

## **Item 1 - Cover Page**

### **Part 2A of Form ADV: *Firm Brochure***

**J. Mark Nickell and Co.**  
**CRD# 111635**

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March 3, 2012 Brochure

This brochure provides information about the qualifications and business practices of J. Mark Nickell and Co. If you have any questions about the contents of this brochure, please contact us at 615 371-6622 or [mark@jmarknickell.com](mailto:mark@jmarknickell.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 J. Mark Nickell and Co. also is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). You can search this site by a unique identifying number, known as a CRD number. Our firm's CRD number is 111635.

## **Item 2 - Material Changes**

As you may be aware, the format that registered investment advisers are required to use in order to inform clients of the nature of advisory services provided, types of clients served, fee charged, potential conflicts of interest and other information has changed.

In the past, we were only required to offer you our updated brochure on an annual basis. Under the new rules, we are required to annually provide each client with these amended disclosures, rather than merely making the offer. If there had been changes to our brochure since our last regulatory filing, we would be required to inform you of these changes. However, there have been no material changes to the Firm's brochure since its last required filing, dated March 31, 2011.

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## **Item 4 - Advisory Business**

### **INTRODUCTION**

J. Mark Nickell & Co. is a registered investment adviser with its principal place of business located in Brentwood, TN. J. Mark Nickell & Co. began conducting business in 1994. The firm does not sell any products or accept any commissions. The firm's principal shareholder is J. Mark Nickell.

J. Mark Nickell & Co. offers the following advisory services to our clients:

### **INVESTMENT SUPERVISORY SERVICES ("ISS")**

Our firm provides continuous advice to clients regarding the investment of client funds based on the individual needs of the client. Through personal discussions in which goals and objectives based on a client's particular circumstances are established, we develop a client's personal investment policy and create and manage a portfolio based on that policy. The purpose of the investment policy is to assign structure to suit the client's risk tolerance, while balancing the client's return objectives. During our data-gathering process, we determine the client's individual objectives, time horizons, risk tolerance, and liquidity needs. As appropriate, we also review and discuss a client's prior investment history, as well as family composition and background.

We manage these advisory accounts on a discretionary basis, which means the client confers to J. Mark Nickell & Co. the authority to supervise and direct the portfolio (i.e., execute trades in the account(s) without first contacting the client) on an ongoing basis consistent with the investment policy. This authority to act is particularly important in times of severe market stress when timely action is prudent to reduce risk and exposure to extreme events. Account supervision is guided by the client's investment policy, which includes statements about client investment preferences (i.e., the degree to which the client assigns priority to stability and capital preservation over growth and the client's aversion to market price declines), as well as tax considerations.

A client may impose reasonable restrictions on investing in certain securities, types of securities, or industry sectors, including affirmation of preference for investment vehicles that apply socially responsible investing ("SRI") principles and/or environmental, social & governance ("ESG") factors. Clients also may prohibit the sale of certain investments held in the account at the inception of the relationship. Each client should note, however, that restrictions imposed by the client may adversely affect the composition and performance of the client's investment portfolio.

Clients may choose a non-discretionary arrangement, whereby he/she must be contacted prior to the execution of any trade in the account(s) under management. This may result in a delay in executing recommended trades, which could adversely affect the performance of the portfolio. This delay also normally means the affected account(s) will not be able to participate in block trades, a practice designed to enhance the execution quality, timing and/or cost for all accounts included in the block. In a non-discretionary arrangement, the client retains the responsibility for the final decision on all actions taken with respect to the portfolio.

Each client also should note that performance of his/her investment portfolio within the same investment objectives, goals and/or risk tolerance may differ from that of similar clients, because each portfolio is implemented individually.

Our investment recommendations are not limited to any specific product or service offered by a broker-dealer (i.e., Schwab) or insurance company (i.e., TIAA-CREF) and will generally include advice regarding the following securities:

- Exchange-traded funds ("ETFs")
- Mutual fund shares
- Variable annuities
- United States government securities

In limited cases, J. Mark Nickell & Co. also will provide advice to clients with existing assets that consist of the following:

- Exchange-listed domestic equity securities
- Equity securities of foreign issuers
- Corporate debt securities
- Certificates of deposit
- Municipal securities

Ordinarily, J. Mark Nickell & Co. will analyze existing assets, including allocation among asset classes, and then select specific exchange-traded funds, mutual funds or similar instruments, and in limited cases specific equity and fixed income securities or third party managers, to help the client achieve his or her stated goals and objectives.

Because some types of investments involve certain additional degrees of risk, they will only be implemented/recommended when consistent with the client's stated investment objectives, tolerance for risk, liquidity and suitability.

Once the client's portfolio has been established, we review the portfolio monthly, or more frequently, based on market conditions or upon specific client request. Any rebalancing of the portfolio will be implemented by J. Mark Nickell & Co. based on market conditions and the client's individual needs.

J. Mark Nickell & Co. will offer to meet in person with the client to review the account as frequently as quarterly during the initial year; and usually, less frequently thereafter, but at least annually.

## **FINANCIAL PLANNING SERVICES**

We provide financial planning services. Clients receive this service as an integral component of Investment Supervisory Services; the scope and degree of service is tailored to the complexity of the client's individual financial situation. Financial planning services also may be provided on a stand-alone basis. Financial planning is a comprehensive evaluation of a client's current and future financial state by using currently known variables to estimate future cash flows, asset values and withdrawal plans. The personalized review incorporates the varied disciplines of investment supervision, tax and estate planning, insurance need assessment, and retirement strategy. Through the financial planning process, all questions, information and analysis are considered as they impact and are impacted by the entire financial and life situation of the client. Recommendations are oral or written, and are supported as necessary with detailed analysis to assist the client achieve his or her financial goals and objectives.

In general, financial planning can address any or all of the following areas:

- **PERSONAL:** We review family records, financial position, cash flow requirements, personal liability, estate information and financial goals.

- **TAX ANALYSIS AND PLANNING:** We analyze the client's income tax situation and plan for tax minimization in current and future years, while emphasizing the priority of capital preservation and maximization of risk-adjusted returns.
- **INVESTMENTS:** We analyze investment alternatives and their effect on the client's portfolio.
- **INSURANCE, RISK MANAGEMENT and ASSET PROTECTION:** We review the client's risk exposures, such as cash needs at death or upon disability, income needs of surviving dependents, and/or estate liquidity needs. To the extent exposures are identified, we recommend consideration of additional protection and/or entity structures to limit exposure.
- **RETIREMENT PLANNING AND EMPLOYEE BENEFITS:** We analyze current strategies and investment plans to help the client achieve his or her retirement goals. We review employee benefit plans, particularly stock ownership and incentive plans, as an integral part of that analysis.
- **ESTATE PLANNING:** We assist the client in assessing and developing long-term strategies, including, as appropriate, living trusts, wills, review of estate tax, powers of attorney, charitable planning, lifetime giving, and related matters.

We gather required information through in-depth personal interviews. Information gathered includes the client's current financial status, tax status, future goals, returns objectives and attitudes towards risk. We carefully review documents supplied by the client, sometimes including a client-prepared questionnaire, and ordinarily prepare written summaries in each functional area. We assist the client in implementing recommendations through coordinated action with his/her existing advisers (i.e., estate attorney, accountant, and/or insurance agent) or introduce him/her to new advisers as needed. We will aid in the decision-making process, suggest alternative recommendations to help achieve objectives, and assist in determining how well each alternative meets objectives. Ultimately, however, responsibility for implementation of financial planning recommendations rests with the client.

Typically the financial planning process occurs at regular intervals over the course of the initial year of service as major areas are addressed, and at regular intervals thereafter in response to the client's evolving financial picture, and updated for life changes, and changes in the financial, investment, and regulatory environment.

## **CONSULTING SERVICES**

Clients also can receive financial and/or investment advice on a more focused basis. This may include advice on only an isolated area(s) of concern such as estate planning, retirement planning, or any other specific topic.

## **AMOUNT OF MANAGED ASSETS**

As of December 31, 2011, we were overseeing \$70,316,009 of clients' assets. Of this total, \$2,543,964 were not actively managed (i.e., client funds consisting of non-trading assets, emergency reserves, temporary investments, etc.) and were excluded from the base on which investment supervisory fees are calculated.

## Item 5 - Fees & Compensation

### INVESTMENT SUPERVISORY SERVICES ("ISS") FEES

The annualized fee for Investment Supervisory Services is charged as a percentage of assets under management, according to the following schedule:

<u>Assets Under Management</u>	<u>Annual Fee</u>
Up to \$750,000	1.00%
Next \$750,000	0.75%
Next \$1,500,000	0.50%
Next \$7,000,000	0.25%

The firm does not receive any commissions or fees for the sale of products.

A minimum fee of \$4,000 per annum is required for this service, and a minimum portfolio value may be imposed. J. Mark Nickell and Co. may group certain related client accounts for the purposes of achieving the minimum account size and determining the annualized fee.

J. Mark Nickell and Co.'s advisory fees are not negotiable, except when assets under management exceed \$10,000,000. Certain family members and company employees (including independent contractors) may be charged rates lower than those stated above.

Fees are payable quarterly, in advance, and are calculated based on the value of accounts under management on the last day of the previous quarter. If management begins after the start of a quarter, fees will be prorated accordingly; however, work on behalf of the client actually begins upon the effective date of the Client Representation Agreement. If material additions and/or withdrawals occur during a quarter (i.e., plus or minus 10% of account value), additional fees may be payable or refundable. Fees may be deducted from clients' investment accounts or clients also may select direct billing.

### FINANCIAL PLANNING FEES

J. Mark Nickell & Co. may be retained to provide Financial Planning services on a stand-alone basis or in conjunction with investment supervisory services.

A minimum fee of \$4,000 is required for our firm to provide Financial Planning services on a stand-alone basis.

No separate fee for Financial Planning services is assessed when provided to investment supervisory services clients. However, when the scope or complexity of financial planning services is beyond those of similarly-situated investment supervisory clients, or the engagement expands due to extraordinary circumstances and/or client request, additional financial planning fees may apply.

As a stand-alone engagement or when extraordinary services are involved, separate Financial Planning fees are calculated and charged on a fixed fee basis, depending on the specific arrangement reached with the client. On occasion fees are calculated and charged on an hourly basis, ranging from \$150 to \$300 per hour. Although the length of time it will take to provide analysis and recommendation will depend on each client's personal situation, we will provide an estimate for the total hours at the start of the advisory relationship.

We may request a retainer upon completion of our initial fact-finding session with the client; however, advance payment will never exceed \$1,200 for work that will not be completed within six months. The balance is due upon completion of the work.

The client is billed quarterly in advance based on our total estimated Financial Planning fees, or periodically in arrears when calculated on an hourly basis. In the event of termination, any work completed will be provided to the client, and the fees due will reflect a prorated amount commensurate with the amount of work performed at time of termination.

## **GENERAL INFORMATION**

***Termination of the Advisory Relationship:*** A client agreement may be canceled at any time, by either party, for any reason upon receipt of 30 days written notice. Upon termination of any account, any prepaid, unearned fees will be promptly refunded. In calculating a client's reimbursement of fees, we will pro rate the reimbursement according to the number of days remaining in the billing period.

