



## **Firm Brochure**

(Part 2A of Form ADV)

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**SEPTEMBER 6, 2016**

This brochure provides information about the qualifications and business practices of First Capital Consulting, Inc. ("FCC"). If you have any questions about the contents of this brochure, please contact us at: (516) 487-8220, or by email at: [dhs@fcequities.com](mailto:dhs@fcequities.com). The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission, or by any state securities authority.

Additional information about FCC is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov)

**References herein to FCC as a "registered investment adviser" or any reference to being "registered" does not imply a certain level of skill or training.**

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**Item 2. Material Changes**

Annual Update

The Material Changes section of this brochure will be updated annually when material changes occur since the previous release of the Firm Brochure.

Material Changes since the Last Update

The disclosure in Item 5 “Fees and Compensation” has been revised to include FFC’s most recent fee schedule.

Full Brochure Available

If you would like to receive a complete copy of our Firm Brochure, please contact us by telephone at: (516) 487-8220 or by email at: [dhs@fcejuties.com](mailto:dhs@fcejuties.com).

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**Item 4. Advisory Business**

**Item 4A. Description**

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First Capital Consulting, Inc. ("FCC") is incorporated in the state of New York. FCC became registered as an Investment Adviser in 1984. FCC is wholly owned by FCE Group, Inc., which is jointly owned by David H. Schwartz, CFP and Fred Sloan, CFA with Mr. Schwartz maintaining a majority interest.

FCC is a Registered Investment Adviser under the Investment Advisers Act of 1940 and provides discretionary portfolio investment management of individuals and small businesses involving a broad range of financial instruments, including but not limited to: individual debt and equity securities, certificates of deposit, bonds, option contracts, mutual funds; investment subdivisions which comprise a variable annuity/life product; exchange traded funds ("ETFs"); and/or independent investment manager(s) and/or program(s). The terms and conditions under which the client shall engage the Independent Manager[s] shall be set forth in separate written agreements between the client and FCC as well as the client and the designated Independent Manager[s]. FCC's advisory process is based on more than thirty (30) years of investment research and implementation conducted by the firm's president, David H. Schwartz.

FCC is the investment adviser to two (2) Investment Partnerships, Excelsior Investment Fund, L.P. and Excelsior Qualified, L.P. (the "Investment Partnerships") of which the general partner is Excelsior Management, LLC ("General Partner") David H. Schwartz and Fred Sloan are the co-members of the General Partner. The General Partner has sole and complete authority to manage the Investment Partnerships' operations and activities.

In addition, Excelsior Opportunity Management LLC ("EOM") as General Partner has offered limited partnership interests in Excelsior Opportunity Fund L.P. ("EOF"). EOM is affiliated with FCC as David H. Schwartz and Fred Sloan are the co-members of the General Partner. In addition, the investment manager for EOF is Excelsior Opportunity Advisors, LLC ("EOA"), an exempt reporting adviser. For more information on EOA, please visit the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov)

**Item 4B. Types of Advisory Services**

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FCC provides portfolio management services for individuals and/or small businesses, pooled investment vehicles and charitable organizations.

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FCC has developed an investment process with three basic parameters: 1) Client investment objectives are identified, as well as the amount of client investment resources and the client's view of acceptable risk/reward assumptions, 2) An investment strategy is employed on the Client's behalf utilizing investment techniques such as dollar cost averaging, rebalancing and asset allocation models, and 3) Client assets are appropriately diversified across a wide range of investment categories. These investment categories are managed on a discretionary basis and may include: equities (stocks), warrants, index funds, corporate debt securities, commercial paper, certificates of deposit, municipal bond securities, investment company securities (variable life insurance, variable annuities, and mutual funds shares), U. S. government securities, options contracts, futures contracts, and interests in Investment Partnerships.

FCC may allocate investment management assets of its client accounts among various investments on a discretionary or non-discretionary basis, in accordance with the investment objective of the client. The terms and conditions under which the client shall engage FCC is set forth in separate written agreements between the client and FCC. FCC maintains ongoing responsibility to select or make recommendations, based upon the needs of the client, as to the specific securities or other investments the account may purchase or sell.

A portion of a client's assets may be invested in the Investment Partnerships. The General Partner, with the assistance of one or more investment advisors, will research, identify, interview, evaluate, select and monitor the individual investment managers (the "Designated Managers") selected by the General Partner. The General Partner manages the Investment Partnership's overall investment position, including on-going evaluation of the Designated Managers, and the General Partner makes periodic changes in the allocation of funds to existing and new Designated Managers as it deems appropriate.

The General Partner believes that the Investment Partnership's investment objective can be achieved with diversified asset management utilizing a number of independent Designated Managers that employ Equity, Event Driven, Global Macro, Relative Value and other investment strategies (See "Strategies Employed" below). These Designated Managers, either through a directly managed account or their own pooled investment vehicle in which the Investment Partnership is a participant, employ varying investment styles and strategies.

Accordingly, each limited partnership is disclosed on FCC's Form ADV, Part IA, Section 7.B. of Schedule D.

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The Investment Partnerships are as follows:

**The Excelsior Investment Fund L.P. and Excelsior Qualified L.P.** a Delaware limited partnership and New York limited Partnership, respectively, are investment partnerships that pool their Limited Partners' capital in order to have such funds managed by a number of Designated Managers.

The Investment Partnerships' investment objectives as described in the funds' offering memorandum are to seek above average rates of return, on a semi-annual basis in excess of one-half (0.5) of the average of the six (6) month United States Treasury Bill rates at the beginning and end of each semi-annual period plus one-half percent (0.5%), with limited exposure to market risk. However, no assurance can be given that the Investment Partnership's investment objective will be achieved and investment results may vary substantially on a monthly, quarterly, annual and/or other periodic basis.

**Investment Strategies Employed**

**Equity:** Equity strategies maintain positions both long and short in primarily equity and equity derivative securities. A wide variety of investment processes can be employed to arrive at an investment decision, including both quantitative and fundamental techniques; strategies can be broadly diversified or narrowly focused on specific sectors and can range broadly in terms of levels of net exposure, leverage employed, holding period, concentrations of market capitalizations and valuation ranges of typical portfolios. Equity managers would typically maintain at least 50% exposure to, and may in some cases be entirely invested in, equities - both long and short. Sub strategies in Equity includes, but is not limited to: Global/International, Natural Resources, Commodity, Technology, Telecom, Multi Strategy and USA only.

**Event Driven:** Designated Managers who maintain positions in companies currently or prospectively involved in corporate transactions of a wide variety including but not limited to mergers, restructurings, financial distress, tender offers, shareholder buybacks, debt exchanges, security issuance or other capital structure adjustments. Security types can range from most senior in the capital structure to most junior or subordinated, and frequently involve additional derivative securities. Event Driven exposure includes a combination of sensitivities to equity markets, credit markets and idiosyncratic, company specific developments. Investment theses are typically predicated on fundamental characteristics, with the realization of the thesis predicated on specific developments relating to the existing capital structure. Sub strategies in Event Driven includes, but not limited to: Global/International, Distressed, Credit, Special Situations and Multi Strategy.

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**Global Macro:** Designated Managers which trade a broad range of strategies in which the investment process is predicated on movements in underlying economic variables and the impact these have on equity, fixed income, currency and commodity markets. Designated Managers employ a variety of techniques, including discretionary and systematic analysis, combinations of top down and bottom up theses, quantitative and fundamental approaches and long and short term holding periods.

