



# **EFFICIENT MARKET ADVISORS, LLC**

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

12555 High Bluff Drive, Suite 300

San Diego, CA 92130

(858) 847-0690

[www.efficient-portfolios.com](http://www.efficient-portfolios.com)

**March 30, 2016**

This Brochure provides information about the qualifications and business practices of Efficient Market Advisors, LLC. If you have any questions about the contents of this Brochure or would like any additional information, please contact EMA at (858) 847-0690 or email [info@efficient-portfolios.com](mailto:info@efficient-portfolios.com). Efficient Market Advisors, LLC is a registered investment advisor with the U. S. Securities and Exchange Commission (SEC). Registration as an investment adviser does not imply any level of skill or training. The information in this Brochure has not been approved or verified by the SEC.

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

## Item 2. Material Changes

The following material changes have occurred since our previous Brochure dated September 22, 2015.

**Item 4 – Advisory Business.** Information was added to expand disclosures regarding the payment of Wrap Account Fees between EMA and the Wrap Sponsor.

– *Model Portfolios to Third Party Advisors.* Information was added to delineate agreements that EMA has entered into with third party advisors (TPA) in which EMA provides the TPA with model portfolios for a fee and the TPA in turn, invests their clients' assets in the model portfolio. EMA does not manage or have discretion over any TPA client's assets.

– *Firm Assets Under Management.* The information in this section was updated to reflect EMA's AUM as of December 31, 2015. Additionally, assets from TPA agreements have been reported separately and not included in the total AUM.

**Item 5 – Fees and Compensation.** Information was added to include an explanation of the amount of fees and methods used to pay EMA for TPA agreements.

**Item 8 – Risk of Loss.** Information was added to explain the use of leverage, derivatives and hedging within EMA's portfolios.

**Item 11 – Code of Ethics.** Information was added to explain what is required by EMA's Code of Ethics as it pertains to personal trading and fiduciary obligations to clients and reporting requirements.

**Item 12 – Brokerage Practices.** An explanation was added clarifying that EMA does not maintain physical custody of clients' assets, that our primary custodian relationship is with TD Ameritrade but other clients may choose other custodians, and an explanation of EMA's Best Execution Policy

**Item 15 – Custody.** Information was added to explain the timing and sources of client account statements.

**Item 17 – Voting Client Securities.** Information was added reflect EMA's current proxy voting policy.

EMA encourages each client to read this Brochure carefully and to call us with any questions you may have about any information contained in it. Our Brochure is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). The searchable IARD/CRD number for Efficient Market Advisors, LLC is 132188. We will provide ongoing disclosure information about material changes as necessary and will provide a new Brochure as necessary based on changes or new information without charge.

Our Brochure may be requested by contacting EMA at (858) 847-0690 or by email to [info@efficient-portfolios.com](mailto:info@efficient-portfolios.com).

EFFICIENT MARKET ADVISORS, LLC  
Part 2A of Form ADV – Firm Brochure

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#### **Item 4. Advisory Business**

**A. Firm Overview**

Efficient Market Advisors, LLC (EMA or we), a California Limited Liability Company, is an independent, fee-only, investment advisor registered with the U.S. Securities and Exchange Commission (SEC). EMA's principal place of business is located in San Diego, California. EMA began conducting business as an independent investment advisory firm in 2004. Herbert W. Morgan, III is the Founder, CEO, Chief Investment Officer and majority owner of EMA.

**B. Advisory Services Offered**

EMA offers investment management and advisory services to individuals, high net worth clients, retirement plans, charitable foundations, and corporations. Our services are offered to clients through advisors and certain wrap programs (collectively, Clients).

EMA offers fifteen (15) investment Portfolios that consist of low-cost, tax-efficient, and transparent exchange-traded funds (ETFs).

#### **Investment Management Services**

Investment management services are tailored to each Client's stated objectives. At the beginning of the relationship, EMA gathers information regarding a Client's overall investment objectives, risk tolerance and time horizon. Once an appropriate Portfolio has been selected for the Client, EMA provides investment management through a three-step process:

- Asset Allocation,
- Portfolio Construction, and
- Periodic Rebalancing

#### **ASSET ALLOCATION**

EMA offers fifteen Portfolios and each Portfolio considers both a Client's tolerance for risk and their stated time horizon for meeting their investment goals.

