

# Invictus Fiduciary Services, LLC

## Firm Brochure - Form ADV Part 2A

*This brochure provides information about the qualifications and business practices of Invictus Fiduciary Services, LLC. If you have any questions about the contents of this brochure, please contact us at (901) 260-1449 or by email at: [mnew@invictusfiduciary.com](mailto:mnew@invictusfiduciary.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 Invictus Fiduciary Services, LLC is also available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). Invictus Fiduciary Services, LLC's CRD number is: 286117.*

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

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## **Item 2: Material Changes**

Invictus Fiduciary Services, LLC has the following material changes to report. Material changes relate to Invictus Fiduciary Services, LLC's policies, practices or conflicts of interests.

- Invictus has updated the office phone number (Item 1).

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## **Item 4: Advisory Business**

Invictus Fiduciary Services, LLC (hereinafter “Invictus”) is a Limited Liability Company organized in the State of Tennessee. The firm was formed in July 2016, and the principal owners are Michael Eugene New, Kenneth Bryan Lenoir and Clyde Douglas Kelso, III.

Invictus provides services to Employee Stock Ownership Plans (“ESOP”) on two separate basis.

First, Invictus will serve as the Investment Manager to the ESOP and its related trust agreement sponsored by the Company on a continuing or “on-going” basis. Michael New or Kenneth Lenoir, in their individual capacities, will serve as the ESOP trustee.

OR

Second, Invictus will serve as the Investment Manager to the ESOP and its related trust agreement sponsored by the Company and Michael New or Kenneth Lenoir, in their individual capacities, will serve as the ESOP trustee in connection with a proposal to engage in a transaction involving the purchase of a percentage of the issued and outstanding shares of Company stock by the ESOP.

Invictus has the following assets under management:

<b>Discretionary Amounts:</b>	<b>Non-discretionary Amounts:</b>	<b>Date Calculated:</b>
\$ 210,468,184	\$ 76,584,167	December 2017

## **Item 5: Fees and Compensation**

For Invictus’s services as Investment Manager of an ESOP transaction, Invictus will receive a transaction fee from the Company, of which a portion disclosed in the agreement is payable upon the execution of the letter agreement, with the remaining amount payable upon either the sixtieth (60th) day following the execution of this agreement, or upon the completion of this engagement, whichever event occurs first. The Company will also pay the reasonable out-of-pocket expenses incurred in connection with the services the Fiduciaries perform relating to the Proposed Transaction, such as copying expenses, long-distance telephone charges, private express mail deliveries, and travel expenses, based on customary rates that commercial air carriers, hotels, and other service providers charge.

For its services as Investment Manager to an ESOP in an on-going capacity, Invictus will receive an annual fee based upon the fair market value of the assets in the ESOP as of December 31<sup>st</sup> of

the prior year (the “fee valuation date”). This annual fee will be calculated in the following manner:

- 15 basis points of the first \$10 Million in ESOP assets;
- 5 basis points of the next \$40 Million in ESOP assets; and
- 2.5 basis points of ESOP assets in excess of \$50 Million;

The annual fee will be payable by the Company or the ESOP in four equal quarterly installments. Each quarterly installment will be charged at one-fourth the annual fee rate and payment shall be due within 30 days following the beginning of each calendar quarter. If the fair market value of the assets in the ESOP as of the “fee valuation date” has not been determined at the time when a quarterly installment payment is to be made, then the amount of such payment will be based upon such fair market value as of the end of the plan year immediately preceding the “fee valuation date” until the fair market value as of the “fee valuation date” can be determined. When the fair market value of the assets in the ESOP as of the “fee valuation date” has ultimately been determined, the Company or the ESOP will increase (or decrease) its subsequent quarterly installments until it has paid Invictus the amount due in accordance with the calculation method described above. In no event will the annual fee be less than \$15,000.00. In addition to its annual fee, Invictus will receive a fee of \$35.00 for each participant distribution made during the plan year. This distribution fee includes the preparation of the appropriate tax reporting form for each distribution. Finally, the Company will also pay the reasonable out-of-pocket expenses incurred in connection with the services the Fiduciaries perform in their respective roles as Investment Manager and trustee to the ESOP, such as copying expenses, long-distance telephone charges, private express mail deliveries, and travel expenses, based on customary rates charged by commercial air carriers, hotels, and other service providers.

