

**Item 1: Cover Page**

February 14, 2012

**Firm Brochure  
(Part 2A of Form ADV)**

**Invicta Capital Management, LLC  
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New York, NY 10165  
212-585-0100  
<http://www.InvictaFund.com>**

This Brochure provides information about the qualifications and business practices of Invicta Capital Management, LLC (ICM). If you have any questions about the contents of this Brochure, please contact us at 212-585-0100 and/or [investor@invictafund.com](mailto:investor@invictafund.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.

Invicta Capital Management, LLC is in the process of registering with the SEC as an investment adviser. Registration of an Investment Adviser does not imply any level of skill or training and no inference to the contrary should be made.

Additional information about Invicta Capital Management, LLC and its investment advisor representatives is also available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

## **Item 2 – Material Changes**

On July 28, 2010, the United State Securities and Exchange Commission published “Amendments to Form ADV” which amends the disclosure document that Registered Firms provide to clients as required by SEC Rules. This Brochure dated July 1, 2011 is a new document prepared according to the SEC’s new requirements and rules and replaces the prior “check the box” and limited narratives of Form ADV Part II. This brochure is designed to provide a more complete narrative, and uses “plain English” disclosures regarding ICM’s advisory business in order to give clients and prospective clients a better understanding of the firm and its policies.

In the future, this Item 2 – Material Changes, will discuss only specific material changes that are made to the Brochure since the last Brochure and provide clients with a summary of such changes. We will also reference the date of our last annual update of our Brochure.

Pursuant to new SEC Rules, we will ensure that you receive a summary of any material changes to this and subsequent Brochures within 120 days of the close of our business’ fiscal year ending December 31<sup>st</sup>. We may further provide other ongoing disclosure information about material changes to the firm as necessary. We will further provide you with a new Brochure as necessary based on changes or new information, at any time, without charge.

Currently, our Brochure may be requested by contacting Daniel Capozzo at 212-585-0100 or by email at [dcapozzo@invictafund.com](mailto:dcapozzo@invictafund.com). Additional information about Invicta Capital Management, LLC is also available via the SEC’s web site [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). The SEC’s web site provides information about any persons affiliated with ICM who are registered, or are required to be registered, as investment adviser representatives of the firm.

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#### **Item 4 – Advisory Business**

##### Description of Firm

Invicta Capital Management, LLC (“ICM”), is a New York Limited Liability Corporation founded in January 2008 whose principle place of business is at 60 East 42nd Street, Suite 2005, New York, NY 10165.

##### Principal Owners

The firm is privately held by Invicta Capital Group, LLC whose sole Member and Manager is Gregory A. Weaver. Prior to founding ICM, Mr. Weaver was a portfolio manager and principal at Kern Capital Management (KCM) where he focused on the technology sector (e.g., telecom equipment, networking, semiconductors, storage, alternative energy, environmental, defense, gaming and related software areas). Mr. Weaver was also a portfolio manager for KCM’s Redpoint Partners, LP (2002-2007), a long/short hedge fund, where he made significant contributions, especially on the short side, since its inception by KCM in 1999. Previous experience also includes a technology analyst position with Morgan Grenfell Capital Management (1996-1997) and an industry analyst position with Sanwa Bank (1991-1994). Mr. Weaver received an M.B.A. from Carnegie Mellon University in 1996 and a B.S. from the University of Vermont in 1991. He is also a holder of the Chartered Financial Analyst designation.

Invicta Capital Management, LLC, a New York limited liability company, is the Manager of the Invicta Fund, LLC. The Manager is responsible for the management of the Fund’s affairs and has discretionary investment authority over the Fund’s assets. Invicta Capital Investor, LLC, a New York limited liability company (Founding Member), is the Founding Member of the Invicta Fund, LLC. Invicta Capital Group, LLC, a New York limited liability company, is the sole Member of the Manager and the sole Member of Invicta Capital Investor, LLC. As the sole Manager of Invicta Capital Group, LLC, and as the sole Manager of the Manager, Gregory Weaver controls all of the ICM’s operations and activities, and is the portfolio manager for all of the clients of ICM.

##### Types of Advisory Services

ICM discretionary advisory services are limited to portfolio management of pooled investment vehicles such as private hedge funds and separate accounts of institutions and high net worth individuals. ICM’s focus investment strategy is a small cap technology equity strategy utilizing both long and short positions. ICM may offer other strategies in the future based on the future growth of the firm. ICM’s current managed portfolios are focused on equity investments in public markets, primarily in the small capitalization segment of the market using both long and short positions. ICM invests mainly in U.S. and US listed foreign equity securities (ADRs), but may invest in other securities such as exchange traded funds (ETFs), or equity options or foreign securities listed on a foreign exchange. There are specific risks associated with this strategy and the value of an ICM Client’s account or investment in a private hedge fund may fluctuate due to volatility and may be worth less than the amount invested. Please see Item 8 for additional details regarding the ICM investment strategy and the risks associated with this strategy.

ICM intends to continue to provide investment management services employing these strategies to private hedge funds, separate accounts and other funds. ICM’s advisory services is limited to these strategies described above. ICM does not offer advisory services to the general public. Clients may not impose restrictions on investing in certain securities or types of securities.

ICM does not provide investment supervisory service, manage personal investment advisory accounts and/or hold itself out as providing financial planning or any similarly termed services.

Prior to ICM providing investment management services, each client will be required to enter into a written investment advisory agreement which details the investment services ICM provides, the fees charged, and other conditions regarding the advisory relationship. Each investor in a private hedge fund will be sent the fund’s offering documents and private placement memorandum, and will be required to complete the fund’s subscription documents.