#### **PORTFOLIO CONSTRUCTION**

EMA constructs proprietary ETF investment Portfolios using strategic, tactical, and opportunistic asset allocation techniques. EMA's investment philosophy emphasizes top-down, macroeconomic research in creating an active asset allocation strategy. This strategy is implemented through fifteen unique time and risk-based Portfolios. We primarily utilize index-based ETFs, which are passive investment vehicles, in order to gain diversified exposure to a desired asset class or category.

Asset Classes and Categories may include:

- Equities (Stocks)
  - US or Foreign Large Cap, Mid Cap, Small Cap, Real Estate Investment Trusts (REITs), Sector or Industry and Emerging and Frontier Markets
- Fixed Income (Bonds)
  - Investment Grade, High Yield, Preferred Stocks, Foreign or Domestic Government and Agency and Emerging and Frontier Markets
- Alternative Investments (Absolute Return)
  - Commodities, Precious Metals, Currencies, Timber, Agriculture, Managed Futures, Hedge Fund Replication and Arbitrage
- Cash
  - Money Market, Bank Deposits or equivalents

Please refer to **Item 8** for further information on our methods of analysis and investment strategies, including details on the specific risks associated with these strategies.

#### REBALANCING A PORTFOLIO

Rebalancing is the process of selling portions of an investment in a particular asset class or security that has increased as a percentage of the Portfolio to a level beyond its intended or target allocation. Proceeds from rebalancing sales are used to buy additional positions in other asset classes or securities that have fallen below their intended target allocation.

Client Portfolios are reviewed at least quarterly to determine if rebalancing is appropriate.

Please refer to **Item 13** for further information on account reviews performed by EMA.

#### C. **Gathering Client Information**

At the onset of the Client relationship, EMA gathers each Client's investment objectives, risk tolerance and time horizon. The information is used by EMA to determine the appropriate asset allocation portfolio for each Client. EMA does not assume any responsibility for the accuracy of the information provided by Clients and is not obligated to verify any information received from the Client or from the Client's other professionals (e.g., advisor, attorney, accountant, etc.) and is expressly authorized to rely on such information. Under all circumstances, Clients are responsible for promptly notifying EMA in writing of any material changes to the Client's financial situation, investment objectives, time horizon, or risk tolerance.

**D. Wrap Fee Accounts**

EMA provides its ETF investment portfolio strategies to accounts under wrap-fee programs (Wrap Programs) sponsored by other investment firms (Wrap Sponsor). A list of such Wrap Programs can be found in EMA's Form ADV Part 1. The Wrap Sponsors recommend and help clients in selecting an appropriate EMA Portfolio that meets the wrap client's investment objectives. EMA's role is to manage the wrap client's wrap account in accordance with the EMA Portfolio selected. Generally, it is the responsibility of the Wrap Sponsor to determine if an EMA Portfolio is suitable for the wrap client.

For a single all inclusive fee (Wrap Fee), a wrap client receives certain other services provided by the Wrap Sponsor, such as trading execution and custodial services. EMA receives a portion of the Wrap Fee from the Wrap Sponsor for providing investment management services to the wrap client.

Although the types of investment management services EMA provides to wrap clients are generally the same as the types of investment management services provided to our non wrap clients, certain differences may exist. These include: 1) the fact that the Wrap Sponsor collects each wrap client's investment objectives and assists in determining the EMA Portfolio best suited for the wrap client, and 2) communication regarding the investment management of a wrap clients' assets is generally between the wrap sponsor and the wrap client, with EMA only communicating with the Wrap Sponsor (unless the Wrap Client requests otherwise).

**E. Model Portfolios To Third Party Advisers**

EMA provides services under written agreement to non-affiliated third party registered investment advisers (TPA), wherein EMA provides the TPA with model portfolios in certain investment styles for a fee ("TPA Model Portfolios"). The TPA may in turn, at its sole discretion, use the model portfolios as investment strategies to invest certain TPA clients' assets. EMA does not receive any personal or investment guideline information pertaining to the TPA's clients and does not manage or have discretion over any TPA clients' assets.

