

Mark Capital Management

DISCLOSURE STATEMENT January 2011

THIS INFORMATION REGARDING MARK CAPITAL MANAGEMENT, INC. HAS NOT BEEN PASSED UPON OR APPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR THE CALIFORNIA DEPARTMENT OF CORPORATIONS. NEITHER OF THESE ENTITIES HAS PASSED UPON OR APPROVED THE QUALIFICATIONS OR BUSINESS PRACTICES OF THE COMPANY, ITS EMPLOYEES, OR ASSOCIATED PERSONS. WE DELIVER THIS DISCLOSURE STATEMENT ANNUALLY OR MORE OFTEN IF NECESSARY TO EACH OF OUR CLIENTS.

Mark Capital Management, Inc. – MCM—is a Registered Investment Advisor with the Securities and Exchange Commission (File # 801-42152) and has made a notice filing with the California Department of Corporations (File # 927-0288). This Disclosure Statement contains information relating to MCM, its employees and associates, and the nature of its business activities.

This Disclosure Statement is delivered in accordance with Part 249 of Chapter II of Title 17 of the Code of Federal Regulations under the Securities and Exchange Act of 1934 as amended and the Investment Advisors Act of 1940, in particular, Section 275.204-3 of these regulations.

If you are an existing client, this document has been delivered to meet requirements of annual delivery under the regulations.

I. The Advisory Company, its officers and sales consultants:

- A. **MCM is a California corporation** wholly owned by Donald W. Sprague and Marshall Patrick (Pat) Smith. MCM is currently registered as an investment advisor with the Securities and Exchange Commission and has made a notice filing with the State of California.
- B. **Donald W. Sprague** was born in 1958 and graduated with a degree in Economics from the University of California at Berkeley in 1981. He started in the financial services industry in 1982, and worked with a number of insurance and securities firms, including a tenure at Charles Schwab & Co. in the 1990s. In 1998, he left Schwab to form his own investment advisory firm, and was joined by Pat Smith a year later, forming the company that would become Smith & Sprague, Registered Investment Advisors.
- C. **Pat Smith** was born in 1952 and graduated with a degree in German Literature from Baylor University in 1975. He has worked continuously in the financial services industry since 1979, and was employed with Charles Schwab & Co. from 1991 to 1999, where he was Fresno Branch Manager. He left Schwab in 1999, and joined Don Sprague to form the company that became Smith & Sprague. Smith and Sprague purchased Mark Capital Management in 2006, and the newly merged business continues to operate under that name.

II. MCM's Advisory Services:

A. **Mark Capital Management, Inc.** ("MCM") provides ongoing financial advisory services to clients under an Asset Management Contract. Under this contract, MCM's duties are to conduct a thorough analysis of the client's financial objectives with respect to the client's present financial position, investments, estate plans and risk tolerance. MCM offers guidance intended to address the achievement of those objectives, with an emphasis on capital preservation and growth. Such guidance is communicated to the client via telephone conversations or face-to-face meetings. No written plans are provided. These services are advisory in nature. Execution of financial transactions in registered stocks, bonds, mutual funds, annuities and other financial instruments will be effected by MCM and its associates pursuant to the client's goals and objectives, as communicated verbally to MCM.

B. **FEES:**

1. MCM's fees for these services are charged per a formula published in the Asset Management Contract and in this Disclosure Statement (see below). Fees are billed quarterly in arrears. Payment of fees will be assessed directly from the client's account at the custodian firm, per written agreement, unless client makes alternative arrangements.

Fees will be calculated as follows:

Client agrees to pay MCM fees for managing Client account(s) at an annual rate of:

1% for the first \$500,000.00 of assets under management, and

0.8% for assets exceeding \$500,000.00 but less than \$2,000,000.00, and

0.5% for assets exceeding \$2,000,000.00.

2. MCM management services are also available on an hourly basis for a fee of \$150.00 per hour.

3. MCM will not require the prepayment of more than \$500 in fees more than six months in advance. Because of this policy, MCM is not required to include its most recent balance sheet with this disclosure statement.

4. There is no set-up fee charged for doing business with MCM. If extensive research or document preparation is required outside of direct account-related issues, MCM may require an additional fee based on its hourly consultation rate, per agreement in advance with the client.

5. MCM does not require a minimum account size.

6. Clients using this service may also pay management fees indirectly to the mutual fund managers for the management of any mutual funds held in their portfolios.

7. Commissions or transaction fees incurred by trading mutual funds, stocks, bonds and other instruments via a broker-dealer, such as Charles Schwab & Co., will be paid by the client. Such fees are solely the revenue of the charging broker-dealer, and none of those revenues are paid or "trailed" to MCM. MCM is a fee-based advisor, and does not charge or receive transaction fees or commissions for any trade executed in a client account.

8. Our services may be terminated by the client or MCM upon written notice to the other party. Clients will be charged management fees, as per the contract, up to the termination date, including any extra expenses incurred on the client's behalf.

