transactions and Personal Trading

Code of Ethics Summary

An investment adviser is considered a fiduciary and has a fiduciary duty to all clients. Advisor has established a Code of Ethics to comply with the requirements of the securities laws and regulations that reflects its fiduciary obligations and those of its supervised persons. The Code of Ethics also requires compliance with federal securities laws. Advisor's Code of Ethics covers all individuals that are classified as "supervised persons". All employees, officers, directors and investment adviser representatives are classified as supervised persons. Advisor requires its supervised persons to consistently act in your best interest in all advisory activities. Advisor imposes certain requirements on its affiliates and supervised persons to ensure that they meet the firm's fiduciary responsibilities to you. The standard of conduct required is higher than ordinarily required and encountered in commercial business.

This section is intended to provide a summary description of the Advisor's Code of Ethics. If you wish to review the Code of Ethics in its entirety, you should send request a copy from us and we will promptly provide a copy to you.

Affiliate and Employee Personal Securities Transactions Disclosure

Advisor or its associated persons can buy or sell for their personal accounts investment products identical to those recommended to clients. This creates a conflict of interest. It is Advisor's express policy that all persons associated in any manner with our firm must place clients' interests ahead of their own when implementing personal investments. Advisor and its associated persons will not buy or sell securities for their personal account(s) where their decision is derived, in whole or in part, by information obtained as a result of employment or association with our firm unless the information is also available to the investing public upon reasonable inquiry.

We are now and will continue to be in compliance with applicable state and federal rules and regulations. To prevent conflicts of interest, we have developed written supervisory procedures that include personal investment and trading policies for our representatives, employees and their immediate family members (collectively, associated persons):

- Associated persons cannot prefer their own interests to that of the client.
- Associated persons cannot purchase or sell any security for their personal accounts prior to implementing transactions for client accounts.
- Associated persons cannot buy or sell securities for their personal accounts when those decisions are based on information obtained as a result of their employment, unless that information is also available to the investing public upon reasonable inquiry.
- Associated persons are prohibited from purchasing or selling securities of companies in which any client is deemed an "insider".
- Associated persons are discouraged from conducting frequent personal trading.
- Associated persons are generally prohibited from serving as board members of publicly traded companies unless an exception has been granted by Advisor's Chief Compliance Officer.

Any associated person not observing our policies is subject to sanctions up to and including termination.

Sponsor or Syndicator of Privately Offered Limited Partnerships and Limited Liability Companies

As disclosed in Item 10, Anton Bayer is actively involved in activities related to forming and soliciting interests in private securities offerings. For example, some private offerings may be established to invest directly in one or more companies (i.e. private equity) and some of which are organized primarily for the purpose of investing in one or more real estate investments. These are separate businesses for separate compensation. We have a conflict of interest when recommending private offerings sponsored or organized by Anton Bayer over other alternatives. We will recommend such

offerings based on the fact that Anton Bayer has formed or helped formed such investment opportunities and not based solely on the client's interest of receiving the most favorable investment recommendations. We control for this conflict by not charging a separate fee for managing our individual client assets invested in private offerings.

Item 12 – Brokerage Practices

Clients are under no obligation to act on advisor's financial planning or other "consultative" recommendations. If the firm assists in implementing of any recommendations, we are responsible for ensuring that the client receives the best execution possible. Best execution does not necessarily mean that clients receive the lowest possible commission costs, but that the qualitative execution is best. In other words, all conditions considered, the transaction execution is in your best interest. When considering best execution, we look at a number of factors besides prices and rates including, but not limited to:

- Execution capabilities (e.g., market expertise, ease/reliability/timeliness of execution, responsiveness, integration with our existing systems, ease of monitoring investments)
- Products and services offered (e.g., investment programs, back office services, technology, regulatory compliance assistance, research and analytic services)
- Financial strength, stability and responsibility
- Reputation and integrity
- Ability to maintain confidentiality

We exercise reasonable due diligence to make certain that best execution is obtained for all clients when implementing any transaction by considering the back office services, technology and pricing of services offered.

Please also see **Item 5 - Fees and Compensation**, for additional information about advisory services and implementing recommendations.

Directed Brokerage

Clients should understand that not all investment advisors require the use of a particular broker/dealer or custodian. Some investment advisors allow their clients to select whichever broker/dealer the client decides. By requiring clients to use a particular broker/dealer, Advisor may not achieve the most favorable execution of client transactions and the practice requiring the use of specific broker/dealers can cost clients more money than if the client used a different broker/dealer or custodian. However, for compliance and operational efficiencies, Advisor has decided to require our clients to use broker/dealers and other qualified custodians determined by us.