**F. Firm Assets Under Management**

As of December 31, 2015, EMA had \$512,228,465 in discretionary assets under management ("AUM") and \$0.00 on a non-discretionary basis. .

For the TPA arrangement, as of December 31, 2015 there was \$178,774,580 invested in TPA Model Portfolios, as reported by the TPAs. These assets are not managed by EMA and are not included in the AUM amount listed above.

**Item 5. Fees and Compensation****A. Advisory Fees**

EMA is a fee-only investment advisory firm, and we are compensated only by a percentage of the Client assets we manage. We do not receive compensation or commissions from any other parties for investment management services. This means that no supervised person associated with us receives or accepts any compensation for the sale of securities or investment products. We believe this method of compensation minimizes conflicts of interest.

**Investment Management Fees**

Compensation for our services is calculated in accordance with Schedule A of the Investment Advisory Agreement (IAA) entered into with each Client when we begin our professional relationship. The IAA may be amended from time to time by us upon 30-days prior written notice to the Client.

In consideration for our investment management services, Clients pay EMA an ongoing fee (Account Fee) that is negotiable and is set out in the IAA. The Account Fee is typically a percentage based on the value of all assets in the account, including cash holdings. The Account Fee is generally paid to EMA quarterly in advance (on occasion, an accommodation may be made for the fee to be paid in arrears), with payment due within 10 days from the date of the invoice. However, the Account Fee may also be structured on a tiered basis, with a reduced percentage rate based on reaching certain thresholds. Fees will be equal to the agreed upon rate per annum, times the market value of the account, divided by the number of days in the agreed upon year and multiplied by the number of days in the quarter. The market value will be construed to equal the sum of the values of all assets in the account, not adjusted by any margin debt.

For purposes of determining value, securities and other instruments traded on a market for which actual transaction prices are publicly reported will be valued at the last reported sale price on the principal market in which they are traded (or, if there are no sales on such date, then at the mean between the closing bid and asked prices on such date). Other readily marketable securities will be priced using a pricing service or through quotations from one or more broker-dealers. All other assets shall be valued at fair value by EMA whose determination shall be conclusive.

Our maximum Account Fee is 2.00%. The Account Fee is paid to EMA, and EMA frequently shares a portion of the Account Fee with an Investment Advisor Representative (IAR) or Solicitor based on the particular agreement between EMA and the IAR or Solicitor. Please refer to Item 14 for further disclosures.

Fee adjustments for additional assets received into the account during a quarter will be provided on a pro-rated basis contingent on the number of days remaining in the quarter.

**Wrap Account and Model Portfolio Fees**

Wrap Sponsors charge an annual Wrap Fee to each of their wrap clients, which includes fees for the investment management services performed by EMA. The annual fees we receive from each Wrap Sponsor are generally equal to a percentage of the total assets in the Wrap Sponsor's Wrap Program accounts for which EMA provides investment management services. Each Wrap Sponsor pays EMA on a quarterly basis, either in arrears or in advance, as outlined in each written agreement between EMA and the Wrap Sponsor. The standard fees that EMA receives from each Wrap Sponsor varies depending on the investment style selected and other factors. The annual investment management fees EMA receives from each Wrap Sponsor range from .20% to .50%. The remainder of the wrap fee paid by the wrap client is retained by the Wrap Sponsor for providing the other services outlined in their Wrap Brochure. It is possible that comparable or similar services may be available to a client at a lower aggregate cost if they were separately provided. Accordingly, a wrap client should consider the amount of the total wrap fee in light of the aggregate services being obtained.

For Model Portfolio arrangements, the TPA calculates and pays EMA a fee for providing ongoing model portfolio recommendations. The fee paid to EMA is generally equal to an annual percentage of the total assets invested in the model portfolios and is paid either in arrears or advance, as outlined in each written agreement between EMA and the TPA. The fee ranges from .20% to .50% and is paid quarterly.

**B. How We Receive Fees for Non-Wrap Clients**

Our investment management fees are paid directly to us from the account by the custodian holding a Client's assets upon submission of an invoice from us to the custodian. Payment of fees may result in the liquidation of a portion of a Client's securities if there is insufficient cash in the account. Copies of invoices are provided to Clients upon request for every applicable billing period. The amount of the investment management fees paid to EMA is reflected on the account statements sent to Clients by their custodian.