Although some strategies employ Relative Value techniques, Macro strategies are distinct from Relative Value strategies in that the primary investment thesis is predicated on predicted or future movements in the underlying instruments, rather than realization of a valuation discrepancy between securities. In a similar way, while both Macro manager and equity hedge managers may hold equity securities, for the overriding investment thesis is predicated on the impact movements in underlying macroeconomic variables may have on security prices, as opposed to Equity Strategies, in which the fundamental characteristics of the company are the most significant and integral to investment thesis. Sub strategies in Global Macro includes, but not limited to: Global/International, Commodities, Systematic, Discretionary and Multi Strategy.

**Relative Value:** Designated Managers who maintain positions in which the investment thesis is predicated on realization of a valuation discrepancy in the relationship between multiple securities. Designated Managers employ a variety of fundamental and quantitative techniques to establish investment theses, and security types range broadly across equity, fixed income, derivative or other security types. Fixed income strategies are typically quantitatively driven to measure the existing relationship between instruments and, in some cases, identify attractive positions in which the risk adjusted spread between these instruments represents an attractive opportunity for the Designated Manager. Relative Value positions may be involved in corporate transactions also, but as opposed to Event Driven exposures, the investment thesis is typically predicated on realization of a pricing discrepancy between related securities, as opposed to the outcome of the corporate transaction. Sub strategies in Relative Value includes, but not limited to: Fixed Income, Volatility and Multi Strategy.

**Other:** In addition to the above strategies, the General Partner may invest in Designated Managers who employ other strategies that will assist in achieving the Investment Partnerships return objective. The General Partner may also invest Partnership funds in other instruments, including but not limited to short term U.S. Government securities, mutual funds, exchange traded funds (ETFs), money market accounts and/or other short-term interest bearing instruments located at major financial institutions in the United States.

Any income earned from such investments will be reinvested by the Investment Partnership in accordance with the Investment Partnership's investment strategies.

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**Item 4C. Tailored Relationships**

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Clients may impose restrictions on investing in certain securities or types of securities. Agreements may not be assigned without client consent.

**Types of Agreements**

The following agreements define the typical client relationships.

**Financial Planning Agreement**

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A financial plan is designed to help the client with all aspects of financial planning without necessarily including ongoing investment management after the financial plan is completed. The financial plan may include, but is not limited to: a net worth statement; a cash flow statement; a review of investment accounts, including reviewing asset allocation and providing repositioning recommendations; strategic tax planning; a review of retirement accounts and plans including recommendations; a review of insurance policies and recommendations for changes, if necessary; one or more retirement scenarios; estate planning review and recommendations; and education planning with funding recommendations.

Detailed investment advice and specific recommendations are provided as part of a financial plan. Implementation of the recommendations is at the discretion of the client.

**Investment Advisory Agreement**

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Most clients choose to have FCC manage their assets in order to obtain ongoing in-depth advice and planning. All aspects of the client's financial affairs are reviewed, including those of their children. Realistic and measurable goals are set and plans to reach those goals are defined. As goals and objectives change over time, suggestions are made and implemented on an ongoing basis.

The scope of work and fee for an Investment Advisory Agreement is provided to the client in writing prior to the start of the relationship. An Investment Advisory Agreement may include one or more of the following: cash flow management; insurance review; investment management (including performance reporting); education planning; retirement planning; estate planning and tax preparation.



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Although the Investment Advisory Agreement is an ongoing agreement and constant adjustments are required, term of the agreement is up to the client.

The client or the investment manager may terminate an Agreement by written notice to the other party. For periods of less than one full quarter, fees will be billed on a pro rata basis for the portion of the quarter completed.

Assets are invested primarily in no-load or low-load mutual funds and exchange-traded funds, usually through discount brokers or fund companies. Fund companies charge each fund shareholder an investment management fee that is disclosed in the fund prospectus. Discount brokerages may charge a transaction fee for the purchase of some funds.

Stocks and bonds may be purchased or sold through a brokerage account when appropriate. The brokerage firm charges a fee for stock and bond trades. FCC does not receive any compensation, in any form, from fund companies.

Investments may include: equities (stocks), warrants, ETFs, commodities, index funds, corporate debt securities, commercial paper, certificates of deposit, municipal bond securities, investment company securities (variable life insurance, variable annuities, and mutual funds shares), U.S. government securities, options contracts, futures contracts, and interests in Investment Partnerships.

Initial public offerings (IPOs) are not available through FCC.

### **Consulting Agreement**

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In some circumstances, a Consulting Agreement is executed in lieu of an Advisory Service Agreement when it is more appropriate to work on a fixed-fee basis. The annual fee for a Consulting Agreement is negotiable.

### **Hourly Planning Engagements**

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FCC provides hourly planning services for clients who need advice on a limited scope of work. The hourly rate for limited scope engagements ranges from \$200 to \$1,000 per hour.

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**Termination of Agreement**

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A client may terminate any of the aforementioned agreements at any time by notifying FCC in writing and paying the rate for the time spent on the agreement prior to notification of termination. If the client made an advance payment, FCC will refund any unearned portion of the advance payment.

FCC may terminate any of the aforementioned agreements at any time by notifying the client in writing. If the client made an advance payment, FCC will refund any unearned portion of the advance payment.

**Item 4D. Wrap Fees**

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FCC does not participate in a wrap fee program.

**Item 4E. Assets Under Management**

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As of December 31, 2015, FCC had \$1,205,720,000 in assets under management on a discretionary basis.

**Item 5. Fees and Compensation**

**Item 5A. Description**

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FCC may provide both initial and ongoing financial planning and investment management services on a fee-only basis. In the event the client determines to engage FCC on a fee-only basis for financial planning and investment management services, FCC shall charge an initial fixed fee, which fee shall vary (typically between \$2,500 and \$5,000), followed by an annual investment management fee, which fee shall vary (between 0.50% and 1.50%) depending upon the market value of the assets under management. FCC's annual fee shall be pro-rated and paid quarterly, in arrears, based upon the market value of the assets on the last day of the previous calendar quarter.

FCC generally requires a minimum quarterly fee of \$1,250.00. However, FCC, in its sole discretion, may charge a lesser management fee and/or accept a lesser account initial minimum, based upon certain criteria (i.e., anticipated future earning capacity, anticipated future additional assets, dollar amount of assets to be managed, related accounts, account composition, negotiations with client, etc.)

Fees are negotiable.

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**Investment Advisory Fees**

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Most clients choose to have FCC manage their assets in order to obtain ongoing in-depth advice and planning. All aspects of the client's financial affairs are reviewed, including those of their children. Realistic and measurable goals are set and objectives to reach those goals are defined. As goals and objectives change over time, suggestions are made and implemented on an ongoing basis.

The scope of work and fee for an Investment Advisory Agreement is provided to the client in writing prior to the start of the relationship. An Investment Advisory Agreement includes: cash flow management; insurance review; investment management (including performance reporting); education planning; retirement planning; estate planning; and tax preparation, as well as the implementation of recommendations within each area.

The annual Investment Advisory Agreement fee is based on a percentage of the investable assets according to the following schedule:

<u>Assets Under Management</u>	<u>Annual Fee</u>
\$0 to \$250,000	150 Basis Points
\$250,001 to \$500,000	100 Basis Points
\$500,001 to \$3,000,000	75 Basis Points
\$3,000,001 and above	50 Basis Points

The minimum annual fee is \$5,000 and is negotiable. Current client relationships may exist where the fees are higher or lower than the fee schedule above. New Investment Advisory Agreement fees are calculated on a formula basis and adjusted for complexity of individual situations. The formula is based on gross income, gross assets and other financial considerations.