Some Companies worked with the members of Invictus while they were employees of Evolve Bank and Trust (“Evolve”), the previous plan trustee, under fee schedules that were applicable at the time these Companies appointed Evolve as their plan trustee. The fee schedule applicable to each of these Companies has been grandfathered by Invictus for these Companies and may produce a fee different than the fee created by the fee schedule shown above.

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

Invictus does not accept performance-based fees or other fees based on a share of capital gains on or capital appreciation of the assets of a client.

## Item 7: Types of Clients

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

- ❖ Employee Stock Ownership Plans and their Plan Sponsors

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

Invictus is responsible for monitoring and recommending investment options to the ESOP trustee and/or Plan Sponsor fiduciary committee. This may include:

- Causing securities to be valued
- Evaluating security valuation methods
- Evaluating executive compensation and planning

Invictus, in consultation with their advisors, will assume the fiduciary responsibility for advising the ESOP trustee that the purchase of Company stock is prudent, that the purchase price of the stock does not exceed adequate consideration as defined under Section 3(18) of ERISA, and that the transaction is fair from a financial viewpoint to the ESOP and its participants. The fiduciary determinations by Invictus will be based upon such factors and information as it considers to be relevant, including the appraisal and a fairness opinion by an independent appraiser and/or financial advisor. However, at all times, Invictus shall have discretionary authority to investigate and evaluate the Proposed Transaction. Nothing contained herein shall be construed to constitute a representation, warranty, or commitment that Invictus will approve or disapprove the Proposed Transaction.

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

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.

**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

There are no criminal or civil actions to report.

There are no administrative proceedings to report.

There are no self-regulatory organization proceedings to report.

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

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

Neither Invictus 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.

Michael Eugene New is a lawyer and from time to time may offer clients advice or products from those activities and clients should be aware that these services may involve a conflict of interest. Invictus always acts in the best interest of the client and clients are in no way required to utilize the services of any representative of Invictus in connection with such individual's activities outside of Invictus.

Clyde Douglas Kelso, III is a lawyer and from time to time may offer clients advice or products from those activities and clients should be aware that these services may involve a conflict of interest. Invictus always acts in the best interest of the client and clients are in no way required to utilize the services of any representative of Invictus in connection with such individual's activities outside of Invictus.

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

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

Invictus 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. Invictus's Code of Ethics is available free upon request to any client or prospective client.

Invictus does not recommend that clients buy or sell any security in which a related person to Invictus or Invictus has a material financial interest.

Invictus does not buy or sell securities for themselves or recommend securities to clients.

## **Item 12: Brokerage Practices**

Invictus does not trade client's accounts and therefore receives no research, product, or services from a broker-dealer ("soft dollar benefits"). Invictus receives no referrals from a broker-dealer or third party in exchange for using that broker-dealer or third party. Invictus does not trade client's accounts. Invictus does not trade clients' accounts and therefore does not have the ability to block trade purchases across accounts.

## **Item 13: Review of Accounts**

Invictus will engage a valuation firm and annually review and approve the valuation of Company stock held in the ESOP.

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

Invictus does not receive any economic benefit, directly or indirectly from any third party for advice rendered to Invictus's clients. Invictus does not directly or indirectly compensate any person who is not advisory personnel for client referrals.

## **Item 15: Custody**

Invictus does not take custody of client accounts at any time. Custody of client's accounts is held primarily at the client's custodian. Clients will receive account statements from the custodian and should carefully review those statements for accuracy. Two of Invictus' employees/principals are also named as trustees to the ESOPs advised by Invictus. The discretionary authority inherent in their trustee roles deems they have custody of the assets over which they are trustee. Custody is also disclosed in Form ADV because Invictus has authority to transfer money from client account(s), which constitutes a standing letter or authorization (SLOA). Accordingly, Invictus will follow the applicable safeguards.

## **Item 16: Investment Discretion**

Invictus provides advice only and does not have discretion over client accounts at any time.

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

Invictus will not ask for, nor accept voting authority for client securities. Clients will receive proxies directly from the issuer of the security or the custodian. Clients should direct all proxy questions to the issuer of the security.



## **Item 18: Financial Information**

Invictus neither requires nor solicits prepayment of fees from clients, Kenneth Lenoir and Michael New, six months or more in advance, and therefore is not required to include a balance sheet with this brochure.

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

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