***ETF and Mutual Fund Fees:*** All fees paid to J. Mark Nickell and Co. for investment advisory services are separate and distinct from the fees and expenses charged by mutual funds and/or ETFs to their shareholders. These fees and expenses are described in each fund's prospectus. These fees will generally include a management fee, other fund expenses, and a possible distribution fee. J. Mark Nickell & Co. does not invest in funds that impose sales charges. A client could invest in a mutual fund or ETF directly, without our services. In that case, the client would not receive the services provided by our firm which are designed, among other things, to assist the client in determining which mutual fund or funds are most appropriate to each client's financial condition and objectives. Accordingly, the client should review both the fees charged by the funds and our fees to fully understand the total amount of fees to be paid by the client and to thereby evaluate the advisory services being provided.

***Third Party Management Fees:*** Clients utilizing the services of one or more Third Party Managers will be charged a separate management fee by each Third Party Manager. In evaluating such an arrangement, the client should review both the fees charged by the Third Party manager and our fees to fully understand the total amount of fees to be paid by the client and to thereby evaluate the advisory services being provided.

***Additional Fees and Expenses:*** In addition to our advisory fees, clients are also responsible for the fees and expenses charged by custodians and imposed by broker dealers, including, but not limited to, any transaction charges imposed by a broker dealer with which an independent investment manager effects transactions for the client's account(s). Transaction charges at Charles Schwab & Co. can be minimized by electing to receive electronic statements and confirmations. Please refer to the "Brokerage Practices" section (Item 12) of this Form ADV for additional information.

***Grandfathering of Minimum Account Requirements:*** Pre-existing advisory clients are subject to J. Mark Nickell and Co.'s minimum account requirements and advisory fees in effect at the time the client entered into the advisory relationship. Therefore, our firm's minimum account requirements will differ among clients.

***Advisory Fees in General:*** Clients should note that similar advisory services may (or may not) be available from other registered (or unregistered) investment advisers for similar or lower fees.

***Limited Prepayment of Fees:*** Under no circumstances do we require or solicit payment of fees in excess of \$1,200 more than six months in advance of services rendered.

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

J. Mark Nickell and Company does not charge performance-based fees. “Side by Side Management” refers to a situation in which the same firm manages accounts that are billed based on a percentage of assets under management and at the same time manages other accounts for which fees are assessed on a performance fee basis. Because J. Mark Nickell and Co. has no performance-based fee accounts, it has no side-by-side management.

## **Item 7 - Types of Clients**

J. Mark Nickell & Co. provides advisory services to the following types of clients:

- Individuals (other than high net worth individuals)
- High net worth individuals (\$750,000 of investable assets or \$1.5 million net worth)
- Pension and profit sharing plans (other than plan participants)
- Other (i.e., trusts and similar entities)

As previously disclosed in Item 5, our firm has established certain initial minimum account requirements, based on the nature of the service(s) being provided. For a more detailed understanding of those requirements, please review the disclosures provided in each applicable service.

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

### **METHODS OF ANALYSIS**

**General.** In accordance with the investment policy described in Item 4 under Investment Supervisory Services, J. Mark Nickell & Co. primarily will invest in ETFs and mutual funds. In addition, we may recommend a one or more Third Party Managers to invest a portion or all of a client’s account. Presently Windham Capital Management is the only Third Party Manager recommended by J. Mark Nickell & Co. We will also purchase common stocks at the request of clients or will hold common stocks that were legacy positions.

ETFs or mutual funds are generally evaluated and selected based on a variety of factors, including, without limitation, asset class, past performance, fee structure, portfolio manager, fund sponsor, overall ratings for safety and returns, and other factors.

When clients hold individual common stocks that were legacy positions, we will rely on information supplied by one or more of the major rating services (i.e., Schwab or Standard & Poor's Equity Ratings) to determine whether to continue holding a security. Priority will be given to capital preservation and maximizing risk-adjusted returns over tax considerations.

Fixed income investments may be used as a strategic investment, as an instrument to fulfill liquidity or income needs in a portfolio, or to add a component of capital preservation. J. Mark Nickell & Co. may evaluate and select bond funds, or on occasion, individual bonds based on a number of factors



including, without limitation, rating, yield and duration.

**Asset Allocation.** Rather than focusing primarily on securities selection, we attempt to identify an appropriate global mix of equity securities, fixed income, alternative investments (i.e., real estate, commodities, etc.) and cash suitable to the client's investment goals and risk tolerance and implement primarily with ETFs and mutual funds. We take an active role in managing risk by adjusting the asset mix in response to interest rate, inflation, and expected return signals dispensed by the market, which change to some extent through time. In addition, the equity market has a tendency to decline under certain conditions (turbulent markets); it also tends to rise under another set of conditions (calm markets). The optimal global asset mix, therefore, can and does change over the long-term (and sometimes in the short-term) with the ebb and flow of markets.

For clients of sufficient size--approximately \$750,000 in value in order to meet Third Party Manager investment minimums--we may recommend an allocation to *The Windham Portfolio*, a tactical separate account of Windham Capital Management, a Third Party Manager. *The Windham Portfolio* is actively managed to exploit return opportunities across global asset classes. *The Windham Portfolio* seeks to protect against downside risk by using Windham's proprietary risk indicators to detect and anticipate when markets are calm, fragile or turbulent. Windham primarily uses ETFs to access global financial markets in a highly liquid, low-cost, and tax-efficient manner. Through daily monitoring of propriety risk indicators (measuring co-movement of multiple factors against historic norms), Windham can tactically allocate across assets within a portfolio to invest more aggressively prior to market rallies and defensively during adverse market conditions.

Although Windham's propriety risk measures are not directly accessible to our firm, Windham's implementation is visible to us daily as we monitor the accounts of clients. Consequently, Windham's risk measures and investment proposal tools available to us will inform our asset allocation analysis. Clients who invest directly with Windham receive the valuable benefit of prompt execution and potentially enhanced execution quality and/or cost when Windham's risk measures signal market turning points.