LPL Financial Corporation

We utilize LPL Financial Corporation for our Up Management Portfolios Program and other programs. LPL Financial Corporation does not charge separately for custody but is compensated by account holders through transaction-related fees for securities trades that are executed or settled in the account and other customary brokerage fees and expenses. LPL Financial Corporation provides us with access to their institutional trading and custody services, which are typically not available to retail investors. These services generally are available to independent investment advisors for fees paid by our firm. LPL Financial Corporation provides us with back-office operational, technology and other administrative support.

We recommend broker/dealers and custodians that we have determined will provide services in a manner and at a cost that will allow us to meet our duty of best execution.

While there is no direct linkage between the investment advice given to you and our recommendation of LPL Financial Corporation, economic benefits are provided to us by LPL Financial Corporation. These benefits may include:

- Negotiated costs for transaction implementation
- A dedicated trade desk that services LPL Financial Corporation participants exclusively
- A dedicated service group and an account services manager dedicated to our accounts
- Access to a real-time order matching system
- Electronic download of trades, balances and position information
- Access, for a fee, to an electronic interface with the account custodian's software
- Duplicate and batched client statements, confirmations and year-end reports

Charles Schwab

Up Management Program accounts must be established with Charles Schwab & Company, Inc. ("Charles Schwab") through their Institutional Platform. Charles Schwab is a member of FINRA/SIPC and an independent (and unaffiliated) SEC-registered broker-dealer and is recommended by Advisor to maintain custody of clients' assets and to effect trades for their accounts. Advisor is independently owned and operated and not affiliated with Charles Schwab.

Charles Schwab does not charge separately for custody but is compensated by account holders through commissions or other transaction-related fees for securities trades that are executed or settled in the account.

Charles Schwab provides us with access to their institutional trading and custody services, which are typically not available to retail investors. These services generally are available to independent investment advisors at no charge to them so long as the independent investment advisors maintain a minimum amount of assets with the custodian.

There is no direct link between Advisor's participation in the program and the investment advice it gives to its clients, although we receive economic benefits that are typically not available to Charles Schwab retail investors through our participation in the program. These benefits include the following products and services (provided without cost or at a discount): receipt of duplicate client statements and confirmations; research related products and tools; consulting services; access to a trading desk serving our participants; access to block trading (which provides the ability to aggregate securities transactions for execution and then allocate the appropriate shares to client accounts); the ability to have advisory fees deducted directly from client accounts; access to an electronic communications network for Client order entry and account information; access to mutual funds with no transaction fees and to certain institutional money managers; and discounts on compliance, marketing, research, technology, and practice management products or services provided to Advisor by third-party vendors. Charles Schwab can also have paid for business consulting and professional services received by our related persons. Some of the products and services made available by Charles Schwab through the program can benefit Advisor but will not benefit your accounts. These products or services assist Advisor in managing and administering client accounts, including accounts not maintained at Charles Schwab. Other services made available by Charles Schwab are intended to help Advisor manage and further develop its business enterprise. The benefits received by Advisor or our personnel through participation in the program do not depend on the amount of brokerage transactions directed to Charles Schwab. As part of its fiduciary duties to clients, we endeavor at all times to put clients' interests first. You should be aware, however, that the receipt of economic benefits by Advisor or our related persons in and of itself creates a conflict of interest and will influence Advisor's choice of Charles Schwab for custody and brokerage services.

An investment adviser receives soft dollar benefits from a broker-dealer when the investment adviser receives research or other products and services in exchange for client securities transactions or maintaining an account balance with the broker-dealer.

Advisor also receives from Charles Schwab, certain additional economic benefits (“Additional Services”) that may or may not be offered to any other independent investment Advisors participating in the program. Specifically, the Additional Services include the use of Orion Advisory’s Portfolio Management Services. Charles Schwab provides the Additional Services to Up Capital in its sole discretion and at its own expense, and Up Capital does not pay any fees to Charles Schwab for the Additional Services. Up Capital and Charles Schwab have entered into a separate agreement (“Additional Services Addendum”) to govern the terms of the provision of the Additional Services.