Based on the amended Rule 204-3 under the Investment Advisors Act of 1940, ICM will provide a copy of this Firm Brochure to each client or prospective client prior to any formal agreement with ICM. Any client that does not receive a

Brochure at least 48 hours prior to any official written agreement with ICM will have 5 business days to terminate their agreement with ICM without penalty.

With respect to the private hedge funds, ICM manages each fund pursuant to the investment objectives and outlines of each Fund described in each Fund's offering documents and private placement memorandum and not the specific needs and objectives of each individual investor in the private hedge funds.

All fees charged by ICM are detailed in the Fund's offering documents or private placement memorandum. ICM does not charge an hourly fee and does not have any retail clientele.

#### Assets Under Management

As of the date of this brochure, ICM managed approximately \$300M on a discretionary basis.

#### **Item 5 – Fees and Compensation**

All fees are subject to negotiation.

The specific manner in which fees are charged by Invicta Capital Management, LLC is established in the client's written advisory agreement with ICM or in the case of the private hedge funds, in the fund's offering documents. ICM advisory fees include both management fees based on % of AUM, and performance fees, based upon annual investment gains in the funds or accounts. Please see Item – 6 for a discussion on performance fees and the potential conflicts of interest associated with these types of fees. ICM will generally bill the private hedge fund's management fees monthly based on the month end AUM value, and withdraw the management fees on a quarterly basis in arrears at the end of each calendar quarter. Performance fees are billed and deducted annually from a client's account at the end of the calendar year. Jefferies & Company Inc. and J.P. Morgan Clearing Corp. (through an introducing relationship with Jefferies), serves as the fund's custodian and directly debits fees per instructions from ICM. For its sub-advisory relationship with the JASC Funds, the Advisor (James Alpha Management I, LP) and not ICM, charges and deducts the JASC Funds for both management fees and performance fees. Subsequent to the deduction of fees from the sub-advised account by the Advisor, the Advisor sends ICM its sub-advisory compensation as per the sub-advisory agreement. The sub-advised account charges management fees, quarterly in advance, and performance fees annually. All fees for all accounts shall be prorated for each capital contribution and/or withdrawal made during the applicable calendar quarter. Accounts initiated or terminated during a calendar quarter will be charged a prorated fee. Upon termination of any account, any prepaid, unearned fees will be promptly refunded, and any earned, unpaid fees will be due and payable.

ICM advisory fees are exclusive of brokerage commissions, transaction fees, and other related costs and expenses which shall be incurred by the client. Clients may incur certain charges imposed by custodians, brokers, auditors, legal, insurance and other third parties such as fees charged by administrators, transfer agents, director fees, wire transfer and electronic fund fees, and other fees and taxes on brokerage accounts and securities transactions. Such charges, fees and commissions are exclusive of and in addition to ICM's fee, and ICM shall not receive any portion of these commissions, fees, and costs outside of the management and incentive fees.

#### Current Fee Schedule:

##### **Invicta Fund, LLC (Private Hedge Fund)**

- Non Founding Members (members who established accounts prior to 3/31/2009) Management Fee = 1.5% AUM annually paid quarterly in arrears, & 20% Performance Fee paid annually. Performance fee subject to high water mark.
- Non Founding Members (members who established accounts after 3/31/2009). Management Fee = 2.0% AUM annually paid quarterly in arrears, & 20% Performance Fee paid annually. Performance fee subject to high water mark.
- Founding Member, employees of ICM. No Fees

#### **Sub Advised Account (James Alpha Small Cap Funds)**

- ICM Management Fee 1% of AUM annually paid quarterly in advance, ICM Performance Fee 10% paid annually. Performance fee subject to high water mark.

The General Partner and Investment Manager of the sub-advised James Alpha Small Cap Fund (JASC) is James Alpha, LLC and James Alpha Management I, LP respectively. James Alpha Management also engages in capital raising activities for both the Invicta Fund, LLC and the James Alpha Small Cap Funds.

ICM reserves the right to waive or reduce the management fees and/or performance fees with respect to any client or with respect to any individual investor in the private funds, including but not limited to employees and/or family members. ICM may also negotiate fees with future clients that are different than the fees discussed in this section. Investors should be aware that they may be able to procure similar advisory services at a higher or lower fee if acquired elsewhere.

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

##### Performance Based Fees

ICM will structure any performance or incentive fee arrangement subject to Section 205(a)(1) of the Investment Advisors Act of 1940 (The Advisors Act) in accordance with the available exemptions thereunder, including the exemption set forth in Rule 205-3. In measuring clients' assets for the calculation of performance-based fees, ICM shall include realized and unrealized capital gains and losses. Performance based fee arrangements may create an incentive for ICM to invest in investments which may be riskier or more speculative than those which would be invested under a different fee arrangement. Such fee arrangements also may create an incentive to favor higher fee paying accounts over other accounts in the allocation of investment opportunities. ICM has procedures designed and implemented to ensure that all clients are treated fairly and equally, and to prevent these conflicts from influencing the allocation of investment opportunities among clients. Currently all of ICM client portfolios are managed *pari passu* and therefore no conflict of interest exists. The CCO will update procedures accordingly to monitor any future conflicts that may arise.