***The Excelsior Investment, L.P. & Excelsior Qualified, L.P. Fees***

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The Excelsior Investment, L.P. and The Excelsior Qualified, L.P. funds are subject to the following fees: The Investment Partnerships are subject to a "layering" of asset-based or performance based allocations, fees and expenses. The Investment Partnership is directly subject to its own asset-based fee (i.e., the Management Fee and/or Operations Fee) and expenses as discussed herein and is indirectly subject, through its investments with Designated Managers, to either asset-based and performance-based fees or allocations charged by the Designated Managers, as well as the ongoing expenses of those Designated Managers.

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***Management Fee***

The General Partner receives a quarter-annual management fee ("Management Fee") calculated and accrued monthly and payable in arrears, equal to three-eighths percent (0.375%) of each Limited Partner's share of the Partnership's Net Worth at the end of each quarter-annual Fiscal Period (approximately 1.5% annually). The Management Fee shall be payable within ten (10) days after the end of each quarter. A pro rata Management Fee is charged to Limited Partners on any amounts invested or withdrawn during any quarter-annual Fiscal Period.

For the avoidance of doubt, the General Partner may waive, reduce or rebate the Management Fee attributable to any Limited Partner, including, without limitation, any employee, agent or affiliate of the General Partner.

***Expenses***

The General Partner pays all expenses arising out of the performance of its duties, except that the Partnership pays up to one percent (1%) ("Expense Cap") of the Partnership's Net Worth (or a prorated amount for the first and last Fiscal Years and on amounts invested or withdrawn during any Fiscal Period) valued as of the end of its Fiscal Year for operating expenses (including an allocation of overhead and administrative expenses, not to exceed 0.25% of the Partnership's Net Worth, incurred by the General Partner and its affiliates) during such year including, without limitation, (i) all legal fees, (ii) the fees charged by public accountants for preparing and reviewing financial statements and preparation of tax returns, (iii) the fees charged by financial institutions for their services in connection with the handling and distribution of Partnership funds, (iv) the fees to engage other independent investment advisors to advise it in its research, identification, interviewing, evaluation, selection and monitoring of individual Designated Managers and Underlying Funds, and (v) all fees of any custodian or custodians incurred in connection with the holding and transferring of securities and collecting income therefrom. In addition thereto, the Partnership will pay all expenses incurred in connection with the offering of the limited partnership interests of the Partnership and with the purchase, sale and transfer of securities (including broker and insurance fees and stock transfer taxes) and fees to Designated Managers as determined by the General Partner.

To the extent that such operating expenses exceed the Expense Cap in any calendar year, the General Partner pays such excess expenses either by charging its capital account or by making a direct payment, as determined by the General Partner in its sole and absolute discretion.

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However, to the extent that such operating expenses are less than the Expense Cap in any calendar year, the General Partner may, in its discretion, waive all or a portion of the difference between the amount of the Expense Cap and actual operating expenses.

***Asset-Based and Performance-Based Fees of Designated Managers***

The asset-based fees of the Designated Managers generally are expected to range from 0% to 3%, and the performance-based allocations of the Designated Managers generally are expected to range from 10% to 30% of net income or capital appreciation. This additional "layer" of fees and expenses is added where the Investment Partnership invests in funds managed by the Designated Managers.

Such fees and expenses, in the aggregate, will exceed the fees and expenses that would typically be incurred by an investor making a direct investment in an Underlying Limited Partnership due to the fees charged by the General Partner of the Investment Partnerships and the service providers thereto.

**Item 5B. Fee Deductions**

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Clients may elect to have FCC's advisory fees deducted from their custodial account. Both FCC's Investment Management Agreement and the custodial/clearing agreement may authorize the custodian to debit the account for the amount of FCC's investment advisory fee and to directly remit that management fee to FCC in compliance with regulatory procedures. In the event that FCC bills the client directly, payment is due upon receipt of FCC's invoice. FCC shall deduct fees and/or bill clients quarterly in arrears, based upon the market value of the assets on the last business day of the previous quarter.

FCC, in its sole discretion, may waive its minimum fee and/or charge a lesser investment advisory fee based upon certain criteria (e.g., historical relationship, type of assets, anticipated future earning capacity, anticipated future additional assets, dollar amounts of assets to be managed, related accounts, account composition, negotiations with clients, etc.).

FCC reserves the right to stop work on any account that is more than 30 days overdue. In addition, FCC reserves the right to terminate any financial planning engagement where a client has willfully concealed or has refused to provide pertinent information about financial situations when necessary and appropriate, in FCC's judgment, to providing proper financial advice. Any unused portion of fees that may have been collected in advance will be refunded within 30 days.

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**Item 5C. Other Fees**

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To the extent applicable, custodians and/or broker-dealers sometimes charge transaction fees and/or commissions for effecting certain mutual fund securities transactions. In addition to FCC's investment management fee, brokerage commissions and/or transaction fees, the client will also incur, relative to all mutual fund purchases, charges imposed at the mutual fund level (e.g. advisory fees and other fund expenses). Factors which FCC considers in recommending a particular broker-dealer/custodian to clients include financial strength, reputation, execution, pricing, reporting, research, and service. The brokerage commissions, transaction fees and/or custodial fees charged are exclusive of, and in addition to, FCC's investment management fee. FCC will not directly receive any of the brokerage commissions and/or transaction fees charged to the client. Certain client's may have a portion of their assets managed by independent investment manager[s] and/or investment programs. The terms and conditions under which the client shall engage the Independent Manager[s] shall be set forth in separate written agreements between the client and FCC as well as the client and the designated Independent Manager[s]. These fees generally range from .20% to 1.00% and may or may not include transaction costs.

**Item 5D. Other Fee Arrangements**

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Financial Planning Agreement: The fee for a financial plan is predicated upon the facts known at the start of the engagement. The minimum fee is \$2,500 and is negotiable. Since financial planning is a discovery process, situations sometimes occur wherein the client is unaware of certain financial exposures or predicaments.

In the event that the client's situation is substantially different than disclosed at the initial meeting, a revised fee will be provided for mutual agreement. The client must approve the change of scope in advance of the additional work being performed when a fee increase is necessary.

After delivery of a financial plan, future face-to-face meetings may be scheduled as necessary for up to one year. Follow-on implementation work is billed separately at rates between \$200 and \$1,000 per hour.

**Item 5E. Outside Compensation**

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Certain mutual funds and/or variable life/annuity products which comprise a client's investment portfolio may have been purchased by the client, prior to, contemporaneous with, or subsequent to the engagement of FCC, through its affiliated broker-dealer, First Capital Equities, Ltd. ("FCE"), an SEC registered and FINRA member broker/dealer, for which product sales it may have been paid a commission.

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In addition, relative to commission mutual fund sales, in its individual capacity as a FINRA broker-dealer, may also receive ongoing 12b-1 trailing commission compensation from a specific mutual fund company during the period that the client maintains the mutual fund investment in his/her/its portfolio managed by FCC.

In the event that the client desires, the client can engage certain of FCC's Principals and/or Associated Persons, in their individual capacities as registered representatives of First Capital Equities, Ltd. ("FCE") an SEC registered and FINRA member broker-dealer affiliated with FCC, to implement investment recommendations on a fully-disclosed commission basis.

In the event the client chooses to purchase investment products through FCE, brokerage commissions will be charged by FCE to effect securities transactions, a portion of which commissions shall be paid by FCE to the applicable Principal and/or Associated Persons. The brokerage commissions charged by FCE may be higher or lower than those charged by other broker-dealers. In addition, FCE, as well as to the applicable Principal and/or Associated Persons, relative to commission mutual fund purchases, may also receive additional ongoing 12b-1 trailing commission compensation directly from the mutual fund company during the period that the client maintains the mutual fund investment.

**Item 5E1. Potential Conflicts of Interest**

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Potential conflicts of interest may include, but not be limited to:

- Advice offered by investment adviser representatives of FCC ("IARs") may involve investments in mutual funds. Mutual funds may carry loads (i.e. sales charges) that may be up-front or on a contingent deferred basis or be no-loads with no initial or contingent deferred sales charges. Fees paid to FCC or any IAR for advisory services are separate from the fees and expenses charged to shareholders of mutual fund shares by the mutual fund companies. A complete explanation of fees and expenses charged by mutual funds is contained in each mutual fund's prospectus. Clients are advised that certain IARs are registered representatives of FCE, a registered Broker/Dealer, member of the Financial Industry Regulatory Authority ("FINRA") and SIPC. Therefore, IARs have a conflict of interest in recommending mutual funds that carry a load since such mutual funds will pay IAR, in his or her capacity of a registered representative of the broker/dealer, a commission should the purchase be made through IARs.

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- A conflict of interest may exist between the interests of FCC and/or its IARs and the interests of client in that FCC and IARs offer financial planning and investment advisory services for a fee and also offer various securities products for which they may be paid a commission in their capacity of a registered representative of the broker/dealer. The securities products available through FCC may be limited to certain products that have been reviewed and made available for offering through FCE with which IARs may be RRs.
- Accordingly, lower fees for comparable services may be available from other sources. Material conflicts of interest have been disclosed to the client in writing via this Form ADV, Part 2A that could cause FCC or its affiliates to not render unbiased and objective advice. Clients are advised that the investment recommendations and advice offered by FCC are not legal advice or accounting advice. Clients should coordinate and discuss the impact of financial advice with their attorney and/or accountant. Clients are advised that it is necessary to inform FCC promptly with respect to any changes in client's financial situation and investment goals and objectives. Failure to notify FCC of any such changes could result in investment recommendations not meeting the needs of client.
- Adviser has discretionary authority.
- Adviser manages different types of accounts in a parallel manner (i.e., private investment company, and/or separately managed accounts – all with the same investment objective).
- Adviser manages accounts with differing compensation structures (i.e., performance-based compensation versus asset-based management fees). The Adviser earns additional fees for offering the Investment Partnerships.
- Adviser makes proprietary investments in the same securities that are recommended to clients.
- Adviser invests client assets in affiliated entities.

These conflicts are documented in FCC's policies and procedures and are mitigated by exercising the following internal controls:

- Adviser has segregation of duties (when practicable) among personnel performing certain functions – especially portfolio management and marketing and portfolio management and valuation of clients' positions.
- Adviser performs forensic testing to identify accounts or portfolio managers that have outlier performance and determines the cause for these unusual results.
- Portfolio managers periodically review offering documents, client contracts, disclosure information, and/or marketing materials to ensure that the strategy or



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investments utilized are accurately described and that accounts are managed consistently.

- Adviser periodically reminds clients of their need to update the firm of any changes in their contact information, objectives or financial situation and documents all changes received (whether they are received verbally or in writing).
- Adviser carefully considers appropriate procedures to address those situations in which the firm might benefit from client relationships or transactions. Adviser establishes front-end compliance parameters to ensure that client mandates, such as restrictions and diversification standards, are followed.
- Adviser provides disclosure (rather than merely offering to provide disclosure) and discusses highlights and changes during periodic client communications.
- Clients are informed of violations of restrictions and the corrective action taken – even if it was promptly found and corrected.
- Adviser regularly reviews the SEC's website for changes to required practices and recent enforcement actions and reconciles these developments with the firm's policies and procedures to determine if updates are warranted.

***The Investment Partnerships:***

Certain potential conflicts of interest can arise from the fact that the General Partner and their respective affiliates act on behalf of the Investment Partnership and other accounts, and may carry on investment activities for other clients, including other Investment Partnerships sponsored by the General Partner and/or their respective affiliates in which the Partnership may have no interest.

The General Partner and/or their respective affiliates may be investing on behalf of the Investment Partnership while simultaneously withdrawing on behalf of another investment Partnership sponsored by the General Partner and/or their respective affiliates or vice versa.

The General Partner, their respective affiliates and/or any of their respective officers, directors, partners, members, equity holders or employees may invest for their own respective accounts in various investment opportunities, including, without limitation, in investment funds in which the Investment Partnership will not have any interest.

In the conduct of the Investment Partnership's business, conflicts may arise between the interests of the General Partner and their respective members and affiliates, on the one hand, and those of the Investment Partnership and its Limited Partners, on the other hand.

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While the General Partner is accountable to the Investment Partnership as a fiduciary and, consequently, must exercise good faith and integrity in handling such business, Clients should be aware of the existence of such conflicts of interest. Among the conflicts which each Client should consider are the following:

(a) None of the General Partner or their respective members, shareholders, directors or officers have any obligation to devote their full time to the business of the Investment Partnership; the General Partner is required to devote only such time and attention to the affairs of the Investment Partnership as may in its judgment be necessary to accomplish the purposes of the Investment Partnership. In addition, the General Partner and their respective members, shareholders, directors and officers may manage other accounts for which they may be compensated. The General Partner serves as the sole general partner for a number of Investment partnership operating since 1990. These Investment Partnerships may use some of the Designated Managers used by one Investment Partnership and certain of such entities may also utilize some of the investment strategies and techniques used the other Investment Partnerships.

(b) In implementing the investment strategies of the Investment Partnerships, the General Partner will determine the allocation of Investment Partnerships funds to various underlying investments in its sole and absolute discretion. The General Partner, FCC and its affiliates may, from time to time, offer partners or other clients the opportunity to invest in Designated Managers alongside the Investment Partnerships. The General Partner and its affiliates are not obligated to arrange such investment opportunities and no partner or client will be obligated to participate in such opportunities. The General Partners and its affiliates have sole discretion as to the amount of investment in Designated Managers that will be allocated to partners and clients, if any.

(c) The General Partner and/or their respective affiliates manage other accounts and provide investment advice to other parties, and may decide to invest the funds of one or more other accounts or recommend the investment of funds by other parties, rather than the Investment Partnership's funds, in a particular security or strategy with a particular Designated Manager.

The General Partner and their affiliates will divide their time among the Investment Partnerships and these other accounts and parties as they see fit, and, from time to time, such other accounts and parties may receive a disproportionate share of their attention.

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(d) In determining capital allocations among Designated Managers, these Designated Managers may, in their discretion also limit the capacity available to the Investment Partnerships. In these cases, in order to provide for long-term management of the Investment Partnerships, the General Partner and its affiliates may determine to increase the investment in a Designated Manager to a level greater than otherwise would be the case. Such allocations may result in the Partnership's assets being more concentrated from time to time and for substantial periods of time. As a result of any such concentration, the Investment Partnerships assets may be subject to more rapid changes in value than would be the case if the Investment Partnerships assets were less concentrated and the economic returns of the Investment Partnership may thereby be materially adversely affected. In addition, the possibility that a Designated Manager limits the capacity available to the Investment Partnerships, to the extent the Investment Partnerships experience different levels of capital activity from one another, the percentage invested in Designated Managers will vary among the Investment Partnerships.

(e) In determining how to allocate investment opportunities among its clients, the General Partner and its affiliates will take into account the investment objectives of each such investment fund or account, the capital capacity of the Designated Managers, and such other considerations as deemed relevant in its sole and absolute discretion. Certain Designated Managers to which the Investment Partnerships have previously allocated assets may be closed to new investments or may otherwise limit subscriptions. The General Partner and its affiliates may determine, for various reasons, including, without limit, strategic fit and other portfolio construction considerations, that a Designated Manager is more appropriately included as part of the portfolio of another of its investment funds or accounts rather than the Investment Partnerships. In such event, the General Partner and affiliates may cause the Investment Partnership to transfer its interest in such Designated Manager to another investment fund or account advised by the General Partner, notwithstanding that such Designated Manager may continue to be an appropriate investment for the Investment Partnership. Any such transfer may give rise to potential conflicts of interest.