Advisor’s receipt of Additional Services raises conflicts of interest. In providing Additional Services to Advisor, Charles Schwab most likely considers the amount and profitability to Charles Schwab of the assets in, and trades placed for, Up Capital’s client accounts maintained with Charles Schwab. Charles Schwab has the right to terminate the Additional Services Addendum with Advisor, in its sole discretion, provided certain conditions are met. Consequently, in order to continue to obtain the Additional Services from Charles Schwab, Up Capital may have an incentive to recommend to its Clients that the assets under management by Up Capital be held in custody with Charles Schwab and to place transactions for client accounts with Charles Schwab. Up Capital’s receipt of Additional Services does not diminish its duty to act in the best interests of its clients, including to seek best execution of trades for client accounts.

Handling Trade Errors

Advisor has implemented procedures designed to prevent trade errors; however, trade errors in client accounts cannot always be avoided. Consistent with its fiduciary duty, it is Advisor’s policy to correct trade errors in a manner that is in the best interest of the client. In cases where the client causes the trade error, the client is responsible for any loss resulting from the correction. Depending on the specific circumstances of the trade error, the client will not be able to receive any gains generated as a result of the error correction. In all situations where the client does not cause the trade error, the client is made whole and any loss resulting from the trade error is absorbed by Advisor if the error is caused by Advisor. If the error is caused by the broker/dealer, the broker/dealer is responsible for handling the trade error. Any investment gain resulting from a correcting trade is retained by LPL. Advisor never benefits or profits from trade errors.

Block Trading Policy

Advisor can elect to purchase or sell the same securities for several clients at approximately the same time. This process is referred to as aggregating orders, batch trading or block trading and is used by us when we believe such action will prove advantageous to clients. If and when we aggregate client orders, allocating securities among client accounts is done on a fair and equitable basis. Typically, the process of aggregating client orders is done in order to achieve better execution, to negotiate more favorable commission rates or to allocate orders among clients on a more equitable basis in order to avoid differences in prices and transaction fees or other transaction costs that might be obtained when orders are placed independently.

We use the average price allocation method for transaction allocation. Under this procedure Advisor calculates the average price and transaction charges for each transaction included in a block order and assigns the average price and transaction charge to each allocated transaction executed for the client’s account.

If and when we determine to aggregate client orders for the purchase or sale of securities, including securities in which Advisor or our associated persons invest, we do so in accordance with the parameters set forth in the SEC No-Action Letter, *SMC Capital, Inc.* Neither we nor our associated persons receive any additional compensation as a result of block trades.

Agency Cross Transactions

Our associated persons are prohibited from engaging in agency cross transactions, meaning we cannot act as brokers for both the sale and purchase of a single security between two different clients and cannot receive compensation in the form of an agency cross commission or principal mark-up for the trades.

Item 13 – Review of Accounts

Account Reviews and Reviewers

Managed accounts are reviewed at least quarterly by the representative responsible for the account. When conducting account reviews, the representatives check each client's investment strategy and objectives to see if any changes have occurred or should be made. The calendar is the main triggering factor for reviews, but they can also be conducted at your request.

Financial planning services terminate upon the presentation of the written plan and consulting services terminate upon completion of the consultations. These services do not include monitoring the investments of your accounts and so there is no ongoing review of your account under such services.

Statements and Reports

Managed accounts receive transaction confirmation notices and regular quarterly account statements directly from the qualified custodian. Additionally, Advisor can provide position reports to you upon request.

Financial planning clients do not receive any report other than the written plan originally contracted for and provided by Advisor.

Clients are encouraged to always compare any reports or statements provided by us, a sub-adviser or third-party money manager against the account statements delivered from the qualified custodian. If clients have questions about their account statement, they should contact us and/or the qualified custodian preparing the statement.

Item 14 – Client Referrals and Other Compensation

Referral Fees

Our firm pays referral fees (non-commission-based) to independent solicitors for the referral of their clients to our firm in accordance with Rule 206(4)-3 of the Investment Advisers Act of 1940. Such referral fee does not represent a share of our investment advisory fee charged to our clients as we pay a flat fee in order to be referred to clients as well as receive prospective client contact information. This arrangement will not result in higher costs to the referred client. In this regard, our firm maintains Solicitors Agreements in compliance with Rule 206(4)-3 of the Investment Advisers Act of 1940 and applicable state and federal laws. All clients referred by solicitors to our firm will be given full written disclosure describing the terms and fee arrangements between our firm and solicitor(s).

Third-Party Solicitor Arrangements

Advisor will enter into arrangements with unaffiliated individuals or entities including telemarketing firms ("Solicitors") that will refer clients to Advisor for investment advisory services. In return, Advisor will agree to pay the Solicitor for referral activities.

Solicitor's associates are **not** employees of Advisor. Solicitor and Advisor are independent entities under separate ownership and control. The Solicitor is **not** registered or licensed to provide investment advice about securities or serve as an investment adviser or investment adviser representative.

The Solicitor is **not** authorized to provide investment advice or manage investments on behalf of or through Advisor. The Solicitor does **not** have authority to accept an investment advisory agreement on behalf of Advisor or to collect or receive payment in its own name for any investment advisory services of Advisor. The Solicitor's role on behalf of Advisor is limited strictly to introducing or referring prospective clients to Advisor.

Compensation paid by Advisor to the Solicitor will be either an agreed upon percentage of the investment management fee of Advisor or paid to the Solicitor in the form of a flat or hourly fee as specified in the solicitor disclosure statement provided to the client.

The investment advisory fee charged to a client will not increase as a result of compensation being shared by Advisor with Solicitor.

This referral program of Advisor is in compliance with federal and state regulations (as applicable). The solicitation/referral fee is paid pursuant to a written agreement retained by both Advisor and the Solicitor. The Solicitor will be required to provide the client with a copy of disclosure documents, including Advisor's Form ADV Part 2A disclosure brochure, Part 2B brochure supplement(s), and a Solicitor disclosure document at the time of the referral.

Other Compensation

The only compensation received from advisory services is the fees charged for providing investment advisory services as described in **Item 5 – Fees and Compensation**. Advisor does not receive any other form of compensation in connection with providing investment advice.

Please also see **Item 10 - Other Financial Industry Activities and Affiliations** and **Item 12 - Brokerage Practices** for additional discussion concerning other compensation.

From time to time, Advisor may receive expense reimbursement for travel and/or marketing expenses from distributors of investment products. Travel expense reimbursements are typically a result of attendance at due diligence and/or investment training events hosted by product sponsors. Marketing expense reimbursements are typically the result of informal expense sharing arrangements in which product sponsors may underwrite costs incurred for marketing such as client appreciation events, advertising, publishing, and seminar expenses. Although receipt of these travel and marketing expense reimbursements is not predicated upon specific sales quotas, the product sponsor reimbursements are typically made by those sponsors for which sales have been made or for which it is anticipated sales will be made. This creates a conflict of interest in that there is an incentive to recommend certain products and investments based on the receipt of this compensation instead of what is in the best interest of our clients. We attempt to control for this conflict by always basing investment decisions on the individual needs of our clients.

Item 15 – Custody

Custody, as it applies to investment advisors, has been defined by regulators as having access or control over client funds and/or securities. In other words, custody is not limited to physically holding client funds and securities. If an investment adviser has the ability to access or control client funds or securities, the investment adviser is deemed to have custody and must ensure proper procedures are implemented. Advisor is deemed to have custody of client funds and securities whenever we are given the authority to have fees deducted directly from client accounts. However, this is the only form of custody Advisor ever maintains. It should be noted that authorization to trade in client accounts is not deemed by regulators to be custody. For accounts custodied at LPL, only LPL is authorized to deduct advisory fees from client accounts and pay them to Advisor.

For accounts in which Advisor is deemed to have custody, we have established procedures to ensure all client funds and securities are held at a qualified custodian in a separate account for each client under that client's name. Clients or an independent representative of the client will direct, in writing, the establishment of all accounts and therefore are aware of the qualified custodian's name, address and the manner in which the funds or securities are maintained. Finally, account statements are delivered directly from the qualified custodian to each client, or the client's independent representative, at least quarterly. Clients should carefully review those statements and are urged to compare the statements against reports received from Advisor. When clients have questions about their account statements, they should contact Advisor or the qualified custodian preparing the statement.

Item 16 – Investment Discretion

When providing asset management services, Advisor maintains trading authorization over your Account and can provide management services on a discretionary or non-discretionary basis. When discretionary authority is granted, we have the authority to determine the type of securities and the amount of securities that can be bought or sold for your portfolio without obtaining your consent for each transaction. However, it is our policy to consult with you prior to making significant changes in the account even when discretionary trading authority is granted.

If you decide to grant trading authorization on a non-discretionary basis, we are required to contact you prior to implementing changes in your account. Therefore, you are contacted and required to accept or reject our investment recommendations including:

- The security being recommended
- The number of shares or units
- Whether to buy or sell

Once the above factors are agreed upon, we are 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 and if we are not able to reach you or you are slow to respond to our request, it can have an adverse impact on the timing of trade implementations and we may not achieve the optimal trading price.