A risk of asset allocation is that the client may not participate in sharp increases in a particular security, industry, market sector, or asset class. Similarly, another risk of asset allocation is that the correlation among asset classes may increase unexpectedly, diminishing the value of diversification, and resulting in sharp declines in asset values.

**Risks of all forms of analysis.** Our market and asset class analysis methods rely on information supplied by third parties, and other publicly-available information. While we are alert to indications that data may be incorrect, there is always a risk that our analysis could be compromised by inaccurate or misleading information, or that we may interpret the data to reach incorrect conclusions.

## INVESTMENT STRATEGIES

We use the following strategy(ies) in managing client accounts, provided that such strategy(ies) are appropriate to the needs of the client and consistent with the client's investment objectives, risk tolerance, and time horizons, among other considerations:

**Long-term purchases.** We purchase securities (primarily ETFs) with the idea of holding them in the client's account for a year or longer. Typically we employ this strategy when:

- we believe the securities (or securities representing an asset class) are currently undervalued, and/or

- we want exposure to a particular asset class over time.

A risk in a long-term purchase strategy is that by holding the security for this length of time, we may not take advantage of short-term gains that could be profitable to a client. Moreover, if our long-term assessments are incorrect, a security may decline sharply in value before we make the decision to sell.

**Short-term purchases.** In limited circumstances, when utilizing this strategy, we purchase securities with the idea of selling them within a relatively short time (typically a year or less). We do this in an attempt to take advantage of conditions that we believe will soon result in a price swing in the securities we purchase. A short-term security purchase also may be the result of an intended long-term purchase, where the price subsequently declines and the security is sold, resulting in a short-term holding period.

## **RISK OF LOSS**

While J. Mark Nickell & Co. seeks to diversify clients' investment portfolios across various asset classes consistent with their investment policy in an effort to reduce risk of loss, all investment portfolios are subject to risks. Accordingly, there can be no assurance that client investment portfolios will be able to fully meet their investment objectives and goals. Securities investments are not guaranteed and you may lose money on your investments. We ask that you work with us to help us understand your tolerance for risk.

Below is a description of several of the principal risks that client investment portfolios face:

*Management Risks.* While J. Mark Nickell & Co. manages client investment portfolios based on experience and research, the value of client investment portfolios will change daily based on the performance of the underlying securities in which they are invested. Accordingly, client investment portfolios are subject to the risk that the firm's asset allocation selections are adversely affected by unanticipated market movements, and also the risk that the firm's specific investment choices could underperform their relevant indexes.

*Risks of Investments in ETFs and Mutual Funds.* J. Mark Nickell & Co. will invest client portfolios in ETFs and mutual funds. Investments in ETFs and mutual funds are generally less risky than investing in individual securities because of their diversified portfolios; however, these investments still are subject to risks associated with the markets in which they invest. In addition, the success of investing in ETFs and mutual funds will be related to the skills of their particular managers and their performance in managing their funds, even for those which are managed to replicate the performance of a benchmark (such as the Standard & Poor's 500 Index). ETFs and mutual funds also are subject to risks due to regulatory restrictions applicable to registered investment companies under the Investment Company Act of 1940.

*Equity Market Risks.* J. Mark Nickell & Co. will invest portions of client assets into equity investments, primarily ETFs and mutual funds that invest in the stock market, or in limited cases, individual stocks. While ETFs and mutual funds have diversified portfolios that may make them less risky than investments in individual securities, funds that invest in stocks and other equity securities nevertheless are subject to the risks of the stock market. These risks include, without limitation, the risks that stock values will decline due to daily fluctuations in the markets, and that stock values will decline over longer periods (e.g., bear markets) due to general market declines in the stock prices for all companies, regardless of any individual security's prospects.

*Fixed Income Risks.* J. Mark Nickell & Co. will invest portions of client assets into fixed income instruments, generally through ETFs and mutual funds that invest in bonds and notes, or may invest directly in bonds and notes. While investing in fixed income instruments, either directly or through

ETFs and mutual funds, is generally less volatile than investing in stock (equity) markets, fixed income investments nevertheless are subject to risks. These risks include, without limitation, interest rate risks (risks that changes in interest rates will devalue the investments), credit risks (risks of default by borrowers), or maturity risk (risks that bonds or notes will change value from the time of issuance to maturity).

*Foreign Securities Risks.* J. Mark Nickell & Co. may invest portions of client assets into ETFs and mutual funds that invest internationally. While foreign investments are important to the diversification of client investment portfolios, they carry risks that may be different from U.S. investments. For example, foreign investments may not be subject to uniform audit, financial reporting or disclosure standards, practices or requirements comparable to those found in the U.S. Foreign investments are also subject to foreign withholding taxes and the risk of adverse changes in investment or exchange control regulations. Finally, foreign investments may involve currency risk, which is the risk that the value of the foreign security will decrease due to changes in the relative value of the U.S. dollar and the security's underlying foreign currency.

## **Item 9 - Disciplinary Information**

We are required to disclose any legal or disciplinary events that are material to a client's or prospective client's evaluation of our advisory business or the integrity of our management.

Our firm and our management personnel have no reportable disciplinary events to disclose.

## **Item 10 - Other Financial Industry Activities & Affiliations**

Our firm and our related persons are not engaged in other financial industry activities and have no other industry affiliations.

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

Our firm has adopted a Code of Ethics which sets forth high ethical standards of business conduct that we require of our employees, including compliance with applicable federal securities laws.

J. Mark Nickell and Co. and our personnel owe a duty of loyalty, fairness and good faith to our clients, and have an obligation to adhere not only to the specific provisions of the Code of Ethics but to the general principles that guide the Code of Ethics.

Our Code of Ethics includes policies and procedures for the review of quarterly securities transactions reports as well as initial and annual securities holdings reports that must be submitted by the firm's access persons. Among other things, our Code of Ethics also requires the prior approval of any acquisition of securities in a limited offering (e.g., private placement) or an initial public offering. Our code also provides for oversight, enforcement and recordkeeping provisions.