The related Founding Member, Invicta Capital Investor, LLC, whose sole Manager is Gregory A. Weaver has entered into a performance fee arrangement with the private hedge fund, the Invicta Fund, LLC that is equal to 20% of a member's book profits subject to a high water mark. The Founding Member was granted this arrangement due to the substantial amount of capital provided to the Fund by the Founding Member at the inception of the Fund which enabled the launch of the Fund in addition to bearing the Fund's organizational expenses. The high water mark establishes a value which a Fund's value must be in order for the Founding Member to earn the performance allocation. If the value of the fund falls below the high water mark for the accounting period, there will be no performance allocation until the prior losses have been recovered. Book profits include all unrealized appreciation of the fund's investments which may never be realized once the investment positions are closed. Performance allocations to the Founding Member generally occur annually at the end of the Invicta Fund's fiscal year December 31<sup>st</sup>, but may occur throughout the year if redemptions are processed.

For the sub-advised private hedge funds, the JASC Funds, and under the sub-advisory agreement with James Alpha Management I, LLC (JAM), JAM will allocate the performance allocation pursuant to the JASC offering documents. ICM will receive a performance fee payment annually from JAM as per the terms of the sub-advisory agreement.

#### **Item 7 – Types of Clients**

ICM seeks to provide portfolio management services to investment advisors, private hedge funds, high net worth individuals, fund of funds, family offices, foundations/endowments and other domestic and international institutions. Generally ICM requires a minimum investment of \$10M for a dedicated separate account, and \$1M minimum account size for an investment in a private hedge fund. ICM reserves the right to waive these minimum account sizes at its discretion.

As of the date of this brochure, ICM's only clients are private hedge funds that are exempt from registration under the Investment Company Act of 1940 under sections 3(c)1 or 3(c)7 of the Act. ICM has no retail clients.

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

### **A. What are the Firm's investment objectives?**

Invicta Capital Management, LLC (ICM) capitalizes on intensive research in the technology sector to create specialized small cap equity portfolios. This objective is realized through investments in equity securities, primarily in the small capitalization segment of the market (generally defined as the bottom 15% of the equity universe).

### **B. Describe your investment style.**

Generally ICM's investment style is Growth/Growth at a Reasonable Price (GARP) combined with selective shorting in the long/short accounts. ICM's style is growth investing, but close attention is paid to company valuation--reflecting total enterprise value and market opportunity. The key question being: "What would a private or strategic buyer pay for the entire company?" This helps avoid myopic analysis that can make a company's stock appear reasonable on a P/E basis (for example), but upon analyzing the enterprise value versus the size of the addressable market opportunity, the firm suddenly looks quite expensive. The opposite is true for an emerging company, which might look expensive on a price/sales or price/earnings basis, but possesses good technology and is addressing a large market opportunity that might easily justify its market capitalization to a strategic buyer.

### **C. List the instruments you are using in your investments.**

Publicly listed small capitalization equities are the primary instruments utilized. ICM's focus will be in publicly listed domestic, small capitalization technology equity securities but may invest in foreign listed companies as well. Equity options and hedging instruments such as exchange traded funds (ETF) may also be utilized.

### **D. Why a technology sector specific product?**

The technology sector is noted for rapid change. ICM targets its research into the core of these changes. This constant innovation spawns opportunities for smaller firms to thrive as existing markets evolve and new ones are created. It also can cause current businesses to suddenly become obsolete (short candidates). This progression creates a steady stream of new investment candidates. ICM has a rigorous fundamental and research-driven approach to investing. The technology sector's high level of innovation requires a specialized and frequently updated knowledge-base. ICM's Portfolio Manager, Gregory Weaver, has been focused on the technology sector for over sixteen years. This level of familiarity is necessary for high-quality decision making, especially when evaluating smaller companies.

### **E. Why a focus on small capitalization equities?**

Focusing on smaller companies often allows for pure participation in an investment theme. Instead of merely being a rapidly growing division within a larger organization, it is often possible to find a smaller company whose entire business is being driven by an emerging trend. This "pure-play" aspect often seen in smaller stocks can lead to dramatic price appreciation as investors seek out companies that are benefitting from a particular growth trend. The larger the perceived end market opportunity, the greater the investor interest to come down into the small cap market to find participating investments.

There is also greater market inefficiency in the small cap arena versus the well-followed mid and large cap space. This phenomenon is more pronounced during protracted market declines. Investors associate quality and stability with size and are not interested in attempting to differentiate among the smaller companies. Broad-based small cap selling ensues; junk and quality names are punished alike. It is during turbulent times that exceptional investment opportunities can be created.

Smaller technology stocks tend to be quite volatile. This creates opportunity on both the long and short side, but can result in performance swings over shorter periods of time. To help mitigate this fact, the portfolio uses limited leverage and limits position size. Finding specific hedges for some of the more unique business models can be difficult as well.

## **Risk of Loss**

ICM's investment strategy is subject to various risks including the risk of significant loss in the value of client accounts. The performance of any investment is subject to numerous factors which are neither within the control of nor predictable by ICM. Such factors include a wide range of economic, political, competitive, technological and other conditions (including acts of terrorism and war) that may affect investments in general or specific industries or companies. The securities markets may be volatile, which may adversely affect the ability to realize profits. Additionally, specific investments under ICM's strategy may require significant time to realize the expected return and may experience a pricing correction in a faster-than-expected time, subjecting the accounts to reinvestment risk. As a result of the nature of ICM's investing activities, it is possible that an accounts' financial performance may fluctuate substantially from period to period. We have highlighted several risks below that are specific to ICM's investment strategy. The risks detailed here are not inclusive of all the risks associated with an investment with ICM. For a more detailed discussion of the risks associated with an investment in the ICM strategy please see the private hedge funds' offering documents including the operating agreement, & private placement memorandum.