**C. Other Fees and Expenses**

The fees discussed above do not include charges imposed by third parties. For example, custodial fees, ETF fees and expenses, and additional fees charged by Wrap Sponsors are not included in EMA's investment management fees. In addition to our fee, Clients are responsible for paying a proportionate share of any ETF fee (outlined in each ETF prospectus), brokerage commissions, stock transfer fees and other similar fees incurred in connection with transactions for their account. These fees are paid out of the assets in a Client's account and are in addition to the investment management fees paid to us.

Please refer to **Item 12** of this Brochure for additional important information about EMA's brokerage and transactional practices.



There are times when a client will request that their managed assets be held in a margin account with the custodian. Clients should be aware that the use of margin creates a conflict of interest between us and our clients since our fees are based on the full value of the assets under management including any assets purchased using margin. In order to mitigate that conflict, it is our goal to work with our clients to pay-off the margin balance as quickly and efficiently as possible.

Buying securities on margin also subjects client to additional costs and risks that should be carefully considered before opening a margin account. For more information regarding the risks of loss in general, please refer to **Item 8**, below.

Clients should review the fees charged to their account(s) to fully understand the total amount of all fees charged and be aware that lower fees for comparable services may be available from other investment advisory firms.

**D. Refund of Unearned Fees**

Fees for partial quarters at the commencement or termination of the IAA will be billed or refunded, as applicable on a pro-rated basis contingent on the number of days the account was open during the quarter. Any amount owed back to the Client is refunded the following quarter by check to the Client's address on record.

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

EMA does not charge any performance-based fees calculated based on a share of capital gains upon or capital appreciation of the assets or any portion of the assets of an advisory client.

**Item 7. Types of Clients**

EMA provides investment advice to individuals, high net worth clients, corporations, pension and profit-sharing plans, trusts, estates or charitable organizations, and other investment advisers.

As a condition of managing client accounts, we generally require an initial and on-going minimum account value of \$100,000, but we reserve the right to waive this requirement.

Accounts managed through wrap programs are subject to the minimums of that program.

For ERISA Clients, EMA will provide certain required disclosures to the "responsible plan fiduciary" (as this term is defined in ERISA) in accordance with Section 408(b)(2), regarding the services we provide and the direct and indirect compensation we receive from such Clients. Generally, these disclosures are contained in this Form ADV Part 2A, the IAA and/or in separate ERISA disclosure documents, and are designed to enable the ERISA plan's fiduciary to:

(1) determine the reasonableness of all compensation received by EMA; (2) identify any potential conflicts of interests; and (3) satisfy reporting and disclosure requirements to plan participants.

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

- A. EMA's proprietary investment process and real-world experience, is comprised of strategic, tactical and opportunistic elements using ETFs.

**Strategic Asset Allocation** considers an investor's time horizon and the historical interrelationship of asset class prices irrespective of the current macroeconomic environment or the state of the business cycle. EMA uses this historical perspective to create the base upon which our investment thesis and opinions are implemented.

**Tactical Asset Allocation** implements EMA's investment views by adjusting upward or downward the various asset class weightings in a Portfolio. EMA uses a top-down approach that considers multiple variables including relative valuation, economic cycle positioning, interest rate spreads, monetary and fiscal policy, political factors, yield curve analyses, and industry and sector valuations.

**Opportunistic Investing** provides the potential to add "alpha" or value to a Portfolio by maintaining the flexibility and willingness to act when unexpected events occur that cause over or under valuations of an asset class, sector or industry.

B. **Risk of Loss**

Like any investment strategy or investment asset, EMA's investment process and the securities we invest in involve risk of loss, and Clients must be prepared to bear the loss of some or all of their investment. Every investment decision made for our Portfolios is subject to various market, currency, economic, political and business risks. We will use our best judgment and good faith efforts in rendering services to our Clients, but we cannot warrant or guarantee any particular level of account performance, or that any account will be profitable over time. Not every investment decision or recommendation made by us will be profitable, and our Clients assume all the market risk involved in their investment account and the assets invested with us.

