

# MANAGED ACCOUNT AGREEMENT

## GENERAL TERMS AND CONDITIONS

The following terms and conditions shall apply to all services rendered by Manager to Client pursuant to the Agreement except to the extent otherwise expressly provided by a Program Supplement. Each Program Supplement shall pertain solely to the specific program of services described therein (each a "Program"). The provisions of each Program Supplement shall control with respect to the Program over the General Terms to the extent inconsistent therewith except to the extent otherwise expressly provided.

1. **Services.** As of the Effective Date (as defined in Section 14 below), Client hereby retains Manager to render investment management services and to manage Client's separately managed securities investment account (the "Account") as set forth in each Program Supplement with respect to the Account's assets to be managed in accordance with such Program Supplement (for each Program, the "Program Assets"). Subject to each Program Supplement and its Investment Guidelines (as defined therein), Client grants to Manager full discretion as to all investment decisions regarding the Account, including but not limited to, authority to buy, invest in, hold for investment, own, assign, transfer, sell exchange, trade in, lend, pledge, deliver and otherwise deal in (on margin or otherwise) stocks, bonds, options, shares of investment companies and exchange traded funds, repurchase agreements and all other securities and intangible investment instruments and vehicles of every kind and nature ("Securities") for the Account, and to exercise in Manager's discretion all rights, powers, privileges and other incidents of ownership with respect to Securities and funds in the Account. In connection therewith, Manager is authorized to select and engage for the Account one or more banks, trust companies and brokerage firms as custodians or brokers for funds and Securities held in the Account and to instruct such custodians and brokers with respect to the purchase, sale, exchange, delivery or other disposition of such Securities, funds and disbursements relating thereto.
  - A. Notwithstanding anything in the Agreement, including without limitation any Program Supplement, to the contrary, Manager shall have no authority hereunder to take or have possession of any assets in the Account or to direct delivery of any Securities or payment of any funds held in the Account to itself or to direct any disposition of such Securities or funds except (i) to Client, (ii) for countervalue or (iii) as provided in Section 4 below.
  - B. Notwithstanding any other provision of the Agreement, if Client is subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), Client retains all authority to exercise voting rights with respect to Securities in

the Account, and Manager is expressly precluded from exercising voting rights with respect to such Securities.

- C. Manager does not and shall not have any duty or obligation to advise or take any action on behalf of Client in any proceeding, including without limitation bankruptcies or class actions, involving Securities held in or formerly held in the Account or the issuers of Securities.
  - D. Notwithstanding any other provision of the Agreement, as between Manager and Client, Client retains, with respect to all Securities and funds in the Account, to the same extent as if Client held the Securities and funds outside the Account, the right to:
    - i. Withdraw Securities or funds;
    - ii. Vote Securities, or delegate the authority to vote Securities to another person;
    - iii. Be provided in a timely manner with a written confirmation or other notification of each securities transaction, and all other documents required by law to be provided to security holders; and
    - iv. Proceed directly as a security holder against the issuer of any security in the Account and not be obligated to join any person involved in the operation of the Program, or any other client of the program, as a condition precedent to initiating such proceeding.
2. **Limited Power of Attorney.** To enable Manager to exercise fully its discretion and authority hereunder, including without limitation as provided in Sections 1 and 3 hereof, Client has constituted and appointed Manager as Client's agent and attorney-in-fact with full power and authority for Client and on Client's behalf to buy, sell and otherwise deal in Securities and contracts relating to same for the Account, pursuant to the Limited Power of Attorney with Trading Authorization (MA-100-006 Rev.1.0) which is expressly incorporated by reference in the Agreement and made a part thereof.
3. **Brokers to be Used.**
- A. Manager shall select the brokers effecting transactions for the Account. Such brokers will be paid brokerage commissions by the Account (not to exceed the rate the brokers currently charge to their retail customers) at levels to be determined by Manager.
    - i. Manager's allocation of brokerage business in effecting transactions for the Account shall not be based solely on a desire to get the best price possible; rather Manager shall select brokers in part on the basis of certain non-monetary benefits offered by those firms, which may include, among other things, research services, special execution capabilities, clearance, settlement, reputation, financial strength and stability, efficiency of execution and error resolution, block trading and block positioning capabilities, willingness to execute related or unrelated

- difficult transactions in the future, order of call, on-line access to computerized data regarding its clients' accounts, availability of Securities to be sold short, referrals of prospective investment advisory clients and other matters involved in the receipt of brokerage services generally.
- ii. Manager also shall be entitled to purchase from a broker, or allow a broker to pay for, certain research services, economic and market information, portfolio strategy advice, industry and company comments, technical data, recommendations, costs of research conferences, general reports, periodical subscription fees, consultations, performance measurement data, on-line pricing and charges for news wire and market data services, quotation services, certain computer software, and the like.
  - iii. Client may pay brokerage commissions in excess of those that other brokers might charge for effecting the same transactions in recognition of the value of the brokerage, research and other services provided. In such cases, however, Manager will determine in good faith that the commissions are reasonable in relation to the value of brokerage, research and other services provided by such broker ("soft dollar credits"), viewed in terms of either the specific transaction or Manager's overall responsibilities to the portfolios over which Manager exercises investment authority.
  - iv. Regarding certain products or services used for both research and non-research purposes, Manager may allocate the costs of such products or services between their research and non-research uses, and use soft dollar credits to pay only for the portion allocated to research uses.
  - v. Brokerage, research and other services furnished by brokers through whom Manager intends to effect securities transactions may be used in servicing any or all of Manager's accounts (including the Account), but not all of such services may be used by Manager in connection with the Account. Manager may receive soft dollar credits based on principal, as well as agency, securities transactions with broker or dealers or direct a broker that executes transactions to share some of its commissions with a broker that provides soft dollar benefits to Manager.
- B. Manager shall be entitled to aggregate Securities sale and purchase orders for the Account with similar orders being made contemporaneously for other accounts managed by Manager or with accounts of affiliates of Manager if, in Manager's reasonable judgment, such aggregation is reasonably likely to result in an overall economic benefit to the Account, based on an evaluation that the Account is benefited by relatively better purchase or sale prices, lower commission expenses or beneficial timing of transactions, or a combination of these and other factors. In many instances, the purchase or sale of Securities for the Account will be effected substantially simultaneously with the purchase or sale of like Securities for the accounts of other clients of Manager and its affiliates.

Such transactions may be made at slightly different prices, due to the volume of Securities purchased or sold. In such event, the average price of all Securities purchased or sold in such transactions may be determined, and Client may be charged or credited, as the case may be, the average transaction price.

- C. Notwithstanding any of the foregoing provisions Section 3.A or 3.B above to the contrary, if (i) because of a prior relationship between Client and one or more brokers or (ii) for other reasons or no reasons, Client has instructed Manager to execute any or all Securities transactions for the Account with or through one or more brokers designated by Client, Client represents and warrants that Client has negotiated the terms and conditions (including but not limited to, commission rates, other fees, costs and expenses) relating to all services to be provided by such brokers and that Client is satisfied with such terms and conditions. Manager shall not have any responsibility for obtaining for the Account from any such broker the best prices or any particular commission rates for transactions with or through any such broker. Client recognizes that Client may not obtain rates as low as it might otherwise obtain if Manager had discretion to select broker-dealers other than those chosen by Client. Client agrees that if Manager believes, in its exclusive discretion, that Manager cannot satisfy its fiduciary duty of best execution by executing a Securities transaction for the Account with a broker designated by Client, Manager may execute that Securities transaction with a different broker. Client shall promptly inform Manager in writing if Client desires that Manager cease executing transactions with or through any such broker.
4. **Manager's Fees and Payment.** Client shall pay the fees to Manager for the services to be rendered by Manager under the Agreement in accordance with each Program Supplement relating to the Program Assets thereunder ("Manager's Fees").
5. [This section is empty]
6. **Responsibility for Expenses.** The Account shall be responsible for all expenses related to the Account or the trading the assets of the Account, including, but not limited to, interest on margin borrowing, dividends payable with respect to securities sold short, custodial fees, brokerage commissions, broker and bank service and account fees, charges and expenses, interest on Account-related loans and debit balances and legal fees and expenses incurred in attempting to protect or enhance the value of the Securities in the Account.
7. **Client Information, Consultations and Instructions.**
- A. With respect to each Program Supplement and the related Program Assets, Client shall promptly advise Manager of (i) Client's financial situation insofar as it relates to the Account, the Program Supplement and the Program Assets, (ii) the Investment Guidelines thereof (including without limitation the investment objectives and restrictions thereof), and (ii) any changes or modifications to the Client's financial condition and those respective Investment Guidelines. Client promptly shall notify Manager in writing if Client

considers any investments recommended or made for the Account and any Program Supplement to violate or to be otherwise inconsistent with such Investment Guidelines.

- B. Client promptly shall furnish, or shall cause Client's custodian, including any broker acting as such, or agent thereof, to furnish, to Manager all data and information Manager reasonably may request or require to render the investment management services pursuant to the Agreement. Client shall be solely responsible for the completeness and accuracy of the data and information so furnished to Manager.
  - C. Subject to the Program Supplement, Client and Manager shall consult on a periodic basis (not less than annually) regarding each Program Supplement and the Program Assets, including without limitation Client's Investment Guidelines in connection therewith.
  - D. Subject to the terms of the Agreement, including without limitation each Program Supplement, Client may at any time direct Manager to sell such Securities or take such other lawful actions as Client may specify to effect compliance of the Account with Client's respective Investment Guidelines with respect to the related Program Assets. In addition, Client may notify Manager at any time not to invest any Account assets in specific Securities or specific categories of Securities, and Manager will follow Client's instructions in respect thereof in the ordinary course of business as set forth in the Program Supplement.
7. **Account Statements.** To the extent not otherwise provided pursuant the Program Supplement(s), Manager shall furnish to Client an account statement no less frequently than at the end of each calendar quarter describing all activity in the Account during the quarter, including all transactions made on behalf of the Account, the aggregate market value of all Securities and funds in the Account at the beginning and at the end of the quarter, Client's additions of funds and Securities to and withdrawals of funds and Securities from the Account during such quarter and the calculation of the Manager's Fees paid or accrued during such quarter. If, however, when considered together, the account statements provided pursuant to all Program Supplements provide such information, Manager need not provide a separate account statement for the Account pursuant to this Section 7. Manager may prepare all account statements required by this Section 7 without the assistance of outside accountants.
8. **Representations and Warranties.**
- A. Client represents and warrants to Manager and agrees with Manager as follows:
    - (i) Client has the requisite legal capacity and authority to execute, deliver and perform its obligations under the Agreement. The Agreement has been duly authorized, executed and delivered by Client and is the legal, valid and binding agreement of Client, enforceable against Client in accordance with its terms. Client's execution of the Agreement and the performance of its obligations hereunder do not conflict with or violate any provisions of the governing documents (if any) of Client or any obligations by which Client is bound, whether

arising by contract, operation of law or otherwise. Client will deliver to Manager evidence of Client's authority and compliance with its governing documents on Manager's request.

- (ii) Client is the owner of all funds and Securities in the Account, and, except as have been or may be disclosed by Client to Manager in writing as contemplated by Section 3 above, there are no restrictions on the pledge, hypothecation, transfer, sale or public distribution of such funds or Securities.
- (iii) Client is knowledgeable regarding the engagement of investment advisers and is aware of the risks associated with such engagements, including but not limited to the risk that the Account could suffer substantial diminution in value.
- (iv) If Client is not subject to the provisions of ERISA, as of the Effective Date, and at all times during the term of the Agreement, less than twenty-five percent (25%) of the Account's assets are and will be assets of "employee benefit plans" within the meaning of ERISA.
- (v) If Client is (or in the future becomes) subject to the provisions of ERISA:
  - a. Client will obtain and maintain for the period of the Agreement any bond for fiduciaries required by Section 412 of ERISA, and will include Manager among those covered by such bond.
  - b. Client has independently determined that the retention of Manager by Client satisfies all requirements of Section 404(a)(1) of ERISA, specifically including the "prudent man" standards of Section 404(a)(1)(B) and the "diversification" standard of Section 404(a)(1)(C), and will not be prohibited under any of the provisions of Section 406 of ERISA or Section 4975(c)(1) of the Internal Revenue Code of 1986, as amended. The undersigned authorized signatory for Client has requested and received all information from Manager that the undersigned, after due inquiry, considered relevant to such determinations. In determining that the requirements of Section 404(a)(1) are satisfied, the undersigned has taken into account that 1) there is a risk of a loss of the Account, 2) the Account may be relatively illiquid, and 3) funds so invested may not be readily available for the payment of employee benefits. Taking into account these and all other factors relating to retention of Manager by Client, the undersigned has concluded that the retention of Manager by Client constitutes an appropriate part of Client's overall investment program.

- c. Client will notify Manager, in writing, of (1) any termination, substantial contraction, merger or consolidation of Client, or transfer of its assets to any other employee benefit plan, (2) any amendment to the organizing documents of Client or any related instrument that materially affects the activities of Manager contemplated hereunder or the authority of any named fiduciary or investment manager to authorize Client investments or retention of investment advisers, and (3) any alteration in the identity of any named fiduciary or investment manager, including itself, who has the authority to approve Client investments.
        - d. In accordance with Sections 405(b)(1), 405(c)(2) and 405(d) of ERISA, the fiduciary responsibilities of Manager and any partner, employee or agent of Manager shall be limited to his, her or its duties in managing the Account, and Manager shall not be responsible for any other duties with respect to Client (specifically including evaluating the initial or continued appropriateness of Client's retention of Manager under Section 404(a)(1) of ERISA).
  - B. Manager represents and warrants to Client and agrees with Client as follows:
    - (i) Manager is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act").
    - (ii) To the extent required by applicable federal and California state law, rules and regulations, Manager has registered those of its members, officers, managers, employees or agents as "investment adviser representatives" in the State of California.
    - (iii) If Client is subject to the provisions of ERISA, Manager understands that Manager shall be a "fiduciary" of Client, as that term is defined in section 3(21)(A) of ERISA.
9. **Conflicts of Interest.**
- A. Client acknowledges, understands and agrees that Manager engages in an investment advisory business apart from managing the Account, including without limitation managing mutual and hedge funds and other separately managed accounts, and that this other business will create conflicts of interest with the Account over Manager's time devoted to managing the Account and the allocation of investment opportunities among accounts (including the Account) managed by Manager. Manager will attempt to resolve all such conflicts in a manner that is generally fair to all of its clients.
  - B. Client confirms that Manager is entitled to give advice and take action with respect to any of its other clients that may differ from advice given or the timing or nature of action taken with respect to Client so long as it is Manager's policy, to the extent practicable, to

allocate investment opportunities to Client over a period of time on a fair and equitable basis relative to other clients.

- C. Nothing in the Agreement shall be deemed to obligate Manager to acquire for the Account any Security that Manager or its officers or employees may acquire for its or their own accounts or for the account of any other client, if in the absolute discretion of Manager, it is not practical or desirable to acquire a position in such Security for the Account.

10. **Account Losses; Indemnification.**

- A. To the fullest extent permitted under applicable law, Manager shall not be liable to Client for any losses incurred by Client that arise out of or are in any way connected with any recommendation or other act or failure to act of Manager under the Agreement, including, but not limited to, any error in judgment with respect to the Account, so long as such recommendation or other act or failure to act does not constitute a breach of Manager's fiduciary duty to Client.
- B. Client shall indemnify and defend Manager and each of its members, officers, employees agents and hold each harmless from and against any and all claims, losses, damages, liabilities and expenses, as they are incurred, by reason of any act or omission of Client or any custodian, broker, agent or other third party selected by Manager in a commercially reasonable manner or selected by Client, including without limitation all expenses related to the Account and the trading of the assets in the Account, including but not limited to expenses referenced in Section 6 above, except solely to the extent such as arise from Manager's breach of fiduciary duty to Client.
- C. Anything in this Section 10 or otherwise in the Agreement to the contrary notwithstanding, however, nothing herein shall constitute a waiver or limitation of any rights that Client may have under any Federal or state securities laws.

11. **Confidentiality.** Except as required by law, (A) Manager agrees to maintain in strict confidence all personal financial information regarding Client that is furnished to Manager by Client (except that if such Client is an institutional investor, Client consents to disclosure of Client's identity as a client of Manager), and (B) Client agrees to maintain in strict confidence all investment advice and information furnished to Client by Manager.

12. **Delivery of Information.**

- A. Client acknowledges that Client has received Manager's brochure required to be delivered under the Advisers Act, including but not limited to the information in Part II of Manager's Form ADV required by the Advisers Act (MA-100-003 and MA-100-004) (the "Brochure"). Upon written request by Client, Manager shall deliver annually, without charge, Manager's Brochure to Client.



- B. If Client received the Brochure less than forty-eight (48) hours prior to signing and causing the Agreement to be delivered, the Agreement may be terminated by Client without penalty within five (5) business days from the Effective Date.

13. **Notices.**

- A. Client shall ***not*** give Manager any instructions orally with respect to the Account, including without limitation with respect to any Securities or funds transactions.
- B. A party shall make all communications under the Agreement to any other party hereto, including without limitation any notices or instructions by Client with respect to any Securities or funds transactions or otherwise, ***only*** in writing.
  - i. ***"In writing"*** means a party must deliver the communication in English to the other party (a) physically via a tangible and easily legible media (*e.g.*, a letter or other physical document) or (b) electronically via 1) a standard facsimile device, or 2) standard Internet electronic mail (including without limitation as a document in customary electronic form attached thereto).
  - ii. Such communication will be deemed duly given and received if properly addressed to a person authorized by the other party to receive such communication and (a) if via a tangible and easily legible media 1) when delivered personally, 2) three (3) business days after being duly sent by first class U.S. mail, or 3) one (1) business day after being deposited for next-day delivery with Federal Express or another nationally recognized overnight delivery service providing for signed receipt upon delivery, in each case all charges or postage prepaid, to the other party's authorized mailing address, and (b) if electronically via 1) facsimile, to a phone number or 2) Internet electronic mail, to an Internet electronic mail address, each address as authorized by the other party as indicated below that party's signature on the Agreement, or at any other address that either party may authorize and designate by notice to the other in writing.

14. **Effective Date and Term of Agreement.** Notwithstanding the date that the Agreement is signed or delivered by either party, the "Effective Date" shall be deemed to be the date Client first furnished funds or Securities to be managed by Manager in the Account. The term of the Agreement shall commence on the Effective Date and shall continue until the Agreement is terminated in accordance with Section 15 below.

15. **Termination: Withdrawals.**

- A. The Agreement, or any Program Supplement, may be terminated by either party with or without cause or for any reason or no reason, by notice in writing to the other party, effective when given and received in accordance with Section 13.B.ii above or such later date as may be specified in such notice. Termination of the Agreement shall simultaneously terminate all Program Supplements, but termination of a Program Supplement shall not terminate the Agreement in its entirety but shall terminate only

that portion of the Agreement to the extent relating to such Program Supplement, and the remainder of the Agreement, including without limitation all other Program Supplement then in effect, shall continue in full force and effect until terminated as provided by this Section 15. Notwithstanding any other provision of the Agreement to the contrary, Sections 10 and 11 above shall survive the termination of the Agreement.

- B. If Client terminates the Agreement within five (5) days of the Effective Date pursuant to Section 12.B above, Manager shall not charge Client any Manager's Fees.
  - C. Subject to the Program Supplement, Client may withdraw part of the funds or Securities in the Account by notifying Manager in writing as provided in the Program Supplement for such funds or Securities at least five (5) days prior to the withdrawal date, stating the amount of funds or the Securities to be withdrawn and the date of the withdrawal; provided that no partial withdrawal shall be permitted without Manager's consent if, after effecting the withdrawal, the net market value of the Account would be less than ten thousand dollars (\$10,000) or such other minimum as Manager shall establish from time to time upon notice to Client in writing.
16. **Independent Contractor.** Manager is and will hereafter act as an independent contractor and not as an employee of Client, and nothing in the Agreement may be interpreted or construed to create any employment, partnership, joint venture or other relationship between Manager and Client.
17. **Assignment.** Neither party shall assign the Agreement without the prior consent of Client, and an purported assignment not in accordance with this Section 17 shall be void and not merely voidable. The Agreement otherwise shall bind and inure to the benefit of and be enforceable by the parties and their respective permitted successors and assigns.
18. **Arbitration.** *The parties waive their right to seek remedies in court, including any right to a jury trial.* In the event of any dispute between the parties, such dispute shall be resolved exclusively by arbitration to be conducted only in the county and state of the principal office of Manager at the time of such dispute in accordance with the rules of the Judicial Arbitration and Mediation Service ("JAMS") applying the laws of the State of California as applied to agreements between California residents entered into and performed entirely within the state of California. Disputes will not be resolved in any other forum or venue. Such arbitration shall be conducted by one or more retired judges who are experienced in dispute resolution regarding the securities industry, pre-arbitration discovery shall be limited to the greatest extent provided by the rules of JAMS, the arbitration award shall not include factual findings or conclusions of law, and no punitive damages shall be awarded. *The parties understand that any party's right to appeal or to seek modification of rulings in an arbitration is severely limited.* Any award rendered by the arbitrators shall be final and binding and judgment may be entered upon it in any court of competent jurisdiction in the county and state of the principal office of Manager at the time such award is rendered.

19. **Governing Law.** THE AGREEMENT, INCLUDING WITHOUT LIMITATION EACH PROGRAM SUPPLEMENT, SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA AS APPLIED TO AGREEMENTS BETWEEN CALIFORNIA RESIDENTS ENTERED INTO AND PERFORMED ENTIRELY WITHIN THE STATE OF CALIFORNIA.
20. **Severability.** The invalidity or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any and all other provisions hereof.
21. **Entire Agreement.** The Agreement, including without limitation each Program Supplement, is the entire agreement of the parties regarding the subject hereof, and supersedes all prior or contemporaneous written or oral negotiations, correspondence, agreements and understandings (including but not limited to any and all preexisting investment management agreements, which hereby are canceled), regarding the subject matter hereof.
22. **Counterparts.** The Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
23. **No Third-Party Beneficiaries.** Neither party intends for the Agreement to benefit any third-party not expressly named in the Agreement.
24. **Changes.** No provision of the Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed and delivered by the party against which enforcement of the change, waiver, discharge or termination is sought.

# MANAGED ACCOUNT AGREEMENT

## LIMITED POWER OF ATTORNEY WITH TRADING AUTHORIZATION

Under the Managed Account Agreement (MA-100-001 Rev 1.4) (the "Agreement"), into which this Limited Power of Attorney with Trading Authorization expressly is incorporated by reference and made a part thereof:

- Client has granted to Manager full discretion as to all investment decisions regarding Client's separately managed account with Manager (the "Account"), including but not limited to, authority to buy, invest in, hold for investment, own, assign, transfer, sell (including without limitation short sales), exchange, trade in, lend, pledge, deliver and otherwise deal in (on margin or otherwise) stocks, bonds, options, shares of investment companies and exchange traded funds, repurchase agreements and all other securities and intangible investment instruments and vehicles of every kind and nature ("Securities") for the Account, and to exercise, in Manager's discretion, all rights, powers, privileges and other incidents of ownership with respect to Securities and funds in the Account; provided, however, that Manager has no authority to (a) take or have possession of any assets in the Account or (b) direct delivery of any Securities or payment of any funds held in the Account to itself or direct any disposition of such Securities or funds except (i) to Client, (ii) for countervalue or (iii) to pay Manager's fees as expressly authorized by the Agreement in accordance with Rule 206(4)(2) of the Investment Advisers Act of 1940, as amended.
- In connection therewith, Client has authorized Manager to select and engage for the Account one or more banks, trust companies and brokerage firms as custodians or brokers for funds and Securities held in the Account and to instruct such custodians and brokers with respect to the purchase, sale, exchange, delivery or other disposition of such Securities, funds and disbursements relating thereto.

To enable Manager to exercise fully its discretion and authority under the Agreement as described in the preceding paragraphs, Client has made, constituted, and appointed, and by these presents, does make, constitute, and appoint Manager Client's true and lawful agent and attorney, for Client and in Client's name and on Client's behalf generally, with full power and authority, for the Account:

- So to buy, sell and otherwise deal in Securities and contracts relating to same; and
- To do and perform every act necessary and proper to be done in the exercise of the foregoing powers as fully as Client might or could do if personally present, including without limitation signing and delivering bank, trust company and brokerage account agreements and related documents on behalf of Client.

Client hereby ratifies and confirms to third parties any and all transactions by Manager made as Client's agent and attorney for the Account. Client hereby indemnifies and holds Manager harmless from any and all claims of loss that may result from Manager's reliance on this authorization and to pay promptly on demand any and all losses arising therefrom or debit balance due thereon. This authorization and indemnity is in addition to (and in no way limits or restricts) any rights that Manager may have under the Agreement or any other agreement or agreements between Manager and Client. This authorization and indemnity is also a continuing one and shall remain in full force and effect until revoked by Client by notice in writing to Manager, but revocation shall not affect any liability in any way resulting from transactions initiated prior to such revocation. This authorization and indemnity shall inure to the benefit of Manager and of any successor firm or firms irrespective of any change or changes at any time in the personnel thereof, for any cause whatsoever, and of the assigns of Manager or any successor firms.

# MANAGED ACCOUNT AGREEMENT

## mFOLIO PROGRAM SUPPLEMENT

Pursuant to the Agreement, this Program Supplement (this “Supplement”) governs Client’s participation as an mFOLIO Client in Manager’s mFOLIO Separately Managed Accounts Program (the “Program”) described below. All capitalized terms not defined in this Supplement shall have the meaning ascribed to them in the Agreement, including Sections A and B of the mFOLIO Separately Managed Account Program description in Manager’s Managed Account Programs Brochure (MA-100-004).

During the Term of this Supplement (as defined in Section 8 below):

1. **FOLIOfn Account.** As described in Section 3.C of the General Terms, Client has selected FOLIOfn as Client’s broker for the Program and has opened and shall maintain a brokerage account with FOLIOfn (the “FOLIOfn Account”) pursuant to FOLIOfn’s standard customer agreement, as revised from time to time (the “Customer Agreement”), to be used solely for the Program, including without limitation having custody of Client’s Program Assets.
  - A. If notwithstanding the foregoing, Client has not yet opened the FOLIOfn Account, Client hereby instructs Manager, pursuant to the Limited Power of Attorney with Trading Authorization (MA-100-006 Rev 1.0), which is expressly incorporated by reference in the Agreement and made a part thereof, to sign and deliver promptly to FOLIOfn, on Client’s behalf, the Customer Agreement and any related standard FOLIOfn documents necessary or appropriate to opening and maintaining the FOLIOfn Account.
  - B. For the express benefit of Manager hereunder, Client hereby expressly acknowledges and agrees that Client is bound by the provisions and certifications of the Customer Agreement immediately following the heading “Special Provisions regarding Advised (or Managed) Accounts” with respect to the FOLIOfn Account, including without limitation Manager’s investment discretion and trading authority over the FOLIOfn Account and the assets held therein, but except to the extent otherwise specifically and expressly provided in the Agreement, *e.g.*, obligations with respect to proxy voting.
  - C. As provided by Section 5 of the General Terms, Client shall be solely for all expenses, fees and other costs of each and every kind whatsoever accrued or charged to, or payable or paid by, the FOLIOfn Account (collectively, “FOLIOfn Account Expenses”), and Manager shall have no responsibility of any kind whatsoever with respect thereto.
  - D. Client shall not cause or permit the FOLIOfn Account to hold any Securities that are not selected by Manager pursuant to the Investment Guidelines set forth in Section 2 below (such Securities “Non-Conforming Assets”). If Client desires to hold Non-Conforming Assets at FOLIOfn, Client shall open and maintain separate non-Program FOLIOfn brokerage account to hold such Non-Conforming Assets.
2. **Investment Guidelines.** Manager shall manage the Program Assets in the FOLIOfn Account in accordance with the investment objectives and restrictions as provided by this Section 2 (the “Investment Guidelines”) and shall execute all Securities transactions for the FOLIOfn Account through FOLIOfn pursuant to the Customer Agreement and the FAI Agreement, as each is revised from time to time.

- A. Client hereby instructs Manager to allocate the Program Assets initially to the mFOLIO Subscriptions and Other Securities as set forth in Client's Client Instruction MA-300-003.
- B. For purposes of these Investment Guidelines, an "mFOLIO Subscription" means that Manager shall manage the Program Assets allocated to such mFOLIO Subscription in substantially the same way as Manager manages such mFOLIO's virtual assets. Each of Client's allocations to an mFOLIO Subscription is subject to each mFOLIO's minimum subscription amount as revised from time to time in Manager's sole discretion.
- C. Client acknowledges and agrees that if Client instructs Manager to allocate any Program Assets to Other Securities that are shares of Marketocracy Masters 100 Fund "MOFQX"):
  - i. Client represents and warrants to Manager that Client already has received and reviewed a copy of MOFQX's currently effective prospectus.
  - ii. Shares of MOFQX are only purchased from and sold by MOFQX's principal underwriter (which is not Manager or any affiliate of Manager) pursuant to MOFQX's currently effective prospectus and if purchased through the FOLIOfn Account, through FOLIOfn, and Manager will act solely as Client's investment adviser in connection with such instruction and in no other capacity.
  - iii. Manager serves as MOFQX's investment adviser and receives an asset based advisory fee for Manager's services as described in that Fund's prospectus and Statement of Additional Information in effect from time to time. Accordingly, Manager shall not charge the Asset Based Fee set forth in Section 3 below with respect to any Program Assets that Client instructs Manager to allocate to Other Securities that are shares of MOFQX.
- D. Notwithstanding Client's instructions regarding any mFOLIO Subscriptions, Manager shall not purchase for or hold the Securities or types of Securities in the FOLIOfn Account (except indirectly through an investment in shares of MOFQX) that Client identifies as "Excluded Securities" in an initial or subsequent Client Instruction. If at any time Manager becomes aware that any Excluded Security is held in the FOLIOfn Account, Manager promptly shall sell such Excluded Security in the normal course of business. The proceeds of any such sale of an Excluded Security shall be available for investment by Manager in accordance with the Investment Guidelines.
- E. From time to time, Client may modify the allocations of the Program Assets in the FOLIOfn Account to mFOLIO subscriptions and Other Securities and may modify the list of Excluded Securities from time to time by executing and delivering to Manager a Client Instruction (MA-300-003). However, Client acknowledges and agrees that frequent modifications of the allocation of the Program Assets pursuant to Client Instructions may impair Manger's management of, and the performance of, the Program Assets.
- F. Client has and shall have no right, power or authority to require that Manager purchase or hold any specific Securities or types of Securities for the FOLIOfn Account.

3. **Asset Based Fee and Payment.**

- A. For the services rendered by Manager pursuant to this Supplement, Client shall pay Manager a management fee (the "Asset Based Fee") based on the average daily Program Assets in the FOLIOfn Account (including all

cash and cash equivalent assets but excluding any Program Assets that are allocated to Other Securities that are shares of MOFQX) as reflected in FOLIOfn's records (the "Daily Assets") at the annual rate(s) of:

- 1.50% of the Daily Assets for up to \$250,000
- 1.40% of the Daily Assets for \$250,000 to \$500,000
- 1.30% of the Daily Assets for \$500,000 to \$1,000,000
- 1.10% of the Daily Assets for \$1,000,000 to \$2,500,000
- 1.00% of the Daily Assets for over \$2,500,000

- B. The Asset Based Fee is and shall be separate from, and in addition to, FOLIOfn Account Expenses.
  - C. Client expressly acknowledges, agrees and instructs that immediately following the end of each calendar month, FOLIOfn, on behalf of Manager and pursuant to the Customer Agreement and the FAI Agreement, shall collect the Asset Based Fee for such month directly from the FOLIOfn Account.
  - D. Client shall at all times maintain in the FOLIOfn Account sufficient amounts of cash or cash equivalents, which amounts shall be in addition to any cash or cash equivalents attributable to Manager's management of the mFOLIO Subscriptions, to permit FOLIOfn to collect the Asset Based Fee and all FOLIOfn Account Expenses so that Manager's management of the mFOLIO subscriptions is not impaired, including without limitation avoiding liquidation of any mFOLIO subscription Securities for the purposes of paying the Asset Based Fee and FOLIOfn Account Expenses
4. **Account Statements.** Client's monthly FOLIOfn Account statement prepared by FOLIOfn pursuant to the Customer Agreement shall serve as Client's account statement pursuant to this Supplement.
5. **Client Consultations.**
- A. At least annually, Manager (or another person designated by the Manager) shall contact Client to determine whether there have been any changes in the Client's financial situation or the Investment Guidelines (including whether Client wishes to modify the existing Investment Guidelines pursuant to a Client Instruction).
  - B. At least quarterly, Manager (or another person designated by Manager) shall notify Client in writing to contact Manager or such other person if there have been any changes in the Client's financial situation or the Investment Guidelines (including whether Client wishes to modify the existing Investment Guidelines pursuant to a Client Instruction), and shall provide Client with instructions as to how such contact may be made if other than pursuant to a Client Instruction.
  - C. Manager and Manager's personnel who are responsible for managing and are knowledgeable about Client's Program account shall be reasonably available to Client for consultation at least quarterly.

7. **Client Program Representations and Warranties.** Without limiting the General Terms in any way (including without limitation each Client representation, warranty and agreement pursuant thereto, each of which is hereby acknowledged and confirmed as true, complete and accurate in all respects as of the Supplement Effective Date as if made on such Date), Client hereby represents, warrants, confirms and acknowledges and consents to and agrees with Manager that:
- A. By design, under the Program:
    - i. Although an mFOLIO may be the similar to the related mFOLIO Master's *Virtual* Portfolio, an mFOLIO is completely separate from, different than, and NOT the same as, the corresponding mFOLIO Master's *Virtual* Portfolio and may differ significantly from the mFOLIO Master's *Virtual* Portfolio from time-to-time or at all times.
    - ii. Although Manager uses the mFOLIO Manager's Research Activities to manage the related mFOLIO, Manager, **not** the mFOLIO Master, manages the mFOLIO. Manager, in its sole discretion, may use or not use the Research Activities information of the mFOLIO Master, in whole or in part, in managing the mFOLIO.
    - iii. The Program Assets allocated to an mFOLIO Subscription, as well as the performance of such Program Assets, may and likely will differ, perhaps significantly, from those of the related mFOLIO and the related mFOLIO Master's *Virtual* Portfolio from time to time or at all times.
  - B. By design, the Program:
    - i. Limits and narrowly constrains the allocation alternatives under the Investment Guidelines to specified mFOLIO Subscriptions, shares of MOFQX and cash / cash equivalents and does not permit Non-Conforming Assets to be held in the FOLIOfn Account.
    - ii. Is intentionally narrow in its scope, is not intended to be a complete or comprehensive investment program for Client, and should constitute only a limited portion of Client's overall, comprehensive investment program for which Client is solely responsible, including without limitation the responsibility to seek out and retain competent comprehensive financial and planning advice from financial, tax and other advisor(s) other than Manager.
    - iii. Assumes and requires that the Program Assets should constitute only a portion of Client's investments that Client has set aside to invest aggressively, perhaps even speculatively, and that Client can afford to lose.
  - C. Client previously has received a copy of Manager's Form ADV, Part II (MA-100-003) and Manager's Managed Account Programs Brochure (MA-100-004).
  - D. Client previously has completed, signed and delivered to Manager a Client Agreement For A Managed Account Form (MA-100-001) including a Client Information disclosure. Each of Client's responses, representations, warranties and agreements therein as complete, true and accurate in all respects on the Supplement Effective Date as if made on such Supplement Effective Date.
8. **Supplement Effective Date and Term of this Supplement.** Notwithstanding the date that the Agreement is signed or delivered by either party, the "Supplement Effective Date" shall be the date Client first furnishes funds or Securities to be managed by Manager in the FOLIOfn Account under the Program. The "Term" of this Supplement shall



commence on the Supplement Effective Date and shall continue until this Supplement is terminated in accordance with Section 9 below.

9. **Termination: Withdrawals.**

- A. This Supplement may be terminated by either party with or without cause or for any reason or no reason, by notice in writing to the other party, effective when given and received in accordance with Section 13.B.ii of the General Terms or such later date as may be specified in such notice. Termination of the Agreement shall simultaneously terminate this Supplement and all Program Supplements, but termination of another Program Supplement shall not terminate the Agreement in its entirety but shall terminate only that portion of the Agreement to the extent relating to such other Program Supplement, and the remainder of the Agreement, including without limitation this Supplement and all other Program Supplements then in effect, shall continue in full force and effect until terminated as provided by Section 15 of the General Terms or as provided by this Section 9 with respect to this Supplement. Notwithstanding any other provision of the Agreement to the contrary, Sections 10 and 11 of the General Terms shall survive the termination of the Agreement or this Supplement or another Program Supplement.
- B. If Client terminates the Agreement within five (5) days of the Effective Date pursuant to Section 12.B of the General Terms, Manager shall not charge Client any Asset Based Fees.
- C. Subject to the Program Supplement, Client may withdraw part of the funds or Securities in the FOLIOfn Account by giving Manager a Client Instruction for withdrawal of such funds or Securities at least five (5) days prior to the withdrawal date, stating the amount of funds or the Securities to be withdrawn and the date of the withdrawal; provided that no partial withdrawal shall be permitted without Manager's consent if, after effecting the withdrawal, the net market value of the FOLIOfn Account would be less than ten thousand dollars (\$10,000) or such other minimum as Manager shall establish from time to time upon notice to Client in writing.

10. **Entire Agreement.** This Supplement is the entire agreement of the parties regarding the subject of this Supplement and supersedes all prior or contemporaneous written or oral negotiations, correspondence, agreements and understandings, regarding such subject.

## MARKETOCRACY CAPITAL MANAGEMENT LLC

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Los Altos Hills, Ca 94022  
Website: [advisor.marketocracy.com](http://advisor.marketocracy.com)  
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# MANAGED ACCOUNT PROGRAMS

Marketocracy Capital Management LLC (“**Manager**”) from time to time offers one or more investment advisory programs (each a “**Program**”) for certain of Manager’s separately managed account (“**SMA**”) clients (each a “**Program Client**”) who open accounts under such Programs (each a “**Program Account**”).

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**This brochure provides clients with information about Manager and the Programs that should be considered before becoming a client of any Program. This information has not been approved or verified by any governmental authority.**

## MARKETOCRACY RESEARCH

Marketocracy Data Services LLC (“MDS”), a financial publishing affiliate of Manager, operates the Marketocracy.com<sup>®</sup> Internet website (the “MDS Site”) whose members (“Members”) manage *hypothetical, virtual* mutual fund portfolios (“*Virtual Portfolios*”), seeking to:

- Identify “Master” Members who can achieve superior and verifiable (simulated) investment performances,
- Identify the most promising stocks in these Master members’ “top ranked” virtual portfolios (“*Virtual Portfolios*”), and
- Research those “top ranked” stocks in depth by collecting and evaluating various data and statistics about these *Virtual Portfolios* as well as additional research and analyses provided by Master and other Members who have demonstrated success in trading the stocks in their *Virtual Portfolios*.

MDS’ proprietary ranking methodology assesses long and short-term model portfolio performances, as well as the specific contributions that market, sector, style and trading factors make to those performances. MDS also uses this ranking methodology to identify Members whose investing style is successful in the prevailing securities market environments. Because no single investment style works at all times and in all circumstances, however, MDS repeats its ranking process periodically to quickly replace lagging “top-ranked” performers with leading performers. MDS provides information for all of these “top-ranked” model portfolios to Manager.

## PORTFOLIO MANAGEMENT

Manager and Manager’s portfolio manager use this research information in the management of the portfolios of Manager’s clients, including both pooled investment vehicles, such as mutual and hedge funds, and SMAs for individuals, pension and profit sharing plans, trusts, estates, charitable organizations, corporations and other business organizations. In managing its clients’ portfolios, Manager may use smaller subsets of these “top-ranked” model portfolios that MDS has ranked the highest for performance and may not choose all of the investments in all of the “top-ranked” model portfolios. In managing certain clients’ accounts, Manager may use information from only one “top ranked” model portfolio. For every client, however, Manager retains sole discretion to use or not use any information regarding any “top-ranked” portfolio.

## PORTFOLIO MANAGER

**Kendrick W. Kam** is Manager’s sole portfolio manager for all client accounts, including all Program Accounts. Since March 2005, Mr. Kam has served as President and sole manger of Manager, an investment adviser registered with the Securities and Exchange Commission (the “SEC”) under the Investment Advisers Act of 1940, as amended (the “Act”). Prior to this time, Mr. Kam served as Vice President-Investments since July 2001. From July 2000 to March 2002, Mr. Kam was President and sole manager of Manager. From August 1999 to the present, Mr. Kam has also been President and a director of Manager’s parent company, Marketocracy, Inc., which also is the parent company of MDS.

From July 1999 to the present, Mr. Kam also has been President and Trustee of the Marketocracy Funds, an investment company registered with the SEC under the Investment Company Act of 1940, as amended (the "Trust"). From July 1999 to the present, Mr. Kam has been portfolio manager for certain series of the Trust advised and administered by Manager (each a mutual fund and a "Fund") and also President and sole manager and member of Ingenuity Capital Management LLC, a registered investment adviser that served as the investment adviser and administrator to a former series of the Trust for which Mr. Kam served as portfolio manager.

From June 2003, Mr. Kam has been portfolio manager of Marketocracy Plus Fund, a private investment company managed by Manager (the "Hedge Fund") for investors who are "qualified clients" within the meaning of within the meaning of Rule 205-3(d)(1) under the Investment Advisers Act of 1940, as amended, which include investors who each have at least \$750,000 invested in the Hedge Fund and otherwise under management with MCM or have a net worth of \$1,500,000 upon becoming an investor in the Hedge Fund. From 1993 to 1999, Mr. Kam served as President of Interactive Research Advisers, Inc., the investment adviser for Firsthand Funds, a registered investment company, for whom Mr. Kam also served as a portfolio manager.

From 1988 to 1992, Mr. Kam served as Vice President, