

# Acclivity Capital Management LLC

## Firm Brochure - Form ADV Part 2A

*This brochure provides information about the qualifications and business practices of Acclivity Capital Management LLC. If you have any questions about the contents of this brochure, please contact us at (212) 521-5198 or by email at: [info@acclivitycap.com](mailto:info@acclivitycap.com). The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority.*

*Additional information about Acclivity Capital Management LLC is also available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). Acclivity Capital Management LLC's CRD number is: 182516.*

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*Registration does not imply a certain level of skill or training.*

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## **Item 2: Material Changes**

Acclivity Capital Management LLC has not yet filed an annual updating amendment using the Form ADV Part 2A. Therefore there are no material changes to report.

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## **Item 4: Advisory Business**

### **A. Description of the Advisory Firm**

Acclivity Capital Management LLC (hereinafter “ACM”) is a Limited Liability Company organized in the State of Delaware. The firm was formed in December 2012, and the principal owner is Bradley Howard Gendell.

### **B. Types of Advisory Services**

#### ***Direct & Subadvisory Portfolio Management***

ACM offers ongoing portfolio management services to one or more private funds, either directly as investment manager or as a subadviser to the investment manager. Portfolio management services include, but are not limited to, the following:

- Investment strategy
- Asset selection and allocation
- Risk tolerance
- Regular portfolio monitoring

ACM requires discretionary authority from clients in order to select securities and execute transactions without permission from the client prior to each transaction.

ACM seeks to provide that investment decisions are made in accordance with the fiduciary duties owed to its accounts and without consideration of ACM’s economic, investment or other financial interests. To meet its fiduciary obligations, ACM attempts to avoid, among other things, investment or trading practices that systematically advantage or disadvantage certain client portfolios, and accordingly, ACM’s policy is to seek fair and equitable allocation of investment opportunities/transactions among its clients to avoid favoring one client over another over time. It is ACM’s policy to allocate investment opportunities and transactions it identifies as being appropriate and prudent among its clients on a fair and equitable basis over time.

### **C. Client-Tailored Services and Client-Imposed Restrictions**

ACM offers the same suite of services to all of its clients. However, specific client investment strategies and their implementation are dependent upon the particular client. Clients may not impose restrictions in investing in certain securities or types of securities in accordance with their values or beliefs.

## **D. Wrap Fee Programs**

A wrap fee program is an investment program where the investor pays one stated fee that includes management fees, transaction costs, fund expenses, and other administrative fees. ACM does not participate in any wrap fee programs.

## **E. Assets Under Management**

ACM has the following assets under management:

Discretionary Amounts:	Non-discretionary Amounts:	Date Calculated:
\$24,000,000	\$0	October 2015

# **Item 5: Fees and Compensation**

## **A. Fee Schedule**

### ***Fees for Portfolio Management***

Accredited clients will pay an annual fee of 1.25% of assets under management along with a 15.00% performance fee based on capital appreciation. If the client's portfolio rises in value, the client will pay 15.00% on that increase in value, but if the portfolio drops in value, the client will not incur a new performance fee until the portfolio reaches the last highest value, adjusted for withdrawals and deposits, which is generally known as a "high water mark" and is set forth in the fund's limited partnership agreement.

These fees are generally negotiable and the final fee schedule is attached as an exhibit of the Investment Advisory Contract. This service may be canceled with 60 days' notice or with a notice period as negotiated by ACM and the Client which is detailed in the Investment Advisory Contract.. Clients must pay the prorated performance-based fees for the billing period in which they terminate the Investment Advisory Contract up to and including the day of termination.

## **B. Payment of Fees**

### ***Payment of Portfolio Management Fees***

Performance fee based on capital appreciation is withdrawn directly from the client's accounts with client's written authorization on an annual basis, or may be invoiced and billed directly on an annual basis. Clients may select the method in which they are billed.

Portfolio management fees are withdrawn directly from the client's accounts with client's written authorization on a quarterly basis, or may be invoiced and billed directly to the client on a quarterly basis. Clients may select the method in which they are billed.

### **C. Client Responsibility For Third Party Fees**

Clients are responsible for the payment of all third party fees (i.e., custodian fees, brokerage fees, mutual fund fees, transaction fees, etc.) to the extent set forth in the fund's limited partnership agreement. Those fees are separate and distinct from the fees and expenses charged by ACM. Please see Item 12 of this brochure regarding broker-dealer/custodian.

### **D. Prepayment of Fees**

Typically management fees are paid quarterly in advance while incentive fee is paid in arrears after the end of the calendar year.

Refunds for fees paid in advance will be returned within fourteen days to the client via check, or return deposit back into the client's account

### **E. Outside Compensation For the Sale of Securities to Clients**

Neither ACM nor its supervised persons accept any compensation for the sale of securities or other investment products, including asset-based sales charges or service fees from the sale of mutual funds.

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

ACM manages accounts that are billed on performance-based fees (a share of capital gains on or capital appreciation of the assets of a client) and may as well manage accounts that are not billed on performance-based fees. Managing both kinds of accounts at the same time presents a conflict of interest because ACM and/or its supervised persons have an incentive to favor accounts for which ACM receives a performance-based fee. ACM addresses the conflicts by ensuring that clients are not systematically advantaged or disadvantaged due to the presence or absence of performance-based fees. ACM seeks best execution and upholds its fiduciary duty for all clients. Clients paying a performance-based fee should be aware that investment advisers have an incentive to invest in riskier investments when paid a performance-based fee due to the higher risk/higher reward attributes.

## **Item 7: Types of Clients**

ACM generally provides advisory services to the following types of clients:

❖ Pooled Investment Vehicles

ACM's stated minimum is \$500,000 for an accredited investor; however, this requirement can be waived with the consent of ACM.

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

ACM's methods of analysis, investment strategies, and specific securities utilized are discussed in greater length in the fund private placement memorandum, which should be thoroughly reviewed.

### **A. Methods of Analysis and Investment Strategies**

#### ***Methods of Analysis***

ACM's methods of analysis include fundamental analysis.

**Fundamental analysis** involves the analysis of financial statements, the general financial health of companies, and/or the analysis of management or competitive advantages.

#### ***Investment Strategies***

ACM uses long term trading, short term trading, short sales, margin transactions and options trading (including covered options, uncovered options, or spreading strategies).

**Investing in securities involves a risk of loss that you, as a client, should be prepared to bear.**

### **B. Material Risks Involved**

#### ***Methods of Analysis***

**Fundamental analysis** concentrates on factors that determine a company's value and expected future earnings. This strategy would normally encourage equity purchases in stocks that are undervalued or priced below their perceived value. The risk assumed is that the market will fail to reach expectations of perceived value.

#### ***Investment Strategies***

ACM's use of short sales, margin transactions and options trading generally holds greater risk, and clients should be aware that there is a material risk of loss using any of those strategies.



**Long term trading** is designed to capture market rates of both return and risk. Due to its nature, the long-term investment strategy can expose clients to various types of risk that will typically surface at various intervals during the time the client owns the investments. These risks include but are not limited to inflation (purchasing power) risk, interest rate risk, economic risk, market risk, and political/regulatory risk.

**Short term trading** risks include liquidity, economic stability, and inflation, in addition to the long term trading risks listed above. Frequent trading can affect investment performance, particularly through increased brokerage and other transaction costs and taxes.

**Short sales** entail the possibility of infinite loss. An increase in the applicable securities' prices will result in a loss and, over time, the market has historically trended upward.

**Margin transactions** use leverage that is borrowed from a brokerage firm as collateral. When losses occur, the value of the margin account may fall below the brokerage firm's threshold thereby triggering a margin call. This may force the account holder to either allocate more funds to the account or sell assets on a shorter time frame than desired.

**Options transactions** involve a contract to purchase a security at a given price, not necessarily at market value, depending on the market. This strategy includes the risk that an option may expire out of the money resulting in minimal or no value, as well as the possibility of leveraged loss of trading capital due to the leveraged nature of stock options.

**Investing in securities involves a risk of loss that you, as a client, should be prepared to bear.**

### **C. Risks of Specific Securities Utilized**

ACM's use of short sales, margin transactions and options trading generally holds greater risk of capital loss. Clients should be aware that there is a material risk of loss using any investment strategy. The investment types listed below are not guaranteed or insured by the FDIC or any other government agency.

**Options** are contracts to purchase a security at a given price, risking that an option may expire out of the money resulting in minimal or no value. An uncovered option is a type of options contract that is not backed by an offsetting position that would help mitigate risk. The risk for a "naked" or uncovered put is not unlimited, whereas the potential loss for an uncovered call option is limitless. Spread option positions entail buying and selling multiple options on the same underlying security, but with different strike prices or expiration dates, which helps limit the risk of other option trading strategies. Option transactions also involve risks including but not limited to economic risk, market risk, sector risk, idiosyncratic risk, political/regulatory risk, inflation (purchasing power) risk and interest rate risk.

**Past performance is not indicative of future results. Investing in securities involves a risk of loss that you, as a client, should be prepared to bear.**

## **Item 9: Disciplinary Information**

### **A. Criminal or Civil Actions**

There are no criminal or civil actions to report.

### **B. Administrative Proceedings**

There are no administrative proceedings to report.

### **C. Self-regulatory Organization (SRO) Proceedings**

There are no self-regulatory organization proceedings to report.

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

### **A. Registration as a Broker/Dealer or Broker/Dealer Representative**

Neither ACM nor its representatives are registered as, or have pending applications to become, a broker/dealer or a representative of a broker/dealer.

### **B. Registration as a Futures Commission Merchant, Commodity Pool Operator, or a Commodity Trading Advisor**

Neither ACM nor its representatives are registered as or have pending applications to become either a Futures Commission Merchant, Commodity Pool Operator, or Commodity Trading Advisor or an associated person of the foregoing entities.

### **C. Registration Relationships Material to this Advisory Business and Possible Conflicts of Interests**

Bradley Howard Gendell Managing Member of Acclivity Capital Management LLC the manager and general partner of Acclivity Capital Partners LP, a private fund. This presents a conflict of interest in that ACM or its related persons may receive more compensation from investment in the fund than from other investments. Nevertheless, ACM acts in the best interest of the client consistent with its fiduciary duties and clients are not required invest in the private fund if they do not wish to do so.

#### **D. Selection of Other Advisers or Managers and How This Adviser is Compensated for Those Selections**

ACM does not utilize nor select third-party investment advisers. All assets are managed by ACM management.

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

#### **A. Code of Ethics**

ACM has a written Code of Ethics that covers the following areas: Prohibited Purchases and Sales, Insider Trading, Personal Securities Transactions, Exempted Transactions, Prohibited Activities, Conflicts of Interest, Gifts and Entertainment, Confidentiality, Service on a Board of Directors, Compliance Procedures, Compliance with Laws and Regulations, Procedures and Reporting, Certification of Compliance, Reporting Violations, Compliance Officer Duties, Training and Education, Recordkeeping, Annual Review, and Sanctions. ACM's Code of Ethics is available free upon request to any client or prospective client.

#### **B. Recommendations Involving Material Financial Interests**

ACM and its associated persons may have material financial interests in issuers of securities that ACM may recommend for purchase or sale by clients. For example, Bradley Howard Gendell, Managing Member of Acclivity Capital Management LLC, is the manager and owns the general partner of Acclivity Capital Partners LP, a private fund. This presents a conflict of interest in that ACM or its related persons may receive more compensation from investment in a security in which in which ACM or a related person has a material financial interest than from other investments. Client approval will be sought for client investment in such recommendations and, if granted, such approval will be binding. ACM always acts in the best interest of the client consistent with its fiduciary duties and clients are not required invest in such investments if they do not wish to do so.

#### **C. Investing Personal Money in the Same Securities as Clients**

From time to time, representatives of ACM may buy or sell securities for themselves that they also recommend to clients. This may provide an opportunity for representatives of ACM to buy or sell the same securities before or after recommending the same securities to clients resulting in representatives profiting off the recommendations they provide to clients. Such transactions may create a conflict of interest. ACM will always document any transactions that could be construed as conflicts of interest and will never engage in trading that operates to the client's disadvantage when similar securities are being bought or sold.

## **D. Trading Securities At/Around the Same Time as Clients' Securities**

From time to time, representatives of ACM may buy or sell securities for themselves at or around the same time as clients. This may provide an opportunity for representatives of ACM to buy or sell securities before or after recommending securities to clients resulting in representatives profiting off the recommendations they provide to clients. Such transactions may create a conflict of interest; however, ACM will never engage in trading that operates to the client's disadvantage if representatives of ACM buy or sell securities at or around the same time as clients. Trading policies for ACM employees are detailed in the firm's Policies and Procedures Manual.

## **Item 12: Brokerage Practices**

### **A. Factors Used to Select Custodians and/or Broker/Dealers**

ACM does not recommend brokers/custodians.

#### ***1. Research and Other Soft-Dollar Benefits***

ACM may receive research, products, or other services from custodians and broker-dealers in connection with client securities transactions ("soft dollar benefits"). ACM may enter into soft-dollar arrangements consistent with (and not outside of) the safe harbor contained in Section 28(e) of the Securities Exchange Act of 1934, as amended. There can be no assurance that any particular client will benefit from soft dollar research, whether or not the client's transactions paid for it, and ACM does not seek to allocate benefits to client accounts proportionate to any soft dollar credits generated by the accounts. ACM benefits by not having to produce or pay for the research, products or services, and ACM will have an incentive to recommend a broker-dealer based on receiving research or services. Clients should be aware that ACM's acceptance of soft dollar benefits may result in higher commissions charged to the client.

#### ***2. Brokerage for Client Referrals***

ACM receives no referrals from a broker-dealer or third party in exchange for using that broker-dealer or third party.

#### ***3. Clients Directing Which Broker/Dealer/Custodian to Use***

ACM may permit clients to direct it to execute transactions through a specified broker-dealer. If a client directs brokerage, then the client will be required to acknowledge in writing that the client's direction with respect to the use of brokers supersedes any authority granted to ACM to select brokers; this direction may result in higher

commissions, which may result in a disparity between free and directed accounts; the client may be unable to participate in block trades (unless ACM is able to engage in “step outs”); and trades for the client and other directed accounts may be executed after trades for free accounts, which may result in less favorable prices, particularly for illiquid securities or during volatile market conditions. Not all advisors require or allow clients to direct brokerage. If client’s direct brokerages, then most favorable execution may not be achieved, which may cost the client more.

## **B. Aggregating (Block) Trading for Multiple Client Accounts**

If ACM buys or sells the same securities on behalf of more than one client, then it may (but would be under no obligation to) aggregate or bunch such securities in a single transaction for multiple clients in order to seek more favorable prices, lower brokerage commissions, or more efficient execution. In such case, ACM would place an aggregate order with the broker on behalf of all such clients in order to ensure fairness for all clients; provided, however, that trades would be reviewed periodically to ensure that accounts are not systematically disadvantaged by this policy. ACM would determine the appropriate number of shares and select the appropriate brokers consistent with its duty to seek best execution, except for those accounts with specific brokerage direction (if any).

# **Item 13: Reviews of Accounts**

## **A. Frequency and Nature of Periodic Reviews and Who Makes Those Reviews**

All client accounts for ACM's advisory services provided on an ongoing basis are reviewed at least monthly by Bradley H Gendell, Managing Principal, with regard to clients’ respective investment policies and risk tolerance levels. All accounts at ACM are assigned to this reviewer.

## **B. Factors That Will Trigger a Non-Periodic Review of Client Accounts**

Reviews may be triggered by material market, economic or political events, or by changes in the client's financial objectives or risk parameters. Clients can request a review of their accounts at any time.

## **C. Content and Frequency of Regular Reports Provided to Clients**

Each client of ACM's advisory services provided on an ongoing basis will receive a monthly report detailing the client’s account asset value, and calculation of fees. This written report will come from the custodian. ACM will also provide at least monthly a separate written statement to the client.

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

### **A. Economic Benefits Provided by Third Parties for Advice Rendered to Clients (Includes Sales Awards or Other Prizes)**

ACM does not receive any economic benefit, directly or indirectly from any third party for advice rendered to ACM's clients.

### **B. Compensation to Non – Advisory Personnel for Client Referrals**

ACM does not directly or indirectly compensate any person who is not advisory personnel for client referrals.

## **Item 15: Custody**

When advisory fees are deducted directly from client accounts at client's custodian, ACM will be deemed to have limited custody of client's assets and must have written authorization from the client to do so. Clients will receive all account statements and billing invoices that are required in each jurisdiction, and they should carefully review those statements for accuracy. Clients will also receive statements from ACM and are urged to compare the account statements they received from custodian with those they received from ACM.

ACM may be deemed to have custody over the funds and securities invested in pooled investment vehicles that ACM manages.

## **Item 16: Investment Discretion**

ACM provides discretionary investment advisory services to clients. The Investment Advisory Contract established with each client sets forth the discretionary authority for trading. Where investment discretion has been granted, ACM generally manages the client's account and makes investment decisions without consultation with the client as to when the securities are to be bought or sold for the account, the total amount of the securities to be bought/sold, what securities to buy or sell, or the price per share.

## **Item 17: Voting Client Securities (Proxy Voting)**

ACM acknowledges its fiduciary obligation to vote proxies on behalf of those clients that have delegated to it, or for which it is deemed to have, proxy voting authority. ACM will vote proxies on behalf of a client solely in the best interest of the relevant client and has established general guidelines for voting proxies. ACM may also abstain from voting if, based on factors such as expense or difficulty of exercise, it determines that a client's interests are better served by

abstaining. Further, because proxy proposals and individual company facts and circumstances may vary, ACM may vote in a manner that is contrary to the general guidelines if it believes that doing so would be in a client's best interest to do so. If a proxy proposal presents a conflict of interest between ACM and a client, then ACM will disclose the conflict of interest to the client prior to the proxy vote and, if participating in the vote, will vote in accordance with the client's wishes.

Clients may obtain a complete copy of the proxy voting policies and procedures by contacting ACM in writing and requesting such information. Each client may also request, by contacting ACM in writing, information concerning the manner in which proxy votes have been cast with respect to portfolio securities held by the relevant client during the prior annual period.

## **Item 18: Financial Information**

### **A. Balance Sheet**

ACM neither requires nor solicits prepayment of more than \$1,200 in fees per client, six months or more in advance, and therefore is not required to include a balance sheet with this brochure.

### **B. Financial Conditions Reasonably Likely to Impair Ability to Meet Contractual Commitments to Clients**

Neither ACM nor its management has any financial condition that is likely to reasonably impair ACM's ability to meet contractual commitments to clients.

### **C. Bankruptcy Petitions in Previous Ten Years**

ACM has not been the subject of a bankruptcy petition in the last ten years.