It is the responsibility of each Client to provide us complete information and to notify us of any changes in their financial circumstances or goals. Except as may otherwise be provided by law, we are not liable to Clients for:

- Any loss that a Client may suffer by reason of any investment decision made or other action taken or omitted in good faith by us with that degree of care, skill, prudence and diligence under the circumstances that a prudent person acting in a fiduciary capacity would use;

- Any loss that a Client may suffer that arises from any outside business activities conducted by Solicitors or non-employee investment advisor representatives of EMA, including but not limited to losses from any insurance or commission based product or any other financial advice or recommendations not involving our ETF Portfolio management;
- Any loss arising from our adherence to a Client's instructions; or
- Any act or failure to act by a custodian of a Client's account.

This limitation of our liability does not relieve us from any responsibility or liability we may have under the Investment Advisers Act of 1940 (Advisers Act) or any applicable state statute.

EMA's Portfolios invest in exchange-traded funds (ETFs). ETFs are professionally managed pooled vehicles that invest in stocks, bonds, short-term money market instruments, other securities or any combination thereof. ETFs generally provide diversification, but risks increase for ETFs that concentrate in a particular market sector, or that primarily invest in small cap or speculative companies, use leverage (i.e., borrow money) to a significant degree, or concentrate in a particular type of security (i.e., equities) rather than balancing the fund with different types of securities. ETFs can be bought and sold throughout the trading day like equities, and their price fluctuates throughout the day. During times of extreme market volatility, ETF pricing may lag versus the actual underlying asset values.

There also are certain risks attributable to the underlying investments of each ETF. These risks vary depending on the underlying securities, but generally include: (i) market risk, (ii) equity securities risk, (iii) reinvestment risk, (iv) business risk, (v) liquidity risk, (vi) financial risk, and (v) derivatives risk. Notably, some ETFs selected by EMA employ alternative or riskier strategies, such as the use of leverage, derivatives or hedging. Leverage is the use of debt to finance an activity. For example, leverage is used when one uses margin to buy a security. Derivatives can be riskier than other types of investments because they may be more sensitive to changes in economic or market conditions than other types of investments and could result in losses that significantly exceed the original investment. The use of derivatives may not be successful, resulting in investment losses, and the cost of such strategies may reduce investment returns. Hedging, on the other hand, occurs when an investment is made in order to reduce the risk of adverse price movements in a security. For example, hedging is used when one takes an offsetting position in a related security, such as an option or short sale. While leverage or hedging can operate to increase rates of return, it also increases the amount of risk inherent in an investment. Other ETFs may employ other alternative techniques which carry inherently higher degrees of risks.

Details regarding the risks pertaining to ETFs and their underlying investments can be found in each respective ETF's prospectus.

#### **Item 9. Disciplinary Information**

We are required to disclose all material facts regarding any legal or disciplinary event that would be material to your evaluation of our firm or the integrity of our management. We have no information to disclose applicable to this Item.

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

Herbert W. Morgan, III is also the CEO of Morgan Financial Enterprises, Inc. ("Morgan Financial"), the general partner to a limited partnership engaged in real estate development. The limited partnership is not soliciting new investors and no new developments are planned.

While Mr. Morgan devotes as much time to the business and affairs of EMA as is reasonably necessary to perform his duties as CEO and ensure the delivery of the firm's services, he does devote a small portion of his time (approximately 2%) providing services for Morgan Financial. This creates a conflict of interest due to the fact that Mr. Morgan's obligations to this entity take time away from his obligations at EMA. However, since Mr. Morgan spends the majority of his time on EMA, the conflict is believed to be not material. In addition, as fiduciaries, both EMA and Mr. Morgan strive to always put the interest of EMA's clients first and foremost.

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

- A. EMA has adopted a Code of Ethics ("Code") in compliance with Rule 204A-1 under the Investment Advisers Act of 1940, as amended. The Code establishes standards of conduct for EMA's supervised persons and includes general requirements that such supervised persons comply with their fiduciary obligations to clients and applicable securities laws, and specific requirements relating to, among other things, personal trading, insider trading, conflicts of interest and confidentiality of client information. It contains written policies reasonably designed to prevent the unlawful use of material non-public information by EMA or any of its associated persons. The Code also requires that certain EMA personnel (called "Access Persons") report their personal securities holdings and transactions and obtain pre-approval of certain investments, including initial public offerings and limited offerings.