### Investments in Small Capitalization and Unseasoned Companies.

ICM's investment portfolios have a substantial portion of the assets invested in small and/or unseasoned companies with small market capitalizations. While smaller companies generally have potential for rapid growth, they often involve higher risks because they may lack the management experience, financial resources, product diversification and/or competitive strength of larger and/or more established companies. In addition, in many instances, the frequency and volume of their trading may be substantially less than is typical of larger companies. As a result, the securities of smaller companies may be subject to wider price fluctuations. Due to the lower trading volume of smaller company securities, the portfolios may have to sell portfolio holdings at discounts from quoted prices or may have to make a series of small sales over an extended period of time when making large sales.

### Liquidity Risk

Generally small capitalization companies trading volume is significantly lower than large cap companies. In addition ICM's concentrated strategy may lead to an account holding large positions in a small cap company whose total position is greater than the average daily trading volume of that security. As a result it may be difficult to liquidate positions at the current quoted market prices.

### Equity Market Volatility

The profitability of the portfolios substantially depends upon the portfolio manager correctly assessing the future price movements of stocks and other securities and assets. ICM cannot guarantee that the portfolio manager will be successful in accurately predicting price movements of stocks.

### Technology Risk

ICM focuses its investments on companies in the technology sector. The rapid change and uncertainty often associated with such sector can create tremendous volatility in technology companies' share prices that may be unrelated to their operating results. Additional risks associated with technology-related equities may include, without limitation, competition, obsolescence, availability of funding, product price erosion, and research and development failures.

### Leverage

When deemed appropriate by the portfolio manager and subject to applicable regulations, the accounts may incur leverage in its investment program, whether directly through the use of borrowed funds, or indirectly through investment in certain types of financial instruments with inherent leverage, such as puts, calls and warrants, which may be purchased for a fraction of the price of the underlying securities while giving the purchaser the full benefit of movement in the market of those underlying securities. While such strategies and techniques increase the opportunity to achieve higher returns on the amounts invested, they also increase the risk of loss. Overall, the use of leverage, while providing the opportunity for a higher return on investments, may also increase the volatility of such investments and the risk of loss. Investors should be



aware that an investment program utilizing leverage is inherently more speculative, with a greater potential for losses, than a program that does not utilize leverage.

#### Short Sales

When deemed appropriate by the portfolio manager, the accounts may sell securities short. Short selling involves the sale of a security that the account does not own and must borrow in order to make delivery in the hope of purchasing the same security at a later date at a lower price. In order to make delivery to its purchaser, ICM must borrow securities from a third-party lender. ICM subsequently returns the borrowed securities to the lender by delivering to the lender the securities it receives in the transaction or by purchasing securities in the open market. ICM must generally pledge cash with the lender equal to the market price of the borrowed securities. This deposit may be increased or decreased in accordance with changes in the market price of the borrowed securities. During the period in which the securities are borrowed, the lender typically retains his right to receive interest and dividends accruing to the securities. Theoretically, securities sold short are subject to unlimited risk of loss because there is no limit on the price that a security may appreciate before the short position is closed. In addition, the supply of securities that can be borrowed fluctuates from time to time. Client accounts may be subject to losses if a security lender demands return of the lent securities and an alternative lending source cannot be found.

#### Investments in Non-U.S. Investments

ICM may invest and trade, from time to time, a portion of its portfolios' assets in non-U.S. securities and other assets (through ADRs and otherwise), which will give rise to risks relating to political, social and economic developments abroad, as well as risks resulting from the differences between the regulations to which U.S. and non-U.S. issuers and markets are subject. Such risks may include: political or social instability, the seizure by non-U.S. governments of company assets, acts of war or terrorism, withholding taxes on dividends and interest, high or confiscatory tax levels, and limitations on the use or transfer of portfolio assets. Enforcing legal rights in some non-U.S. countries is difficult, costly and slow, and there are sometimes special problems enforcing claims against non-U.S. governments. Non-U.S. securities and other assets often trade in currencies other than the U.S. dollar, and the accounts may directly hold non-U.S. currencies and purchase and sell non-U.S. currencies through forward exchange contracts. Changes in currency exchange rates will affect the account's net asset value, the value of dividends and interest earned, and gains and losses realized on the sale of investments. An increase in the strength of the U.S. dollar relative to these other currencies may cause the value of the Fund's investments to decline. Some non-U.S. currencies are particularly volatile. Non-U.S. governments may intervene in the currency markets, causing a decline in value or liquidity of the account's non-U.S. currency holdings. Non-U.S. countries often lack uniform accounting, auditing and financial reporting standards, and there may be less public information about the operations of issuers in such markets.

### **Item 9 – Disciplinary Information**

#### Legal or Disciplinary Events

ICM has no legal or disciplinary events to disclose, including any that would be material to a client or prospective client's evaluation of ICM's advisory business or our management. Any such information would be available upon request and would also be publically accessible by selecting the Investment Advisor Search option at <http://www.advisorinfo.sec.gov>

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

Invicta Capital Group, LLC, a New York Limited Liability Company is the sole Member of Invicta Capital Management, LLC and the sole Member of Invicta Capital Investor, LLC. Gregory A. Weaver is the sole Member and sole Manager of Invicta Capital Group, LLC. Gregory A. Weaver is the sole Manager of Invicta Capital Management, LLC and Invicta Capital Investor, LLC. Invicta Capital Investor, LLC is the Founding Member of the Invicta Fund, LLC.

ICM nor any of its affiliates are registered or have an application pending to register as a broker dealer.

Invicta Fund, LLC service providers are as follows:

Prime Broker: Jefferies & Company, Inc; JP Morgan Clearing Corp. (introduced through Jefferies & Company, Inc)

Custodian Bank: First Republic Bank

Auditor: Rothstein Kass & Company, P.C.

Administrator: Pinnacle Fund Administration, Inc.

Legal Counsel (mgmt co): Sadis & Goldberg LLP

Sub-advisory and Marketing Relationship with Investment Advisor James Alpha Management, I, L.P.

In March 2009, ICM entered into a sub-advisory agreement with James Alpha Management I, LP (“JAM”), whereby ICM was hired as the sub-advisor under the Advisor JAM, to the private hedge funds, the James Alpha Small Cap Fund, LP and the James Alpha Small Cap Fund, Ltd., an offshore fund (the “JASC Funds”). As a result of this sub-advisory agreement, ICM is responsible for managing the investments in the JASC Funds employing the same Small Cap Strategy that is employed for the private hedge fund, the Invicta Fund, LLC for as long as the sub-advisory agreement is in effect. The portfolios of the JASC Funds, and the Invicta Fund, LLC are managed *pari passu*. The JASC Funds were launched in April 2009, one year after the launch of the Invicta Fund, LLC.

JAM is the Advisor to the JASC Funds. As part of the sub-advisory agreement, JAM invested initial seed capital in the JASC Funds and JAM is responsible for capital raising efforts for James Alpha Small Cap Funds. As a result of the sub-advisory agreement, the Advisor (JAM) pays a portion of the management and incentive fees of the JASC Funds to ICM. Through its asset raising efforts for the JASC funds, JAM may introduce investors who are interested in an investment in the private hedge fund, the Invicta Fund, LLC or a separate dedicated account at ICM. For these “JAM sourced clients” in the Invicta Fund, LLC, ICM directly compensates JAM a portion of the management and incentive fees for as long as the JAM sourced assets remain in the fund subject to certain terms and conditions of the agreements between ICM and JAM.

The sub-advisory agreement with JAM only applies to the Long/Short Small Cap Technology Strategy and does not represent a conflict of interest as both the Invicta Fund, LLC & the JASC Funds are managed *pari passu*. The CCO will update procedures accordingly to monitor any future conflicts that may arise.

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

Invicta Capital Management, LLC (“ICM”) has a fiduciary duty to its investment clients to act solely for their benefit, and therefore, it has adopted a Code of Ethics (“Code”) designed to avoid potential conflicts of interest and to prevent any conduct in breach of this duty. Accordingly, ICM will distribute a copy of the Code to each person who is or becomes an employee of the Firm.

It is the policy of the firm to establish such rules and guidelines of conduct to prevent actual or potential conflicts, and to prevent any violations of legal or other duties to clients. Federal and state securities laws govern the conduct of investment advisors. These laws impose specific record-keeping requirements and prohibit certain conduct.

Federal and state securities laws also prohibit anyone from engaging in insider trading and other fraudulent acts and practices. Because of the nature of the firm’s business, its employees may be exposed to information which constitutes inside information, the use of which for the financial benefit of the employees, their “tippees” or clients is proscribed by federal law. In addition to the firm’s fiduciary duty to its clients which requires each advisory representative to act solely for the benefit of the clients, employees also have a duty to act in the best interests of the firm. Finally it is in the best of interests of ICM to avoid potential conflicts of interest in the conduct of our employees.

As a result of these aspects of the firm’s business, a Code has been adopted. While it is impossible to define all situations which might pose a risk of securities laws violations or create conflicts, this Code is designed to address those circumstances where such concerns are most likely to arise. By complying with the guidelines in the Code, the firm’s employees can minimize their and the firm’s potential exposure to violations of laws governing securities transactions and fiduciary relationships.

Restrictions on Securities Transactions

Essentially, the Code restricts employees from engaging in personal securities transactions involving securities that the firm is holding, trading, or have been identified by an investment team member as a security that is being contemplated for trading for clients' accounts. No employee of the firm may engage in personal securities transactions involving any securities which are on ICM's Restricted List. However if an employee holds a security that in the future is identified by the portfolio manager as a security being contemplated for trading for a client's account it is added to the Restricted List and that employee's personal position is immediately frozen from trading until after the position is removed from the Restricted List.

#### Restricted List

ICM maintains a list of securities in which personal trading and/or Firm activities shall be restricted (the "Restricted List"). The Compliance Officer or his designee shall place securities on the Restricted List when ICM (i) receives material non-public information regarding those securities or (ii) has been identified as securities in connection with considering such securities for purchase or sale on behalf of ICM clients or (iii) is currently holding a position in such securities in a client's portfolio. All employees will be responsible for notifying the Compliance Officer or his designee about securities that should be placed on the Restricted List. The Compliance Officer or his designee shall remove securities from the Restricted List when (i) material information relating to the securities is public and (ii) ICM is not monitoring such securities in connection with considering them for purchase or sale on behalf of the ICM clients and (iii) ICM is no longer holding a position in such securities in a client's portfolio. The Compliance Officer or his designee shall update the Restricted List on a bi-weekly basis, or more frequently as necessary. A copy of each Restricted List generated shall be maintained in an easily accessible place on the ICM network.

#### Manager of the "Founding Member" Status

Gregory A. Weaver, Manager of ICM and Portfolio Manager for all of ICM's accounts, is the sole Manager of Invicta Capital Investor, LLC, the Founding Member of the Invicta Fund, LLC who has entered into a performance fee arrangement with the Invicta Fund, LLC that is equal to 20% of a member's book profits subject to a high water mark. The Founding Member was granted this arrangement due to the substantial amount of capital provided to the Fund by the Founding Member at the inception of the Fund which enabled the launch of the Fund in addition to bearing the Fund's organizational expenses. As a result of this relationship a potential conflict of interest could arise that would result in Mr. Weaver favoring the Invicta Fund, LLC account over other client accounts in which he had no personal investment. However no conflict of interests exists due to the fact that ICM manages two accounts and both are managed pari-passu with an attempt to maintain the same positions and position weightings. The CCO will update procedures accordingly to monitor any future conflicts that may arise.

Furthermore, according to the offering documents of the private hedge fund the Invicta Fund, LLC, The Manager is not prohibited from buying or selling securities for its own account, including the same securities (and/or other investments) as are purchased, sold or held by the Fund, but none of the Manager or any of its affiliates (which shall not include, for purposes of this paragraph, advisory clients or managed funds) shall buy securities (and/or other investments) from or sell securities (and/or other investments) to the Fund without the written consent of all Members or a committee of independent Members. Although the offering documents allow the Manager to engage in these transactions, it is the policy of the firm ICM to restrict such transactions as per the Code of Ethics described above. ICM will provide a copy of our Code of Ethics to any client or any prospective client upon request to our CCO.

#### **Item 12 – Brokerage Practices**

ICM as a fiduciary to its advisory clients, seeks the "best execution" for client transactions, i.e., seeks to obtain not necessarily the lowest commission cost but the best overall qualitative execution. ICM will allocate transactions to brokers and/or dealers on such markets and at such prices, and at such commission rates as in the good faith judgment of ICM is appropriate. In selecting brokers and/or dealers, ICM takes into account not only available prices and rates of brokerage commissions, but also other factors including: the execution capabilities of the brokers; research, custodial or other services provided by such brokers which, are expected to enhance the firm's portfolio management capabilities; the size of the transaction; the difficulty of execution; the operational facilities of the brokers; the risk of positioning a block of securities; and the quality of the overall brokerage research services provided by the broker. As part of seeking best execution, ICM may aggregate orders across client accounts if appropriate. ICM evaluates brokers and the reasonableness of their

commissions based on the following: quality of research, financial responsibility, analyst access, conference availability, execution, cost, operational efficiency.

Selection Criteria:

#### Prime Broker

ICM as the investment manager of each fund has selected Jefferies & Company Inc. and JP Morgan Clearing Corp. (through an introducing relationship with Jefferies) to provide prime broker and custodial services. The trading commissions and other fees charged by these prime brokers have been negotiated by ICM and we believe that they are comparable to other commissions and fees charged by other prime brokers. For trade execution ICM trades a portion directly through Jefferies "JETS" direct market access system that provides direct access to exchanges and ECNs.

#### Non-Directed Brokerage Firms

ICM also has direct relationships with greater than 40 different brokers for executing trades and providing research. These brokers have been selected by ICM due to both their research and execution capabilities within the small cap equity sector of the market. On a quarterly basis, ICM reviews the commissions paid to each of these brokers as part of ICM's "best execution" policies, and each are measured by both the front and back office at ICM on research, execution, financial status and other criteria.

In addition to the direct brokerage relationships, ICM also trades from time to time with other brokerage firms through an outsourced trading firm Tourmaline Partners, LLC. For these brokers ICM has not opened a direct account but ICM determines that the broker has met the criteria described above as it relates to best execution, and ICM trades with that broker indirectly through Tourmaline Partners, LLC. Tourmaline Partners, LLC receives a portion of the total commission on the trade for acting as intermediary between ICM and the broker.

#### Directed Brokerage

As a matter of firm policy, ICM does not accept client direction of brokerage and therefore, seeks best execution for all client transactions. None of the broker dealers used by ICM are affiliates of ICM.

#### Order Aggregation

At times ICM may aggregate orders across multiple accounts for a specific security because that security is appropriate based on the investment guidelines of each account. At these times it may be appropriate in the interests of efficient execution to complete the trade with one or more block orders. This may give rise to potential conflicts of interests as it relates to the final allocation of trades at the end of the day. In order to address these potential conflicts, ICM has adopted several policies as it relates to aggregate trades and account allocations to insure that all client accounts are treated equitably and fairly. These policies are as follows: 1) aggregation of trades are consistent with ICM's best execution policy, 2) no account is favored over any other account, 3) accounts that are managed pari-passu are allocated based on % equity unless the trades are in an effort to rebalance specific positions that may fall out of balance due to fund inflows/outflows, 4) accounts that are not managed pari-passu but when the security is appropriate in both accounts, the aggregated order will be allocated equitably based on the targeted weighting of that security for each account, 5) in order to ensure that these policies are being followed, all trades will be reviewed daily by a member of the operations team and any trades that deviate from these policies will be flagged and further researched with the trading team.

#### IPO/Secondary Allocation Policy

ICM does not participate in IPOs however may from time to time participate in secondary offerings. For accounts not managed pari-passu, ICM will determine on a case-by case basis if each investment is appropriate based on the investment mandate. For all accounts where it is deemed appropriate, ICM will allocate secondary shares among the participating accounts in an equitable way not to give one account preference over any other. If ICM does not receive full allocation of shares, shares will be allocated on a pro-rata basis with the exception that the allocation would result in a de minimus amount of shares. ICM reserves the right to make exceptions to this policy.