J. Mark Nickell and Co.'s Code of Ethics further includes the firm's policy prohibiting the use of

material non-public information. While we do not believe that we have any particular access to non-public information, all employees are reminded that such information may not be used in a personal or professional capacity.

A copy of our complete Code of Ethics is available to our advisory clients and prospective clients. You may request a copy by email sent to [mark@jmarknickell.com](mailto:mark@jmarknickell.com), or by calling us at 615 371-6622.

Our Code of Ethics is designed to assure that the personal securities transactions, activities and interests of our employees will not interfere with (i) making decisions in the best interest of advisory clients and (ii) implementing such decisions while, at the same time, allowing employees to invest for their own accounts. Our firm and/or individuals associated with our firm may buy or sell for their personal accounts securities identical to or different from those recommended to our clients. In addition, any related person(s) may have an interest or position in a certain security(ies) which may also be recommended to a client.

It is the expressed policy of our firm that no person employed by us may purchase or sell any security immediately prior to a transaction(s) being implemented for an advisory account, thereby preventing such employee(s) from benefiting from transactions placed on behalf of advisory accounts.

We may aggregate our employee trades with client transactions where possible and when compliant with our duty to seek best execution for our clients. In these instances, participating clients will receive an average share price and transaction costs will be shared equally and on a pro-rata basis. In the instances where there is a partial fill of a particular batched order, we will allocate all purchases pro-rata, with each account paying the average price. Our employee accounts will be included in the pro-rata allocation.

As these situations represent actual or potential conflicts of interest to our clients, as described above, J. Mark Nickell & Co. has adopted specific procedures to protect client interests when its associated persons invest in the same securities as those selected for or recommended to clients. In the event of any identified potential trading conflicts of interest, the goal of J. Mark Nickell & Co. is to place client interests first.

## **Item 12 - Brokerage Practices**

### **Best Execution and Benefits of Brokerage Selection**

For discretionary clients, J. Mark Nickell and Co. requires these clients to provide us with written authority to determine the broker dealer to use and the commission costs that will be charged to these clients for these transactions.

These clients must include any limitations on this discretionary authority in this written authority statement. Clients may change/amend these limitations as required. Such amendments must be provided to us in writing.

When given discretion to select the brokerage firm that will execute orders in client accounts, J. Mark Nickell & Co. seeks "best execution" for client trades, which is a combination of a number of factors, including, without limitation, quality of execution, services provided and commission rates. Therefore, J. Mark Nickell & Co. may use or recommend the use of brokers who do not charge the lowest available commission in the recognition of research and securities transactions services, or quality of execution. Research services received with transactions may include proprietary or third party research (or any combination), and may be used in servicing any or all of J. Mark Nickell & Co.'s clients.

Therefore, research services received may or may not be used for the account for which the particular transaction was effected.

J. Mark Nickell and Co. may recommend that clients establish brokerage accounts with the Schwab Advisor Services division of Charles Schwab & Co., Inc. ("Schwab"), a FINRA registered broker-dealer, member SIPC, to maintain custody of clients' assets and to effect trades for their accounts. Although we recommend that clients establish accounts at Schwab, it is the client's decision to custody assets with Schwab. J. Mark Nickell and Co. is independently owned and operated and not affiliated with Schwab.

Schwab provides J. Mark Nickell and Co. with access to its institutional trading and custody services, which are typically not available to Schwab retail investors. These services generally are available to independent investment advisers on an unsolicited basis, at no charge to them so long as a total of at least \$10 million of the adviser's clients' assets are maintained in accounts at Schwab Advisor Services. These services are not contingent upon our firm committing to Schwab any specific amount of business (assets in custody or trading commissions). Schwab's brokerage services include the execution of securities transactions, custody, research, and access to mutual funds and other investments that are otherwise generally available only to institutional investors or would require a significantly higher minimum initial investment.

For our client accounts maintained in its custody, Schwab generally does not charge separately for custody services but is compensated by account holders through commissions and other transaction-related or asset-based fees for securities trades that are executed through Schwab or that settle into Schwab accounts. In general, clients who sign up for electronic account delivery receive lower transaction-related charges.

Schwab Advisor Services also makes available to our firm other products and services that benefit J. Mark Nickell and Co. but may or may not directly benefit our clients' accounts. Many of these products and services may be used to service all or some substantial number of our client accounts including accounts not maintained at Schwab.

Schwab's products and services that assist us in managing and administering our clients' accounts include software and other technology that

- i. provide access to client account data (such as trade confirmations and account statements);
- ii. facilitate trade execution and allocate aggregated trade orders for multiple client accounts;
- iii. provide research, pricing and other market data;
- iv. facilitate payment of our fees from clients' accounts; and
- v. assist with back-office functions, recordkeeping and client reporting.

Schwab Advisor Services also offers other services intended to help us manage and further develop our business enterprise. These services may include:

- i. compliance, legal and business consulting;
- ii. publications and conferences on practice management and business succession; and
- iii. access to employee benefits providers, human capital consultants and insurance providers.