The Code also requires supervised persons to report any violations of the Code promptly to the Firm's Chief Compliance Officer ("CCO"). Each supervised person receives a copy of the Code and any amendments to it and must acknowledge in writing having received the materials.

A copy of the Code of Ethics is available to any Client upon request.

- B.** EMA, our employees and individuals associated with EMA, buy and sell some of the same securities for their own accounts that we buy and sell for our Clients. While this practice could cause a conflict of interest, the conflict is mitigated because our employees are required to obtain pre-clearance from EMA's CCO for all personal securities transactions before executing any trade and also report all transactions in personal accounts

## **Item 12. Brokerage Practices**

**A. Selection of Brokers**

EMA does not maintain physical custody of clients' assets although we are deemed to have custody of client assets when the client has given us authority to debit fees from the client's account (see Item 15 Custody below). Client assets must be maintained in an account at a "qualified custodian," generally a broker-dealer or bank. The custodian that EMA recommends that clients use is TD Ameritrade Institutional, a division of TD Ameritrade, Inc. ("TDA"), which is a FINRA registered broker-dealer and member of SIPC. EMA is independently owned and operated and not affiliated with TDA. TDA will hold client assets in a brokerage account and buy and sell securities when we instruct them to. While EMA recommends that clients use this custodian, the client will decide whether to open an account with them or enter into an account agreement directly with their selected custodian.

When performing investment management services, EMA will place transactions for client accounts through the client's appointed custodian in cases where the custodian is a broker-dealer, such as TDA. This practice is due to the fact that these types of custodians generally do not charge clients custodian fees so long as transactions for client accounts are executed through them as broker-dealer. EMA periodically evaluates the commissions charged and the services provided by the custodian and compares those with other broker-dealers to evaluate whether we feel that overall best qualitative execution has been achieved ("best execution").

The factors we consider when evaluating for best execution include but are not limited to:

- Execution capability;
- Commission rate;
- Financial responsibility;
- Responsiveness;
- Custodian capabilities;

- The value of any research services/brokerage services provided; and
- Any other factors that we consider relevant.

If a client requests that EMA use a particular broker-dealer to execute some or all transactions for that client, the client should understand that they are responsible for negotiating the terms and arrangements for the account with that broker-dealer, and EMA will not seek better execution services or prices from other broker-dealers. Also, we may not be able to “aggregate” client transactions for execution through other broker-dealers with orders for other accounts managed by EMA (as described below) and we will have limited ability to ensure the broker-dealer selected by the client will provide best possible execution. As a result, the client could 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. Subject to its duty of best execution, EMA may decline a client’s request to direct brokerage if, in EMA’s sole discretion, such directed brokerage arrangements would result in additional operational difficulties or violate restrictions imposed by other broker-dealers.

- A.1.** As referenced above, we participate in TDA’s Institutional Program. TDA is an unaffiliated SEC-registered broker-dealer and FINRA member that offers independent investment advisor services, which include custody of securities, trade execution, clearance and settlement of transactions. We receive some benefits from TDA through our participation in the Program.

Through our participation in the Program, TDA provides us with the following products, services and assistance:

- Products that allow us to download account information, place and allocate trades, and submit advisory fees to TDA;
- Research, which we may use to service all accounts, including accounts that do not necessarily execute trades with TDA;
- Receipt of duplicate Client statements and confirmations;
- Research related products and tools;
- Consulting services;
- Access to a trading desk serving advisor 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 conferences and educational meetings with product sponsors;
- Access to ETFs 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 EMA by third party vendors.

While we do not pay a fee for these products and services, all Client accounts may not be the direct or exclusive beneficiary of such products and services.

Other services made available by TDA are intended to help us manage and further develop our business and do not depend on the amount of brokerage transactions directed to TDA. As part of our fiduciary duties to Clients, we endeavor at all times to put the interests of its Clients first. However, Clients should be aware that our receipt of economic benefits may create a potential conflict of interest and may indirectly influence our choice of TDA for custody and brokerage services.

As discussed above, EMA participates in TDA's institutional customer program and we recommend TDA to Clients for custody and brokerage services. There is no direct link between EMA's participation in the Program and the investment advice we give to our Clients, although EMA receives economic benefits through its participation in the Program that are typically not available to TDA retail investors.