### Soft Dollar Policy

As part of seeking best execution for transactions and subject to Section 28(e) of the Securities & Exchange Act of 1934, ICM may utilize research and other services obtained from broker-dealers on a soft dollar commission basis. This research provides assistance to the portfolio manager in the decision making process. When ICM uses client brokerage commissions to obtain research or other products or services, ICM receives a benefit because ICM does not have to produce or pay for the research, products or services. Use of client securities transactions to obtain research creates incentives that potentially creates conflicts of interest between advisors and clients. ICM may have an incentive to select a broker dealer based on its own interests rather than on the clients' interest in receiving the most favorable execution. ICM may cause clients' to pay commissions that are higher than those charged by other brokers in return for soft dollar benefits. Currently soft dollars are paid on sell-side research, Bloomberg research, news and quote subscription, TheMarkets.com research products and several other non-affiliated third party research services. The research services provided may be proprietary or could be provided by a party independent from the broker providing the execution services. In the event any soft dollar services obtained may have mixed uses, i.e., for research and non-research purposes, a good faith and reasonable allocation of the uses will be made and soft dollar (commissions) or hard dollar payments will be made as appropriate. In making allocations between research services and non research services a conflict of interest may arise by allocations that benefit ICM and those that benefit clients. To address this potential conflict, ICM has adopted written procedures regarding our soft dollar policy. In addition, all soft dollar services, broker selections and executions are reviewed by the Compliance Officer or his designee to ensure that the amount of commissions are reasonable in relation to the brokerage and research services received. ICM believes that to have access to this research is imperative to its decision making process. ICM performs quarterly reviews to ensure clients are receiving best overall execution.

Research provided may be utilized by ICM in managing any or all of the client's accounts. There may be certain accounts that benefit from this research that do not make the payment of commissions to the research broker and vice versa.

ICM generally pays no more than .05 per share for commissions. Invicta Capital Management manages part of its soft dollar commissions through third party arrangements with Fidelity Brokerage and Pulse Trading Brokerage. In these cases, Fidelity and Pulse receive portion of the commissions for execution (generally .01-.015 cents/share) and an additional .02-.04 cents per share is allocated to a soft dollar account which is then utilized to directly pay for research. In other arrangements, ICM will directly trade with the broker that is also providing the research services and execution services..

We perform quarterly reviews to ensure clients are receiving best overall execution in the context of all of the items discussed above.

In certain instances ICM considers client referrals in selecting broker dealers. ICM's prime broker Jefferies and Company, Inc. provides client introductions and also provides brokerage services. ICM may have an incentive to select a broker dealer based on its own interests rather than on the clients' interest in receiving the most favorable execution.

ICM does not permit a client to direct brokerage.

### **Item 13 – Review of Accounts**

ICM's accounts (private hedge funds) are reviewed on a daily basis. Accounts are reviewed on a daily basis by Gregory Weaver and the analysts/traders who continually review and monitor the current security positions and any future opportunities for investments in the funds. The Operations Team also monitors the transaction activity in the funds which include cash flows, security transactions, corporate actions, etc. With respect to the private hedge funds, such reviews are undertaken to ensure that the goals and objectives of the Funds are being met as according to the Fund's offering documents, not the needs or objectives of the individual investors in the Funds.

Investors in the Invicta Fund, LLC receive monthly written account statements from our administrator which display opening and closing balances, account equity, P/L and other items.

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

### **Economic Benefits Received**

As discussed in item 12, ICM may enter into “soft dollar” arrangements where certain broker dealers will be directed brokerage transactions in return for research services that aids ICM in its investment decision making process. This research can be regarded as an economic benefit for ICM and these arrangements could cause a potential conflict of interest if ICM directs brokerage trades to these soft dollar brokers solely for the purpose of receiving this research benefit and without regard for a client’s best interest. Please see item 12 for an explanation on how ICM addresses this potential conflict of interest, and to understand ICM’s policies to ensure that the clients’ best interests are being served in all cases including the “best execution” of client transactions.

ICM has entered into a sub-advisory agreement with James Alpha Management I, LP (JAM) whereby JAM introduces clients for the James Alpha Small Cap Funds (JASC Funds) for which ICM is the sub-advisor, and ICM shares in management and performance fees as per the terms of the sub-advisory agreement. Through its asset raising efforts for the JASC funds, JAM may solicit investors who are interested in an investment in the in-house Invicta Fund, LLC or a separate dedicated account at ICM. For JAM sourced “clients” in the Invicta Fund, LLC, ICM directly compensates JAM a portion of the management and incentive fees for as long as the JAM sourced assets remain in the fund subject to certain terms and conditions agreed to between ICM and JAM.

With all solicitation agreements including with JAM, ICM complies with the requirements of Rule 206(4)-3 of the Investment Advisors Act, and all solicitation agreements are made in writing.

## **Item 15 – Custody**

Regarding the private hedge fund, Invicta Fund, LLC, the Manager of the Fund, Invicta Capital Management, LLC whose sole member is Invicta Capital Group, LLC, sole Manager Gregory A. Weaver has general power and authority to manage the affairs of the Invicta Fund, LLC. This authority includes to buy, sell, transfer and otherwise manage all assets of the Invicta Fund, LLC. Paragraph (d)2(iii) of the SEC custody rule refers to a person with sufficient “ownership” of or “access” to assets falling within the definition of “custody”. Therefore Gregory Weaver through his relationship with Invicta Capital Management, LLC, the Manager, has “custody” over the assets in the private hedge fund, Invicta Fund, LLC. The Invicta Fund, LLC’s assets are maintained with independent non-affiliated qualified custodians, namely First Republic Bank, Jefferies & Company, Inc. and JP Morgan Clearing Corp. Furthermore, the assets of the Invicta Fund, LLC are subject to an annual audit, and the audited financial statements are sent to all investors in the Invicta Fund, LLC.

Excluding the Invicta Fund, LLC (as explained above), Invicta Capital Management, LLC nor any of the affiliates of ICM have “custody” over any other client assets.

## **Item 16 – Investment Discretion**

ICM receives full discretionary authority from the client at the outset of all advisory relationships to select the identity and amount of securities to be bought or sold, brokers to be utilized and commissions to be paid. In all cases, however, such discretion is to be exercised in a manner consistent with the stated investment objectives for the particular clients’ account and/or detailed in each private hedge fund’s offering documents.