You have the ability to place reasonable restrictions on the types of investments purchased in your account. You may also place reasonable limitations on the discretionary power granted to Advisor so long as the limitations are specifically set forth or included as an attachment to the client agreement.

For sub-account management services, when discretionary authority has been granted in writing by you, Advisor exercises limited discretionary authority to exchange sub-accounts available in the variable annuity and/or variable life contract without contacting you in advance to obtain your consent for each exchange. Under our sub-account management services, you have the ability to place reasonable restrictions on the available sub-accounts utilized by Advisor. You can also place reasonable limitations on the discretionary power granted to Advisor so long as the limitations are specifically set forth or included as an attachment to the client agreement.

Item 17 – Voting Client Securities

Proxy Voting

Advisor does not vote proxies on behalf of clients, nor do we provide recommendations or clarifications regarding proxy issues. It is your responsibility to vote all proxies for securities held in account. You should read through the information provided with the proxy-voting documents and make a determination

based on the information provided. You receive proxies directly from the qualified custodian or transfer agent; we do not provide you with the proxies.

Class Action Lawsuits

You retain the right under applicable securities laws to initiate individually a lawsuit or join a class-action lawsuit against the issuer of a security that was held, purchased or sold by or for you. Advisor does not initiate such a legal proceeding on behalf of clients and does not provide legal advice to clients regarding potential causes of action against such a security issuer and whether the client should join a class-action lawsuit. We recommend that you seek legal counsel prior to making a decision regarding whether to participate in such a class-action lawsuit. Upon your specific instruction, we may provide assistance to you regarding an investment history related to the security underlying the individual, or class-action, lawsuit and may provide assistance with the completion of this portion of certain class-action paperwork. At no time should such assistance be deemed as a substitute for consulting with legal counsel.

Item 18 – Financial Information

Advisor does not require or solicit prepayment of more than \$500 in fees per client, six months or more in advance. Therefore, we are not required to include a balance sheet for the 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 clients. Finally, Advisor has not been the subject of a bankruptcy petition at any time.

Customer Privacy Policy Notice

Regulation S-P, Privacy of Consumer Financial Information, requires financial institutions, including Advisor, to provide notice to current clients and prospective clients about their policies and practices concerning the collection and use of customer, non-public information. This privacy policy notice is given to all of our prospective clients upon entering into a contract with us and annually thereafter.

Privacy Disclosure Statement. Our primary goal is to protect the privacy of its clients. We do not sell the personal information of clients to anyone.

To conduct regular business, we may collect non-public personal information from clients. This information is provided to us on applications and other forms provided by clients to us as well as transactions with the firm, its affiliates or others.

We may enter into contracts with outside third parties so that we can assist clients in servicing their accounts. In order to do this, we disclose personal information to companies that help us process transactions for client accounts (for example, executing client trades through a broker/dealer). However, we do not share or disclose any non-public customer information except as allowed or required by law. In addition to sharing information in order to provide financial services to clients, we may be required to disclose personal information to cooperate with regulators or law enforcement authorities, to resolve customer disputes or for risk control.

Information Safeguarding. We have implemented strict policies and procedures aimed at protecting the sensitive nature of client information. We restrict access to client information to only those members of our firm that must provide products and services to clients in order to service client accounts. We have implemented physical, electronic, and procedural safeguards aimed at meeting our duty to protect non-public client information.

If clients have any questions concerning our customer privacy policy or concerns about their personal information please feel free to contact Anton Bayer at the number located on the cover page of this Disclosure Brochure.

Business Continuity Plan

Advisor has a business continuity and contingency plan in place designed to respond to significant business disruptions. These disruptions can be both internal and external. Internal disruptions will impact our ability to communicate and do business, such as a fire in the office building. External disruptions will prevent the operation of the securities markets or the operations of a number of firms, such as earthquakes, wildfires, hurricanes, terrorist attack or other wide-scale, regional disruptions.

Our continuity and contingency plan has been developed to safeguard employees' lives and firm property, to allow a method of making financial and operational assessments, to quickly recover and resume business operations, to protect books and records, and to allow clients to continue transacting business.

The plan includes the following:

- Alternate locations to conduct business;
- Hard and electronic back-ups of records;
- Alternative means of communications with employees, clients, critical business constituents and regulators; and
- Details on the firms' employee succession plan

Our business continuity and contingency plan is reviewed and updated on a regular basis to ensure that the policies in place are sufficient and operational.