(f) The General Partner, their respective principals and/or their respective affiliates may make trades and investments for their own accounts. In these accounts, they may use investment managers, trading and investment methods that are similar to, or substantially different from, the methods used by them to direct the Investment Partnership's assets. The records of these personal accounts will not be made available to Limited Partners.

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Subject to internal compliance policies and approval procedures, the principals and/or employees of the General Partner, and/or their respective affiliates may engage, from time to time, in personal trading of securities and other instruments, including, without limitation, securities and instruments in which the Investment Partnerships may invest.

(g) The General Partner reserves the right, in its sole and absolute discretion to sell Interests through banks and/or registered broker-dealers which may charge a fee or commission thereon of up to two percent (2%). Any such fee or commission will be paid solely by the Limited Partner purchasing the interest through the bank or registered broker/dealer, and no portion thereof will be paid by the Investment Partnerships or the General Partner.

(h) While presently none of the General Partner or any of their respective affiliates own any equity interests in any of the Designated Managers with which the Investment Partnership invests its assets, it is possible that one or more of the affiliates of the General Partner will in the future acquire non-controlling interests in one or more of such Designated Managers. The Partnership Agreements requires the General Partner to exercise its duties with care, skill, prudence and diligence. In the event of a conflict of interest between the Investment Partnership and any other entity managed by the General Partner or any of its affiliates, the General Partner or such affiliate, as the case may be, will resolve such conflict by taking into account the investment objective of each entity (or account), any investment restrictions applicable to each entity and the other available investment options for each entity and will seek to resolve such conflict in a fair and equitable manner.

In order to mitigate the aforementioned risks, FCC has an Investment Committee that is chaired monthly by the Chief Operating Officer and among its Investment Committee members are other employees who serve to assist in the following: approve and/or terminate Designated Managers; set strategic asset allocations and review individual Designated Managers risk profiles. In addition, the investment committee makes determinations as to portfolio allocations by strategy and reviews factors for each Designated Manager including, but not limited to Quantitative, Qualitative and Operational risk assessments made for each Designated Manager.

It should also be mentioned that FCC considers all of the above discussions and subsequent actions during its regular and routine Compliance Committee meetings addressing potential conflicts of interest as well as conformance with the disclosure, reporting and operational requirements of the federal securities laws as well as FCC's policies and procedures manual.

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**Item 5E2. Client Option**

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At all times clients have the option to purchase investment products recommended by FCC through unaffiliated brokers or agents.

**Item 5E3. Compensation Composition**

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None of FCC's revenue from advisory clients results from commissions and other compensation for the sale of investment products FCC recommends to its clients, including asset-based distribution fees from the sale of mutual funds.

**Item 5E4. Compensation Application**

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FCC does not charge commissions in lieu of advisory fees.

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

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As previously explained in Item 5 above, FCC as investment adviser, manages investment advisor accounts for a fee.

**Item 7. Types of Clients**

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FCC generally provides investment advice to individuals and/or small businesses, pooled investment vehicles and charitable organizations. Client relationships vary in scope and length of service.

The minimum annual fee is \$5,000 and is negotiable. Current client relationships may exist where the fees are higher or lower than the fee schedule above.

New Investment Advisory Agreement fees are calculated on a formula basis and adjusted for complexity of individual situations. The formula is based on gross income, gross assets and other financial considerations.

**Item 8. Methods of Analysis, Investment Strategies and Risk of Loss**

**Item 8A. Methods of Analysis**

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Financial planning analysis and recommendations will be based on written information submitted by the client, FCC's personal interviews with the client, economic and tax considerations, as well as a review of the client's personal circumstances.

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FCC and its agents do not provide legal or tax consultations and suggest that the client work with his own attorney and accountant when considering a financial plan.

FCC will emphasize each client's individual needs, constraints and preferences in addition to the ongoing performance of a particular asset class. FCC and its agents will be available for consultation regarding the creation of an investment portfolio that will attempt to complement client's educational, home ownership and retirement funding goals and objectives, etc.

Sources of information may include, but are not limited to: periodicals, corporate rating services, annual reports, prospectuses and company press releases.

Security analysis methods involve the following fundamental approach:

Modern Portfolio Theory – FCC's investment approach is rooted in the belief that markets are "efficient" and that investor's returns are determined primarily by asset allocation decisions, rather than market timing or security selection. FCC recommends diversified portfolios, principally through the use of passively managed mutual funds and the Investment Partnerships.

FCC may utilize the following investment strategies when implementing investment advice given to clients:

- Long Term Purchases (securities held at least a year) FCC's investment philosophy is designed for investors who desire a buy and hold strategy, with an investment time horizon minimum of five years and preferably ten years or more.
- Short Term Purchases (securities sold within a year)

FCC's methods of analysis and investment strategies do not present any unusual risks. However, every method of analysis has its own inherent risks.

To perform an accurate market analysis, FCC must have access to current/new market information. FCC has no control over the dissemination rate of market information; therefore, unbeknownst to FCC, its analyses may be compiled with outdated market information, severely limiting the value of the FCC's analysis. Furthermore, an accurate market analysis can only produce a forecast of the direction of market values.

There can be no assurances that a forecasted change in market value will materialize into actionable and/or profitable investment opportunities.

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**Item 8B. Investment Strategies**

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FCC's primary investment strategies - Long Term Purchases and Short Term Purchases - are fundamental investment strategies. However, every investment strategy has its own inherent risks and limitations. For example, longer term investment strategies require a longer investment time period to allow for the strategy to potentially develop. Shorter term investment strategies require a shorter investment time period to potentially develop but, as a result of more frequent trading, may incur higher transactional costs when compared to a longer term investment strategy.

**Item 8C. Risk of Loss**

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Our investment programs have certain risks that are borne by the client. Our investment approach constantly keeps the risk of loss in mind. Clients face the following investment risks:

- **Interest-rate Risk:** Fluctuations in interest rates may cause investment prices to fluctuate. For example, when interest rates rise, yields on existing bonds become less attractive, causing their market values to decline.
- **Market Risk:** The price of a security, bond, or mutual fund may drop in reaction to tangible and intangible events and conditions. This type of risk is caused by external factors independent of a security's particular underlying circumstances. For example, political, economic and social conditions may trigger market events.
- **Inflation Risk:** When inflation is present, a dollar today will not buy as much as a dollar next year, because purchasing power is eroding at the rate of inflation.
- **Currency Risk:** Overseas investments are subject to fluctuations in the value of the dollar against the currency of the investment's originating country. This is also referred to as exchange rate risk.
- **Reinvestment Risk:** This is the risk that future proceeds from investments may have to be reinvested at a potentially lower rate of return (i.e. interest rate). This primarily relates to fixed income securities during periods of declining interest rates.
- **Business Risk:** These risks are associated with a particular industry or a particular company within an industry. For example, oil-drilling companies depend on finding oil and then refining it, a lengthy and complex process, before they can generate a profit. They carry a higher risk of profitability than an electric company, which generates its income from a steady stream of customers who buy electricity no matter what the economic environment is like.