## **Item 17 – Voting Client Securities**

ICM has accepted authority to vote the private hedge funds’ securities proxies. ICM proxy voting policies and procedures are designed to ensure that its proxy voting activities on behalf of the Funds are conducted in the best interest of the Funds. While the decision whether to vote or not is made on a case by case basis, ICM generally does not vote a proxy if ICM believes the proposal is not adverse to the best interests of the Funds or if adverse, the outcome of the vote is not in doubt. For most matters, it is ICM’s policy not to vote when we believe the outcome is not in doubt in order to avoid the unnecessary expenditure of time and the cost to review the proxy materials in detail and carry out the vote. We believe the clients of the Funds are best served by devoting our time to investment activities on their behalf. In the situations where we do vote a proxy, we vote within our general guidelines outlined within our policy. In many cases the issues are so fact

sensitive that no general policy can be established. We will provide investors of a copy of our proxy voting policies and procedures upon written request. Information regarding how a client's proxies were voted may also be obtained by an investor upon their written request. Investors in the Invicta Fund, LLC cannot direct ICM's vote. If ICM accepts the authority to vote proxies for client that is not a private hedge fund, and if a material conflict exists, the CCO & CEO will determine if it is appropriate to disclose this conflict to the client, in order to give the client an opportunity to vote the proxy itself. ICM will maintain records of the voting resolution of any conflict of interest.

Regarding the sub-advised private hedge fund, ICM shall vote proxies for securities held by the fund as ICM deems appropriate. ICM is authorized and directed to instruct the custodian to forward promptly to ICM copies of all proxies and shareholder communications relating to securities held in the fund. Sub-Advisor shall not be responsible for voting proxies not timely received by Sub-Advisor.

With regard to all other matters for which shareholder action is required or solicited with respect to securities beneficially held by the sub-advised private hedge fund (such as (i) all matters relating to class actions, including without limitation, matters relating to opting in or opting out of a class and approval of class settlements and (ii) bankruptcies or reorganizations), ICM will take such action as ICM deems appropriate; provided that if the Advisor (James Alpha Management I, LP) has been instructed in writing by one of its investors and/or clients to take a specific shareholder action, Advisor shall provide ICM with advance written notice of such written instruction by Advisor's investor and/or client, ICM shall take no action with respect thereto, and Advisor shall directly take such Shareholder Action.

#### **Item 18 – Financial Information**

ICM does not require or solicit prepayment of more than \$1,200 in fees per Client, six months or more in advance and therefore is not required to provide, and has not provided, a balance sheet. Registered investment advisers are required in this Item to provide you with certain financial information or disclosures about ICM's financial condition. ICM has no financial commitment that impairs its ability to meet contractual and fiduciary commitments to clients, and has not been the subject of a bankruptcy proceeding.

**Item 19 – Requirements for State-Registered Advisers** This item is not applicable.

# Invicta Capital Management, LLC

## Part 2B of Form ADV

### The Brochure Supplement

60 East 42<sup>nd</sup> Street  
Suite 2005  
New York, NY 10165  
212-585-0100

Updated: February 2012

This brochure supplement provides information about Gregory A. Weaver, sole Manager of Invicta Capital Management (ICM) engaged in exercising investment discretion for client accounts on behalf of ICM. It supplements ICM's accompanying Form ADV brochure. Please contact ICM's Chief Compliance Officer, Daniel Capozzo, at 646-747-5361 if you have any questions about the Form ADV brochure or this supplement, or if you would like to request additional or updated copies of either document.

Additional Information about Gregory A. Weaver is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov)



## Gregory A. Weaver's Biographical Information

### Educational Background and Business Experience

Year of Birth: 1968

Prior to founding Invicta Capital Management, LLC, Mr. Weaver was a portfolio manager and founding member of Kern Capital Management (KCM) (2001-2007), where he focused on the technology sector (e.g., telecom equipment, networking, semiconductors, storage, alternative energy, environmental, defense, gaming and related software areas). Previously, Mr. Weaver was a senior equity analyst with KCM (1997-2000).

Mr. Weaver was also a portfolio manager for KCM's Redpoint Partners, LP (2002-2007), a long/short hedge fund, where he made significant contributions, especially on the short side, since its inception by KCM in 1999. Previous experience also includes a technology analyst position with Morgan Grenfell Capital Management (1996-1997) and an industry analyst position with Sanwa Bank (1991-1994).

Mr. Weaver received an M.B.A. from Carnegie Mellon University in 1996 and a B.S. from the University of Vermont in 1991. He is also a holder of the Chartered Financial Analyst<sup>1</sup> designation.

### Disciplinary Information

There are no disciplinary events pertaining to Gregory Weaver material to a client's or prospective client's evaluation of Gregory A. Weaver.

### Other Business Activities

Gregory Weaver has no other business activities that are investment related that have not been previously disclosed. There are no such activities that pose a material conflict of interest.

### Additional Compensation

There is no one who is not a client that provides an economic benefit to Gregory Weaver for providing advisory services.

### Supervision

Chief Compliance Officer: Daniel Capozzo, 212-585-0100

ICM has adopted written policies and procedures which are designed to set standards and internal controls for the firm, its employees, and its businesses and are also reasonably designed to detect and prevent any violations of regulatory requirements and the firm's policies and procedures.

<sup>1</sup>  
CFA charter holder candidates must pass three six-hour exams, possess a bachelor's degree (or equivalent, as assessed by CFA institute) and have 48 months of qualified, professional work experience. CFA charter holders are also obligated to adhere to a strict code of ethics and standards governing professional conduct.