In addition to a broker's ability to provide "best execution," we may also consider the value of research or additional brokerage products and services a broker-dealer has provided or may be willing to provide. This is known as paying for those services or products with "soft dollars." Because many of the services or products could be considered to provide a benefit to us, and because the "soft dollars" used to acquire them are Client assets, we could be considered to have a conflict of interest in allocating Client brokerage business: we could receive benefits by selecting a particular broker-dealer to execute client transactions and the transaction compensation charged by that broker-dealer might not be the lowest compensation the firm might otherwise be able to negotiate. In addition, the firm could have an incentive to cause clients to engage in more securities transactions than would otherwise be optimal in order to generate brokerage compensation with which to acquire products and services.

Our use of soft dollars is intended to comply with the requirements of Section 28(e) of the Securities Exchange Act of 1934. Section 28(e) provides a "safe harbor" for investment managers who use commissions or transaction fees paid by their advised



accounts to obtain investment research services that provide lawful and appropriate assistance to the manager in performing investment decision-making responsibilities. As required by Section 28(e), we will make a good faith determination that the amount of commission or other fees paid is reasonable in relation to the value of the brokerage and research services provided. For example, before placing orders with a particular broker, we generally determine, considering all the factors described below, that the compensation to be paid to the broker is reasonable in relation to the value of all the brokerage and research products and services provided by the broker. In making this determination, we typically consider not only the particular transaction or transactions, and not only the value of brokerage and research services and products to a particular client, but also the value of those services and products in our performance of our overall responsibilities to all of our Clients. In some cases, the commissions or other transaction fees charged by a particular broker-dealer for a particular transaction or set of transactions may be greater than the amounts another broker-dealer who did not provide research services or products might charge.

Additionally, Orion Advisor Services, LLC, who provides portfolio accounting, back-office, technology, support and reporting services to EMA, credits EMA's quarterly invoice \$10 for each new account a client opens at TD Ameritrade.

- B.** EMA is authorized in its discretion to aggregate purchases and sales and other transactions made for the account with purchases and sales and other transactions in the same or similar securities or instruments for other Clients of ours. When transactions are so aggregated, the actual prices applicable to the aggregated transactions will be averaged, and the account will be deemed to have purchased or sold its proportionate share of the securities or instruments involved at the average price so obtained. If the aggregate orders do not fill at the same price, transactions will generally be averaged as to price and allocated among participating accounts pro rata to the purchase and sale orders placed for each participating account. If such orders cannot be fully executed under prevailing market conditions, EMA will allocate the securities traded among participating accounts and each similar order in a manner which it considers equitable, taking into consideration, among other things, the size of the orders placed, the relative cash positions of each account, the investment objectives of the accounts, and liquidity of the security.

### **Item 13. Review of Accounts**

- A.** EMA regularly reviews the status of all securities in Client accounts. An overall assessment is usually performed on a quarterly basis. All reviews are based on Clients' stated investment objectives.
- B.** More frequent reviews may be triggered by a change in Client's investment guidelines, tax considerations, large deposits or withdrawals, large security sales or purchases, loss



of confidence in corporate management objectives, or a change in opinion of particular securities or markets.

- C. Clients receive custodian account statements on a monthly basis. Additionally, EMA provides Clients with performance reports on a quarterly basis. EMA urges Clients to compare the custodian statement with reports provided by us.

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

EMA enters into solicitation agreements with individuals in which they receive a portion of the net asset management fees for Clients they refer to us for asset management services. This arrangement is commonly referred to as a “Solicitor” arrangement. All Solicitor arrangements we have in place are in compliance with SEC Rule 206(4)-3 under the Advisers Act.

EMA has no supervisory duties over Solicitors, and we are only responsible for those investments we have actually been engaged to manage, namely EMA’s ETF Portfolios. Accordingly, any and all other financial advice and recommendations that may be made by a Solicitor, including but not limited to, losses from any insurance or commission based product recommendations, is neither the responsibility of nor warranted by EMA in any manner whatsoever.