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- **Liquidity Risk:** Liquidity is the ability to readily convert an investment into cash. Generally, assets are more liquid if many traders are interested in a standardized product. For example, Treasury Bills are highly liquid, while real estate properties are not.
- **Financial Risk:** Excessive borrowing to finance a business' operations increases the risk of profitability, because the company must meet the terms of its obligations in good times and bad. During periods of financial stress, the inability to meet loan obligations may result in bankruptcy and/or a declining market value.

***The Investment Partnership Risks***

The Investment Partnerships may incur certain risks and are suitable only for clients of adequate financial means which have no need for liquidity in these investments. Please refer to disclosure documents, the private placement memorandum and additional information of each partnership offering for a more detailed description of the fund's investment strategy for such partnership offering and the material risks associated with such strategy.

**Item 9. Disciplinary Information**

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Neither FCC nor any management person are currently or have previously been involved in any legal or disciplinary events in the past ten (10) years that are material to its advisory business or the integrity of its management.

**Item 10. Other Financial Industry Activities and Affiliations**

**Item 10A. Dual Registration**

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Certain of FCC's Principals and/or Associated Persons, in their individual capacities are also registered representatives of First Capital Equities, Ltd. ("FCE") an SEC registered and FINRA member broker-dealer affiliated with FCC, to implement investment recommendations on a fully-disclosed commission basis.

**Item 10B. CFTC Registration**

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Neither FCC, nor its representatives, are registered or have an application pending to register, as a futures commission merchant, commodity pool operator, a commodity trading advisor, or a representative of the foregoing.



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**Item 10C3. Other Investment Advisor**

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Excelsior Opportunity Management, LLC is affiliated with FCC by virtue of David H. Schwartz and Fred Sloan being the co-members of the General Partner. In addition, the investment manager for EOF is Excelsior Opportunity Advisors, LLC ("EOA"), an exempt reporting adviser.

**Item 10C6. Accountant or Accounting Firm**

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Certain of FCC's principals own shares in Klein & Co. ("Klein"), an affiliated certified public accounting firm. However, FCC does not render accounting advice or tax preparation services to its clients. Rather, to the extent that a client requires accounting advice and/or tax preparation services, FCC, if requested, may recommend the services of Klein as well as other qualified tax preparers; all of which services shall be rendered independent of FCC pursuant to a separate agreement between the client and Klein or others.

FCC shall not receive any of the fees charged by Klein, referral or otherwise. Although FCC shall not receive referral fees from Klein, David H. Schwartz and Fred Sloan, who individually own interests in Klein, shall be entitled to receive distributions relative to their respective ownership interests in Klein.

Please Note: The recommendation that a client engage Klein in its capacity as a certified public accounting firm, presents a potential conflict of interest. No client is under any obligation to engage Klein for accounting advice or tax preparation services.

The firm's Chief Compliance Officer, David H. Schwartz remains available to address any questions that a client or prospective client may have regarding the above potential conflict of interest.

**Item 10C8. Licensed Insurance Agents**

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FCC has arrangements that are material to its advisory or its clients with an affiliate, FC Equities, Ltd., an insurance agency. David H. Schwartz, Alan Kleinberg, Brett Schwartz and Edward Reaven are licensed insurance agents of FC Equities, Ltd, and may introduce clients to insurance agencies to obtain certain insurance-related products on a fully-disclosed basis.

Accordingly, FCC does not exercise any discretionary authority with respect to a client's decision to obtain such insurance-related products, but may receive fees in connection therewith.

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With respect to the purchase of any variable annuity, the client will also incur a charge imposed directly by the insurance company, the details of which will be presented to the client separately in connection with the sale of the insurance product.

The recommendation by FCC's principals that a client purchase an insurance commission product presents a conflict of interest, as the receipt of commissions may provide an incentive to recommend insurance products based on commissions to be received, rather than on a particular client's need.

However, no client is under any obligation to purchase any commission products from FCC or its principals. Clients are reminded that they may purchase insurance products recommended by FCC through other, non-affiliated insurance agents.

FCC's Chief Compliance Officer, David H. Schwartz, remains available to address any questions that a client or prospective client may have regarding the above conflict of interest.

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**Item 10C10. Real Estate Entity**

FCC has arrangements that are material to its advisory or its clients with a related person who is a real estate entity, MFA Construction, Inc. In this regard, David H. Schwartz owns a majority interest of MFA Construction, Inc., and may introduce clients to real estate opportunities on a fully-disclosed basis.

Accordingly, FCC does not exercise any discretionary authority with respect to a client's decision to obtain such real estate opportunities, but may receive fees in connection therewith.

FCC's Chief Compliance Officer, David H. Schwartz, remains available to address any questions that a client or prospective client may have regarding the above conflict of interest.

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

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**Item 11A. Code of Ethics**

FCC has adopted a Code of Ethics (the "Code of Ethics") pursuant to Rule 204A-1 under the Advisers Act. The Code of Ethics is designed to ensure that FCC employees comply with applicable federal securities laws and place the interests of clients first in conducting personal securities transactions.

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The Code of Ethics imposes certain restrictions on securities transactions in the personal accounts of covered persons to help avoid conflicts of interest, as described more fully below. A copy of the Code of Ethics is available free of charge to any client upon request. Additionally, all FCC employees are subject to the firm's policies and procedures. In addition, the Code of Ethics sets forth restrictions regarding confidential and proprietary information, information barriers, private investments, outside business activities and personal trading. All FCC employees are required to comply with the Code of Ethics terms as a condition of continued employment.

**Item 11B. Material Interest**

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FCC's principals own interests in related entities who act as general partners in a partnership in which they solicit client investments. Please see response to Item 6, Performance-Based Fees & Side-By-Side Management.

**Item 11C. Personal Trading**

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FCC and/or representatives of FCC may buy or sell securities that are also recommended to clients. This practice may create a situation where FCC and/or representatives of the firm are in a position to materially benefit from the sale or purchase of those securities. Therefore, this situation creates a potential conflict of interest.

Practices such as "scalping" (i.e., a practice whereby the owner of shares of a security recommends that security for investment and then immediately sells it at a profit upon the rise in the market price which follows the recommendation) could take place if FCC did not have adequate policies in place to detect such activities. In addition, this requirement can help detect insider trading, "front-running" (i.e., personal trades executed prior to those of the FCC's clients) and other potentially abusive practices.

FCC has a personal securities transaction policy in place to monitor the personal securities transactions and securities holdings of each of FCC's "Access Persons". In this regard, a designated supervisor will pre-approval and pre-clearance is required for all transactions set forth in the Personal Securities Transaction Policy of FCE Group's Code of Ethics. Additionally, each Access Person must provide the Chief Compliance Officer or his/her designee with a written report of the Access Person's current securities holdings at least once each twelve (12) month period thereafter on a date FCC selects.

**Item 11D. Potential Conflict of Interest**

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FCC and/or representatives of FCC may buy or sell securities, at or around the same time as those securities are recommended to clients.

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This practice creates a situation where FCC and/or representatives of the firm are in a position to materially benefit from the sale or purchase of those securities. Therefore, this situation creates a potential conflict of interest. As indicated above in Item 11C, FCC has a personal securities transaction policy in place to monitor the personal securities transaction and securities holdings of each of Registrant's Access Persons.

FCC has implemented an investment policy relative to personal securities transactions. This investment policy is part of Applicant's overall Code of Ethics which serves to establish a standard of business conduct for all of FCC's members that is based upon fundamental principles of openness, integrity, honesty and trust.

In accordance with Section 204A of the Investment Advisers Act of 1940, FCC also maintains and enforces written policies reasonably designed to prevent the misuse of material nonpublic information by FCC or any person associated with FCC. Although commissions generated by the purchase of securities and insurance products through FCC or its members may or may not cause its recommendations to be free from self-interest, or a conflict of interest, the client is under no obligation to accept or implement the Applicant's recommendations.