Schwab may make available, arrange and/or pay third-party vendors for the types of services rendered to J. Mark Nickell and Co. Schwab Advisor Services may discount or waive fees it would otherwise

charge for some of these services or pay all or a part of the fees of a third-party providing these services to our firm. Schwab Advisor Services may also provide other benefits such as educational events or occasional business entertainment of our personnel. In evaluating whether to recommend or require that clients custody their assets at Schwab, we may take into account the availability of some of the foregoing products and services and other arrangements as part of the total mix of factors we consider and not solely on the nature, cost or quality of custody and brokerage services provided by Schwab, which may create a potential conflict of interest. The benefits received through participation in the program of Schwab Advisor Services do not necessarily depend upon the proportion of transactions directed to Schwab. The benefits are received by J. Mark Nickell & Co, in part because of commission revenue generated for Schwab by J. Mark Nickell & Co. clients. This means that the investment activity in client accounts is beneficial to J. Mark Nickell & Co., because Schwab does not assess a fee to J. Mark Nickell & Co. for these services. This creates an incentive for J. Mark Nickell & Co. to continue to recommend Schwab to clients. While it may be possible to obtain similar custodial, execution and other services elsewhere at a lower cost, J. Mark Nickell & Co. believes that Schwab provides an excellent combination of these services.

J. Mark Nickell & Co. does not receive any cash compensation (including commissions or referral fees) from Schwab.

#### Block Trading

J. Mark Nickell & Co. may enter trades as a block where possible and when advantageous to clients whose accounts have a need to buy or sell shares of the same security. This blocking of trades permits the trading of aggregate blocks of securities composed of assets from multiple client accounts, so long as transaction costs are shared equally and on a pro-rata basis between all accounts included in any such block. Block trading allows J. Mark Nickell & Co. to execute equity trades in a timelier, equitable manner, and may reduce overall costs to clients.

J. Mark Nickell & Co. will only aggregate transactions when it believes that aggregation is consistent with its duty to seek best execution (which includes the duty to seek best price) for its clients, and is consistent with the terms of J. Mark Nickell & Co.'s Investment Advisory Agreement with each client for which trades are being aggregated. No advisory client will be favored over any other client; each client that participates in an aggregated order will participate at the average share price for all J. Mark Nickell & Co.'s transactions in a given security on a given business day, with transaction costs generally shared pro-rata based on each client's participation in the transaction. On occasion, owing to the size of a particular account's pro rata share of an order or other factors, the commission or transaction fee charged could be above or below a breakpoint in a pre-determined commission or fee schedule set by the executing broker, and therefore transaction charges may vary slightly among accounts. Accounts may be excluded from a block due to tax considerations, client direction or other factors making the account's participation ineligible or impractical.

J. Mark Nickell & Co. will prepare, before entering an aggregated order, a written statement ("Allocation Statement") specifying the participating client accounts and how it intends to allocate the order among those clients. If the aggregated order is filled in its entirety, it will be allocated among clients in accordance with the Allocation Statement. If the order is partially filled, it will generally be allocated pro-rata, based on the Allocation Statement, or randomly in certain circumstances. Notwithstanding the foregoing, the order may be allocated on a basis different from that specified in the Allocation Statement if all client accounts receive fair and equitable treatment, and the reason for different allocation is explained in writing and is approved by an appropriate individual/officer of J. Mark Nickell & Co. J. Mark Nickell & Co.'s books and records will separately reflect, for each client

account included in a block trade, the securities held by and bought and sold for that account. Funds and securities of clients whose orders are aggregated will be deposited with one or more banks or broker-dealers, and neither the clients' cash nor their securities will be held collectively any longer than is necessary to settle the transaction on a delivery versus payment basis; cash or securities held collectively for clients will be delivered out to the custodian bank or broker-dealer as soon as practicable following the settlement, and J. Mark Nickell & Co. will receive no additional compensation or remuneration of any kind as a result of the proposed aggregation.

### Directed Brokerage

Clients may direct J. Mark Nickell to use a particular broker for custodial or transaction services on behalf of the client's portfolio. In directed brokerage arrangements, the client is responsible for negotiating the commission rates and other fees to be paid to the broker. Accordingly, a client who directs brokerage should consider whether such designation may result in certain costs or disadvantages to the client, either because the client may pay higher commissions or obtain less favorable execution, or the designation limits the investment options available to the client.

The arrangement that J. Mark Nickell has with Schwab is designed to maximize efficiency and to be cost effective. By directing brokerage arrangements, the client acknowledges that these economies of scale and levels of efficiency are generally compromised when the alternative brokers are used. While every effort is made to treat clients fairly over time, the fact that a client chooses to use the brokerage and/or custodial services of these alternative service providers may in fact result in a certain degree of delay in executing trades for their account(s) and otherwise adversely affect management of their account(s).

By directing J. Mark Nickell to use a specific broker or dealer, clients who are subject to ERISA confirm and agree with J. Mark Nickell that they have the authority to make the direction, that there are no provisions in any client or plan document which are inconsistent with the direction, that the brokerage and other goods and services provided by the broker or dealer through the brokerage transactions are provided solely to and for the benefit of the client's plan, plan participants and their beneficiaries, that the amount paid for the brokerage and other services have been determined by the client and the plan to be reasonable, that any expenses paid by the broker on behalf of the plan are expenses that the plan would otherwise be obligated to pay, and that the specific broker or dealer is not a party in interest of the client or the plan as defined under applicable ERISA regulations.

## **Item 13 - Review of Accounts**

### **INVESTMENT SUPERVISORY SERVICES ("ISS")**

**REVIEWS:** While the underlying securities within Individual Portfolio Management Services accounts are continually monitored, these accounts are reviewed at least monthly. Accounts are reviewed in the context of each client's stated investment objectives and guidelines. More frequent reviews may be triggered by material changes in variables such as the client's individual circumstances, or the market, political or economic environment.

These accounts are reviewed by J. Mark Nickell (President) and/or Christopher E. Walker (Adviser).

**REPORTS:** In addition to the monthly statements and confirmations of transactions that clients receive from their broker-dealer, we provide quarterly reports summarizing account performance, balances and holdings. We also provide annual tax reports to assist the tax advisor in preparing complete and

accurate tax filings.

## **FINANCIAL PLANNING SERVICES**

**REVIEWS:** While reviews may occur at different stages depending on the nature and terms of the specific engagement, typically reviews occur in conjunction with an in-person review regarding investment supervisory services, when the client updates us on changes to his/her financial picture and we explain the impact to him/her of changes in the financial, investment, and/or regulatory environment.

**REPORTS:** Financial Planning clients will receive reports and/or analysis as necessary to explain the rationale for alternatives and recommendations. Additional reports may be provided upon request.

### **Item 14 - Client Referrals and other compensation**

It is J. Mark Nickell and Co.'s policy not to engage solicitors or to pay related or non-related persons for referring potential clients to our firm.

It is J. Mark Nickell and Co.'s policy not to accept or allow our related persons to accept any form of compensation, including cash, sales awards or other prizes, from a non-client in conjunction with the advisory services we provide to our clients.

### **Item 15 - Custody**

We previously disclosed in the "Fees and Compensation" section (Item 5) of this Brochure that our firm directly debits advisory fees from client accounts.

As part of this billing process, the client's custodian is advised of the amount of the fee to be deducted from that client's account. On at least a quarterly basis, the custodian is required to send to the client a statement showing all transactions within the account during the reporting period.

Because the custodian does not calculate the amount of the fee to be deducted, it is important for clients to carefully review their custodial statements to verify the accuracy of the calculation, among other things. Clients should contact us directly if they believe that there may be an error in their statement.

In addition to the periodic statements that clients receive directly from their custodians, we also send account statements directly to our clients on a quarterly basis. We urge our clients to carefully compare the information provided on these statements to ensure that all account transactions, holdings and values are correct and current.

Our firm does not have actual or constructive custody of client accounts.

### **Item 16 - Investment Discretion**

Clients may hire us to provide discretionary asset management services, in which case we place trades in a client's account without contacting the client prior to each trade to obtain the client's permission.

Our discretionary authority includes the ability to do the following without contacting the client:

- determine the security to buy or sell; and/or
- determine the amount of the security to buy or sell



The limited power of attorney conferred by the client will give J. Mark Nickell & Co. the authority to carry out various activities in the account, generally including the following: trade execution; the ability to request checks on behalf of the client; and, the billing of advisory fees directly from the account(s).

Clients give us discretionary authority when they sign a discretionary agreement with our firm, and may limit this authority by giving us written instructions. Clients may also change/amend such limitations by once again providing us with written instructions.

As described in the “**Advisory Business**” section, J. Mark Nickell & Co. also will accept clients on a non-discretionary basis in limited circumstances. For *non-discretionary* accounts, the client also generally executes a LPOA, which allows J. Mark Nickell & Co. to carry out trade recommendations and approved actions in the portfolio. However, in accordance with the investment advisory agreement between J. Mark Nickell & Co. and the client, J. Mark Nickell & Co. does not implement trading recommendations or other actions in the account unless and until the client has approved the recommendation or action. As with discretionary accounts, clients may limit the terms of the LPOA, subject to J. Mark Nickell & Co.’s agreement with the client and the requirements of the client’s custodian.

## **Item 17 - Voting Client Securities**

As a matter of firm policy, we do not vote proxies on behalf of clients. Therefore, although our firm may provide investment advisory services relative to client investment assets, clients maintain exclusive responsibility for: (1) directing the manner in which proxies solicited by issuers of securities beneficially owned by the client shall be voted, and (2) making all elections relative to any mergers, acquisitions, tender offers, bankruptcy proceedings or other type events pertaining to the client’s investment assets. Clients are responsible for instructing each custodian of the assets, to forward to the client copies of all proxies and shareholder communications relating to the client’s investment assets.

We may provide clients with consulting assistance regarding proxy issues if they contact us with questions at our principal place of business.

## **Item 18 - Financial Information**

Under no circumstances do we require or solicit payment of fees in excess of \$1,200 per client more than six months in advance of services rendered. Therefore, we are not required to include a financial statement.

As an advisory firm that maintains discretionary authority, we also are required to disclose any financial condition that is reasonably likely to impair our ability to meet our contractual obligations. Neither J. Mark Nickell and Co. nor J. Mark Nickell, personally, has any additional financial circumstances to report, nor has either party been the subject of a bankruptcy petition during the past ten years.

**Part 2B of Form ADV: *Brochure Supplement for***

**J. Mark Nickell, CPA/PFS, CFA**

**CRD# 4479162**

of

**J. Mark Nickell and Co.**

104 East Park Dr., Suite 310  
Brentwood, TN 37027

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[www.jmarknickell.com](http://www.jmarknickell.com)

March 3, 2012

This brochure supplement provides information about Joseph Mark Nickell that supplements the J. Mark Nickell and Co. brochure. You should have received a copy of that brochure. Please contact J. Mark Nickell if you did not receive J. Mark Nickell and Co.'s brochure or if you have any questions about the contents of this supplement.

Additional information about Joseph Mark Nickell is available on the SEC's website at

[www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

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**Educational Background and Business Experience**

Joseph Mark Nickell (born 1957) has served as President of J. Mark Nickell & Co. (formerly J. Mark Nickell, P.C.) since 1994. Mark began his career with Arthur Andersen & Company in 1981 as Tax Staff member. Mark rose through the ranks to Tax Senior, then Tax Manager from 1986 – 1988. In 1988 Mark joined KPMG in a similar position and was promoted to Senior Tax Manager in 1990 where he served through 1992. Prior to forming J. Mark Nickell, P.C. in April, 1994, Mark worked as a CPA in solo practice.

Mark received his BS in accounting (with honors) from the University of Tennessee, Knoxville in 1979. Between academic quarters Mark gained experience through internships with Internal Revenue Service (1977); Peat, Marwick & Mitchell (predecessor firm to KPMG) (1978); and the Knoxville accounting firm of Breazeale & McWilliams (later reorganized separately as Breazeale & Associates and McWilliams & Co (1979). Mark rounded out his formal education with graduate coursework with a concentration in Ethics at Southern Baptist Theological Seminary (Louisville, KY). Mark earned the designation Certified Public Accountant\* in 1983, the Personal Financial Specialist\*\* designation in 1993, and the Chartered Financial Analyst® designation\*\*\* in 1996, and is in good standing with each of the conferring bodies.