9. The advisory agreements/contracts between MCM and the client are non-transferable by either party.

C. CUSTODY OF CLIENT ASSETS:

At no time will MCM take custody of client assets, or co-mingle MCM assets with client assets. Client's securities may be custodied at any authorized bank, trust company or broker/dealer of the client's choice. Any custodial service fees charged by any such entity will be in addition to the fees charged by MCM. *Any custodian of client assets or accounts, e.g. Charles Schwab & Co. or First Mercantile Trust Co. or other financial companies, will be contracted to supply client with periodic statements, either monthly or quarterly. Clients are urged to compare these statements with the quarterly statements issued by Mark Capital. Any apparent discrepancies that arise between these statements should be brought to the attention of Mark Capital for explanation or resolution.*

D. MCM's EARNINGS:

Approximately 90% of MCM's advisory fees are earned from asset management services. The remaining 10% of fees are earned from offering general advisory services.

E. TYPES OF INVESTMENT INSTRUMENTS:

MCM offers advice on the following types of securities: exchange-listed and over-the-counter equity securities (stocks, stock options, unit trusts and exchange-traded funds), warrants, corporate bonds, commercial paper, certificates of deposits ("CDs"), municipal bonds, variable annuities (through broker dealers), mutual funds, U.S. government securities, and partnership interests. MCM and its associated persons are not general partners in any partnership in which clients are solicited to invest.

F. METHODS OF ANALYSIS:

MCM relies on both fundamental and technical analysis for determining suitable investment instruments and securities for client portfolios. MCM analyzes information from a variety of reputable sources that are respected and utilized industry-wide, but MCM cannot guarantee the validity of such information and Client agrees not to hold MCM liable for actions taken based on erroneous information from such sources.

G. INVESTMENT STRATEGIES:

MCM's investment strategies include investing for capital gains and asset growth, income from dividends and interest, capital preservation techniques, income and estate tax reduction, and protection of assets and income from inflationary risks, where such strategies coincide with the Client's financial objectives and risk tolerance. These strategies may include utilizing both long-term and short-term investments.

H. INVESTMENT OR BROKERAGE DISCRETION :

Considering market conditions and adherence to sound financial strategies and tactics, MCM may be granted either full discretion or limited trading authority to purchase and sell securities within the appropriate risk levels as established with the client.

I. UTILIZATION OF BROKER/DEALERS, RECORD-KEEPERS:

For asset management services, MCM may recommend the use of various broker/dealers or, in the case of 401(k) accounts, record-keeping firms, including Charles Schwab & Co., Inc., First Mercantile Trust Co., ASPIRE Financial Services, Retirement Planning Consultants, Price & Co. and Paychex, Inc. Such recommendations will be based on the ability of the broker/dealers to deliver inexpensive transaction costs, quality and timeliness of executions, and the ability of record-keepers to deliver superior administrative service support. MCM acknowledges its duty of best execution and accurate accounting for all client accounts.

III. REVIEWS AND REPORTS

- A. Managed Accounts** are continuously monitored, and trades are implemented as necessary. Accounts are also reviewed regularly for their performance keyed to individual client goals

and objectives. Account reviews are executed by licensed investment advisors or associated persons of MCM. Currently, these reviewers include Don Sprague and Pat Smith.

- B. In addition to any monthly statements provided by broker/dealers or banks, MCM will provide a quarterly report of all managed accounts. These reports will include a snapshot of assets invested and their performance as of the end of the most recent quarter (*see II.C., above*).

IV. CLIENTELE

MCM acts as advisor to individuals, businesses, estate trustees, trustees of employee benefit plans, as well as trustees and participants of company 401(k) plans.

V. OTHER BUSINESS ACTIVITIES/FINANCIAL INDUSTRY ACTIVITIES OR AFFILIATIONS

- A. **Pat Smith:** is also CEO of Brave New Genre, Inc., a venture publishing company that provides columns and articles pertaining to residential builders and local auto dealers to the Fresno Bee, and publishes books. Pat conducts this business in non-market hours.

VI. POTENTIAL CONFLICTS OF INTEREST:

A. **Front-Running and Shadowing Prohibited.**

At times principals or associated persons of MCM may invest in the same securities that are recommended to clients. While this may represent a potential conflict of interest, MCM and its associated persons observe legal and ethical restrictions, and are prohibited from front-running or shadowing client trades. Front-running or shadowing is defined as any attempt by an associated person or MCM to purchase or sell a security of his/her/their own account or related family account within 24 hours prior to or within 24 hours after a similar recommendation has been made to clients, with the intent of using the client's trades to manipulate the market in favor of the associated person's trade(s). The firm's policy is that clients' trades must come before personal trades by owners, associated persons and staff, both on purchases and sales. Further, in cases of bulk purchases and sales, MCM and its associated persons are prohibited from "cherry-picking" trade executions to obtain prices more favorable for their own accounts than those allocated to client accounts. In the execution of bulk orders, any case where MCM and its associated persons can be shown to have received a more favorable execution than any client(s) will be solely the result of random assignment by the trading broker/dealer or custodian.

- B. **The firm has adopted a Code of Ethics** incorporating the trading policies stated above. All owners, associated persons and staff must have approval of the firm's controlling officers prior to any securities purchases or sales in their own or immediate families' accounts.

C. **Additional "SOFT MONEY" Consideration:**

MCM receives, free of charge, the following services from Charles Schwab and First Mercantile Trust: administrative assistance; newsletters that address regulatory and industry matters and the ability to access a daily electronic link to all MCM client accounts held at the respective broker/dealers. These broker/dealers also provide research on mutual funds, stocks and managed money funds that may be utilized as part of our own research process. MCM also enjoys a non-compensatory exchange of research and market analysis with The Applied Finance Group, Ltd. (AFG), a nationally respected equities research company.

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