**Item 12. Brokerage Practices**

**Item 12A. Selecting Brokerage Firms**

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**Affiliated Entities**

Clients can engage FCC's principal and/or associated persons, in their individual capacities as registered representatives of First Capital Equities, Ltd. ("FCE") an SEC registered and FINRA member broker-dealer affiliated with FCC, to implement investment recommendations on a fully-disclosed commission basis.

In the event the client chooses to purchase investment products through FCE, brokerage commissions will be charged by FCE to effect securities transactions, a portion of which commissions shall be paid by FCE to the applicable principal and/or associated persons. The brokerage commissions charged by FCE may be higher or lower than those charged by other broker-dealers.

In addition, FCE, as well as to the applicable principal and/or associated persons, relative to commission mutual fund purchases, may also receive additional ongoing 12b-1 trailing commission compensation directly from the mutual fund company during the period that the client maintains the mutual fund investment.

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Factors that FCC considers in recommending FCE (or any other broker/dealer-custodian to clients) include historical relationship with FCC, financial strength, reputation, execution capabilities, pricing, research, and service.

Although the commissions and/or transaction fees paid by FCC's clients shall comply with FCC's duty to obtain best execution, a client may pay a commission that is higher than another qualified broker-dealer might charge to effect the same transaction where FCC determines, in good faith, that the commission/transaction fee is reasonable in relation to the value of the brokerage and research services received.

In seeking best execution, the determinative factor is not the lowest possible cost, but whether the transaction represents the best qualitative execution, taking into consideration the full range of a broker/dealer services, including the value of research provided, execution capability, commission rates, and responsiveness.

Accordingly, although FCC will seek competitive rates, it may not necessarily obtain the lowest possible commission rates for client account transactions. The brokerage commissions or transaction fees charged by the designated broker-dealer/custodian are exclusive of, and in addition to, FCC's investment management fee.

**Unaffiliated Entities**

FCC has recently secured an agreement to participate in the institutional advisor program (the "Program") offered by TD Ameritrade Institutional. TD Ameritrade Institutional is a division of TD Ameritrade Inc., member FINRA/SIPC/NFA ("TD Ameritrade"), an unaffiliated SEC-registered broker-dealer and FINRA member. TD Ameritrade offers FCC services which may include custody of securities, trade execution, clearance and settlement of transactions. Through this program, FCC receives some benefits from TD Ameritrade through its participation.

(Please see the disclosure under **Items 14A&B** below.)

**Item 12A1a. Research and Other Soft Dollar Benefits**

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Although not a material consideration when determining whether to recommend that a client utilize the services of a particular broker-dealer/custodian, FCC may receive from its broker-dealer/custodians without cost (and/or at a discount) support services and/or products, certain of which assist FCC to better monitor and service client accounts maintained at such institutions.

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Included within the support services that may be obtained by FCC may be investment-related research, pricing information and market data, software and other technology that provide access to client account data, compliance and/or practice management-related publications, discounted or gratis consulting services, discounted and/or gratis attendance at conferences, meetings, and other educational and/or social events, marketing support, computer hardware and/or software and/or other products used by FCC in furtherance of its investment advisory business operations.

As indicated above, certain of the support services and/or products that may be received may assist FCC in managing and administering client accounts.

Others do not directly provide such assistance, but rather assist FCC to manage and further develop its business enterprise. FCC's clients do not pay more for investment transactions effected and/or assets maintained at its broker-dealer/custodians as a result of this arrangement.

There is no corresponding commitment made by FCC to its broker-dealer/custodians to invest any specific amount or percentage of client assets in any specific mutual funds, securities or other investment products as result of the above arrangement.

FCC's Chief Compliance Officer, David H. Schwartz, remains available to address any questions that a client or prospective client may have regarding the above arrangement and any corresponding perceived conflict of interest such arrangement may create.

**Item 12A2. Brokerage for Client Referrals.**

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FCC may receive referrals from broker-dealers.

**Item 12A3. Directed Brokerage**

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FCC does not generally accept directed brokerage arrangements (when a client requires that account transactions be effected through a specific broker-dealer).

In such client directed arrangements, the client will negotiate terms and arrangements for their account with that broker-dealer, and FCC will not seek better execution services or prices from other broker-dealers or be able to "batch" the client's transactions for execution through other broker-dealers with orders for other accounts managed by FCC. As a result, client may pay higher commissions or other transaction costs or greater spreads, or receive less favorable net prices, on transactions for the account than would otherwise be the case.

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Please Note: In the event that the client directs FCC to effect securities transactions for the client's accounts through a specific broker-dealer, the client correspondingly acknowledges that such direction may cause the accounts to incur higher commissions or transaction costs than the accounts would otherwise incur had the client determined to effect account transactions through alternative clearing arrangements that may be available through FCC.

FCC's Chief Compliance Officer, David H. Schwartz, remains available to address any questions that a client or prospective client may have regarding the above arrangement.

To the extent that FCC provides investment management services to its clients, the transactions for each client account generally will be effected independently, unless FCC decides to purchase or sell the same securities for several clients at approximately the same time. FCC may (but is not obligated to) combine or "bunch" such orders to obtain best execution, to negotiate more favorable commission rates or to allocate equitably among FCC's clients differences in prices and commissions or other transaction costs that might have been obtained had such orders been placed independently.

Under this procedure, transactions will be averaged as to price and will be allocated among clients in proportion to the purchase and sale orders placed for each client account on any given day. FCC shall not receive any additional compensation or remuneration as a result of such aggregation.

**Item 13. Review of Accounts**

**Item 13A. Periodic Reviews**

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Account reviews are performed at monthly and quarterly meetings to determine asset allocation portfolio mixes by FCC's Investment Committee. The committee is chaired by the CIO and meets monthly. It is charged with approving and terminating managers, setting strategic asset allocations and reviewing individual manager risk profiles. In addition, the committee makes determinations as to portfolio allocations by strategy that is implemented by the Portfolio Management Group.

Client can engage FCC to review their plan annually. These reviews and updates may or may not include investment advice depending upon the investment climate and their financial situation.

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**Item 13B. Review Triggers**

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Other conditions that may trigger a review are changes in the tax laws, new investment information, and changes in a client's own situation.

**Item 13C. Regular Reports**

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Designated supervisory personnel consider the client's current security positions and the likelihood that the performance of each security will contribute to the investment objectives of the client. These reviews and updates may or may not include investment advice depending upon the investment climate and their financial situation.

Clients receive periodic communications on at least an annual basis. Advisory Service Agreement clients, Investment Management clients, and Retainer Agreement clients receive written quarterly updates.

The written updates may include a net worth statement, portfolio statement, tax return (if the client requests tax preparation services), and a summary of objectives and progress towards meeting those objectives.

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

**Item 14A. Client Referrals**

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As referenced above, FCC may receive an indirect economic benefit from custodians. FCC, without cost (and/or at a discount), may receive support services and/or products from custodians. FCC's clients do not pay more for investment transactions effected and/or assets maintained at custodians as a result of this arrangement.

There is no corresponding commitment made by FCC to custodian or any other entity to invest any specific amount or percentage of client assets in any specific mutual funds, securities or other investment products as result of the above arrangement.

In addition, as disclosed under *Item 12* above, FCC has recently secured an agreement to participate in TD Ameritrade's institutional customer program ("the program") allowing FCC to recommend TD Ameritrade to clients for custody and brokerage services.

Accordingly, there is no direct link between FCC's participation in the program and the investment advice it gives to its clients, although FCC receives economic benefits through its participation in the program that are typically not available to TD Ameritrade retail investors.