\* A CPA is a Certified Public Accountant. All CPA candidates must pass the Uniform CPA Examination to qualify for a CPA certificate and license to practice public accounting. While the exam is the same regardless of where it is taken, every state/jurisdiction has its own set of education and experience requirements that individuals must meet. However, most states require at least a bachelor's

degree and a concentration in accounting, and at least one year of public accounting experience under the supervision of or verification by a CPA. Once the designation is attained, the CPA is required to meet continuing education requirements.

\*\* The PFS (Personal Financial Specialist) designation is granted exclusively to CPAs with the combination of extensive tax expertise and comprehensive knowledge of financial planning. The requirements of the PFS credential are established by the PFP (Personal Financial Planning) staff of the AICPA (American Institute of CPAs), the National Accreditation Commission, along with the PFS Credential Committee, and accurately reflect the depth and breadth of experience and technical expertise required to obtain this credential. The 5 major requirements are: (1) Obtain CPA licensure (2) join the AICPA and be a member in good standing (3) complete a comprehensive PFP education, consisting of a minimum of 80 hours of PFP training and education within the five year period preceding the date of the PFS application (4) attain 2 years of full-time business or teaching experience in the area of Personal Financial Planning and (5) pass a PFP examination.

\*\*\* The Chartered Financial Analyst® (“CFA”) designation is a professional designation given by the CFA Institute that measures the competence and integrity of financial analysts. The CFA Program is a graduate-level self-study program that combines a broad-based curriculum of investment principles with professional conduct requirements. Candidates are required to pass three levels of examinations covering areas such as accounting, economics, ethics, money management and security analysis. Before a candidate is eligible to become a CFA charterholder, he/she must meet minimum experience requirements in the area of investment/financial practice. To enroll in the program, a candidate must hold a bachelor’s degree.

### **Disciplinary Information.**

There is no disciplinary information to report regarding Mark.

### **Other Business Activities**

Mark is not engaged in any other business activities.

### **Additional Compensation**

Mark has no other income or compensation to disclose.

### **Supervision**

As President of J. Mark Nickell & Co., Mark supervises all duties and activities of the firm. Mark can be reached at (615) 371-6622.

Because we want to insure continuity of service in the event that Mark becomes unavailable to serve clients, whether temporarily or permanently, we have entered into an Agreement with John R. Day with the firm of Day & Ennis, LLC, in Macon, Georgia to serve as the interim financial advisor for the Company in the absence of Mark Nickell due to accident, illness or upon his death. Upon a triggering event, John Day will become the interim financial advisor of the Company, supervising all financial advisory services of the Company. John Day may delegate his duties to one or more members of his firm so long as such services are at all times supervised by him. Information regarding John’s education and background as well as his firm’s Form ADV is available upon request.

**Part 2B of Form ADV: *Brochure Supplement for***

**Christopher Edward Walker, CPA, CFP®**

**CRD# 5530829**

of

**J. Mark Nickell and Co.**

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Additional information about Joseph Mark Nickell is available on the SEC's website at

[www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

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**Business Experience and Educational Background**

Christopher Edward Walker (born 1976) has been an adviser with J. Mark Nickell & Co. since 2008. Chris began his career with Dent, Baker, & Company of Birmingham, Alabama in 1999 as a staff accountant. Chris joined DiPiazza, LaRocca, McDowell & Co. in 2001 where he attained the position of tax manager. In 2004 he returned to his native Nashville, where he served as Revenue Manager with Community Health Systems until May, 2008, when he joined J. Mark Nickell & Co.

Chris received both his Bachelors of Commerce and Business Administration in Accounting (graduating *Magna Cum Laude*) and Master of Accountancy (graduating *Summa Cum Laude*) from the University of Alabama in 1998 and 1999, respectively. Chris is a Certified Public Accountant\* since 2000 and also is a CERTIFIED FINANCIAL PLANNER™ professional\*\* since 2003 and is in good standing with each of the conferring bodies.

\*A CPA is a Certified Public Accountant. All CPA candidates must pass the Uniform CPA Examination to qualify for a CPA certificate and license to practice public accounting. While the exam is the same regardless of where it is taken, every state/jurisdiction has its own set of education and experience requirements that individuals must meet. However, most states require at least a bachelor's degree and a concentration in accounting, and at least one year of public accounting experience under the supervision of or verification by a CPA. Once the designation is attained, the CPA is required to meet continuing education requirements.

**\*\*The CFP® certification is granted by Certified Financial Planner Board of Standards, Inc. (CFP Board). To attain the certification, the candidate must complete the required educational, examination and experience requirements set forth by CFP Board. Certain designations, such as the CPA, CFA and others may satisfy the education component, and allow a candidate to sit for the CFP® Certification Examination. The Examination tests the candidate's ability to apply financial planning knowledge to client situations. The 10-hour exam is divided into three separate sessions over a 2-day period. At least 3 years of qualifying full-time work experience are required for certification. Qualifying experience includes work in the area of the delivery of the personal financial planning process to clients, the direct support or supervision of others in the personal financial planning process, or teaching all, or any portion, of the personal financial planning process.**

### **Disciplinary Information**

Chris has no reportable disciplinary history.

### **Other Business Activities**

Chris is not engaged in any other investment-related activities.

### **Additional Compensation**

Chris has no other income or compensation to disclose.

### **Supervision**

Chris is supervised by Mark Nickell, President of J. Mark Nickell & Co., who supervises all duties and activities of the firm. Mark can be reached at (615) 371-6622.