Solicitor referral arrangements between EMA and a third-party solicitor are in writing and set forth in the following:

- The scope of the Solicitor’s activities;
- A covenant that the Solicitor will perform its activities consistent with EMA’s instructions and in compliance with the Act and associated rules; and
- A covenant that the Solicitor will provide the end Client with:
  - A copy of EMA’s Form ADV Part 2A Brochure; and
  - A separate written Solicitor Disclosure.

The separate written Solicitor Disclosure must include the following information:

- The name of the Solicitor;
- The nature of the relationship between the Solicitor and EMA;
- A statement that the Solicitor will be compensated by EMA for the referral, along with a description of the compensation paid; and
- The amount the Client will be charged in addition to the advisory fee (if any).

We will not engage any Solicitors who are disqualified from acting as a Solicitor under Section 203 of the Advisers Act. For example, EMA will not pay a Solicitor a referral fee to any person who has been barred or prohibited from acting as an investment advisor or broker-dealer, or convicted within the past ten years of certain felonies or misdemeanors.

As disclosed above, EMA participates in TDA's institutional customer program, and EMA may recommend TDA to Clients for custody and brokerage services. There is no direct link between our participation in the program and the investment advice we give our Clients, although EMA receives economic benefits through its participation in the program that are typically not available to TDA retail investors. On occasion, we may co-host or participate in joint marketing activities with custodians, ETF managers or third-party wholesaling organizations, which might be construed as providing an economic benefit to us. TDA is a discount broker-dealer independent of and unaffiliated with EMA, and there is no employee or agency relationship between us.

#### **Item 15. Custody**

Except for having the ability to deduct fees from Client accounts, EMA does not have custody of the assets in the Client's account and shall have no liability to Clients for any loss or other harm to any property in the account, including any harm to any property in the account resulting from the insolvency of the custodian or any acts of the agents or employees of the custodian and whether or not the full amount of such loss is covered by the Securities Investor Protection Corporation (SIPC) or any other insurance which may be carried by the custodian. Clients understand that SIPC provides only limited protection for the loss of property held by a broker-dealer.

In accordance with Rule 206(4)-2 of the Advisers Act, all EMA client account assets are maintained with an independent qualified custodian. Generally, EMA recommends TD Ameritrade for custodial services, but from time to time, other custodians may be used by clients to custody assets. Clients will receive statements on at least a quarterly basis directly from the qualified custodian that holds and maintains their assets. Clients are urged to carefully review all custodial statements and compare them to the statements/reports provided by EMA. EMA's reports will vary from custodial statements based on, among other things, accounting procedures, reporting dates, information provided, and/or valuation methodologies of certain securities. Please refer to **Item 12** for additional important disclosure information relating to EMA's practices and relationships with custodians.

#### **Item 16. Investment Discretion**

Except as otherwise instructed, Clients grant us ongoing and continuous discretionary authority to execute its investment recommendations in accordance with the Investment Policy Statement (or similar document used to establish Client's objectives and suitability), without the Client's prior approval of each specific transaction. Under this authority, Clients allow EMA to purchase

and sell securities and instruments in this account, arrange for delivery and payment in connection with the foregoing, and act on behalf of the Client in most matters necessary or incidental to the handling of the account, including monitoring certain assets. Clients will execute instructions regarding our trading authority as required by each custodian.

In some limited circumstances, Clients grant us non-discretionary authority to execute its investment recommendations in accordance with the Investment Policy Statement (or similar document used to establish Client's objectives and suitability) and the directions and preferences provided to us by the Client. Non-discretionary authority requires us to obtain a Client's prior approval of each specific transaction prior to executing investment recommendations.

### **Item 17. Voting Client Securities**

EMA may vote proxies on behalf of clients, but it will generally not provide advice to clients on how the client should vote. All proxy materials received on behalf of a client account are to be sent directly to the client or a designated representative of the client, who is responsible for voting the proxy. Some participants in managed money platforms (e.g., Schwab Managed Account Access) may require EMA to vote proxies.

### **Item 18. Financial Information**

- A.** EMA does not solicit or require prepayment of fees of more than \$1,200 per client, six months or more in advance.
- B.** Other than having the ability to deduct fees from Client accounts, we do not have custody of Client's funds or securities. We manage Client assets on a discretionary basis and have no financial commitments that would impair our ability to meet the contractual and fiduciary commitments to our Clients.
- C.** EMA has never been the subject of any bankruptcy proceedings.