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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 FCC 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 FCC by third party vendors. TD Ameritrade may also have paid for business consulting and professional services received by FCC's related persons. Some of the products and services made available by TD Ameritrade through the program may benefit FCC but may not benefit its client accounts. These products or services may assist FCC in managing and administering client accounts, including accounts not maintained at TD Ameritrade. Other services made available by TD Ameritrade are intended to help FCC manage and further develop its business enterprise. The benefits received by FCC or its personnel through participation in the program do not depend on the amount of brokerage transactions directed to TD Ameritrade.

As part of its fiduciary duties to clients, FCC endeavors at all times to put the interests of its clients first. Clients should be aware, however, that the receipt of economic benefits by FCC and/or its related persons in and of itself creates a potential conflict of interest and may indirectly influence FCC's choice of TD Ameritrade for custody and brokerage services.

FCC's Chief Compliance Officer, David H. Schwartz remains available to address any questions that a client or prospective client may have regarding the above arrangement and any corresponding perceived conflict of interest any such arrangement may create.

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**Item 14B. Other Compensation**

FCC may receive client referrals from TD Ameritrade through its participation in TD Ameritrade AdvisorDirect. In addition to meeting the minimum eligibility criteria for participation in AdvisorDirect, FCC may have been selected to participate in AdvisorDirect based on the amount and profitability to TD Ameritrade of the assets in, and trades placed for, client accounts maintained with TD Ameritrade. TD Ameritrade is a discount broker-dealer independent of and unaffiliated with FCC and there is no employee or agency relationship between them.

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TD Ameritrade has established AdvisorDirect as a means of referring its brokerage customers and other investors seeking fee-based personal investment management services or financial planning services to independent investment advisors.

TD Ameritrade does not supervise FCC and has no responsibility for FCC's management of client portfolios or FCC's other advice or services. FCC pays TD Ameritrade an on-going fee for each successful client referral. This fee is usually a percentage (not to exceed 25%) of the advisory fee that the client pays to FCC ("Solicitation Fee"). FCC will also pay TD Ameritrade the Solicitation Fee on any advisory fees received by FCC from any of a referred client's family members, including a spouse, child or any other immediate family member who resides with the referred client and hired FCC on the recommendation of such referred client. FCC will not charge clients referred through AdvisorDirect any fees or costs higher than its standard fee schedule offered to its clients or otherwise pass solicitation fees paid to TD Ameritrade to its clients.

For information regarding additional or other fees paid directly or indirectly to TD Ameritrade, please refer to the TD Ameritrade AdvisorDirect Disclosure and Acknowledgement Form.

FCC's participation in AdvisorDirect raises potential conflicts of interest. TD Ameritrade will most likely refer clients through AdvisorDirect to investment advisors that encourage their clients to custody their assets at TD Ameritrade and whose client accounts are profitable to TD Ameritrade. Consequently, in order to obtain client referrals from TD Ameritrade, FCC may have an incentive to recommend to clients that the assets under management by FCC be held in custody with TD Ameritrade and to place transactions for client accounts with TD Ameritrade.

In addition, FCC has agreed not to solicit clients referred to it through AdvisorDirect to transfer their accounts from TD Ameritrade or to establish brokerage or custody accounts at other custodians, except when its fiduciary duties require doing so. Advisor's participation in AdvisorDirect does not diminish its duty to seek best execution of trades for client accounts.

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**Item 15. Custody**

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FCC shall have the ability to have its advisory fee for each client debited by the custodian on a quarterly basis. Clients are provided, at least quarterly, with written transaction confirmation notices and regular written summary account statements directly from the broker-dealer/custodian and/or program sponsor for the client accounts.

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FCC may also provide a written periodic report summarizing account activity and performance.

With respect to SEC Rule 206(4)-2, FCC has made a determination that it should be examined by a qualified Public Company Accounting Oversight Board Member ("PCAOB") to conduct a surprise examination on an annual basis. This determination will ensure the allowance of an independent third-party review of FCC's records and other procedures in conformity with the amendments to SEC Rule 206(4)-2 under the Investment Advisers Act of 1940.

Please Note: To the extent that FCC provides clients with periodic account statements or reports, the client is urged to compare any statement or report provided by FCC with the account statements received from the account custodian.

Please Also Note: The account custodian does not verify the accuracy of FCC's advisory fee calculation.

**For Excelsior Limited Investment Partnerships:**

All Limited Partners will be sent: (i) annual audited financial statements, (ii) a quarterly statement from the Fund's independent administrator of the Limited Partner's capital account and (iii) a quarterly letter from the General Partner discussing the results of the Investment Partnership for the quarter just ended, and (iv) copies of such Limited Partner's Schedule K-1 to the Investment Partnership's tax returns.

Certain Limited Partners may have additional and/or different access to information than specified in the private placement memorandum as a result of the creation of additional Classes or pursuant to side letters entered into by the Investment Partnership and/or the General Partner.

**Item 16. Investment Discretion**

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The client can determine to engage FCC to provide investment advisory services on a discretionary basis. Prior to FCC assuming discretionary authority over a client's account, client shall be required to execute an Investment Advisory Agreement, naming FCC as client's attorney and agent in fact, granting FCC full authority to buy, sell, or otherwise effect investment transactions involving the assets in the client's name found in the discretionary account.

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Clients who engage FCC on a discretionary basis may, at any time, impose restrictions, in writing, on FCC's discretionary authority. (i.e. limit the types/amounts of particular securities purchased for their account, exclude the ability to purchase securities with an inverse relationship to the market, limit or proscribe FCC's use of margin, etc.).

**Item 17. Voting Client Securities**

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FCC has engaged with a third-party vendor, EC Proxy Voting Service ("EC") to assist it in the exercise of voting client securities. Upon receipt of a proxy, EC will vote and record the data. EC will vote all proxies in a timely manner and consistent with written guidelines provided by FCC.

**GUIDELINES**

FCC has established proxy voting guidelines with EC that are detailed in a report. The following general issues are expanded in detail when necessary:

- General Issues
- Board of Directors
- Ratification of Auditors
- Proxy Contests
- Proxy Contest Defenses
- Tender Offer Defenses
- Miscellaneous Governance Provisions
- Capital Structure
- Executive and Director Compensation
- State of Incorporation
- Mergers and Restructures
- Mutual/Closed End Fund Proxies
- Issues with Moral and Social Implications
- Miscellaneous Issues

The proxy voting guidelines report is available to clients upon request.

However, under no circumstances will EC vote any proxy or take any action in connection with mergers, acquisitions, tender offers or bankruptcy proceedings, or any other occurrences which may affect the assets unless expressly authorized by FCC.

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EC shall keep and maintain for five (5) years from the date of any action, complete and accurate records of all action taken by it pursuant to the terms of a fully executed contractual agreement. Upon request, EC will provide FCC with reports of such actions, such reports to identify the accounts voted, voting positions taken and justification for those positions, and the date the proxy was voted.

If a conflict of interest exists, it will be disclosed to the Client.

**Item 18. Financial Information**

**Item 18A. Pre-Payment**

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FCC does not solicit fees of more than \$1,200, per client, six months or more in advance.

**Item 18B. Financial Condition**

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FCC is unaware of any financial condition that is reasonably likely to impair its ability to meet its contractual commitments relating to its discretionary authority over certain client accounts.

**Item 18C. Bankruptcy Petition**

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FCC has not been the subject of a bankruptcy petition.

**ANY QUESTIONS:** FCC's Chief Compliance Officer, David H. Schwartz, remains available to address any questions that a client may have regarding the above disclosures and arrangements.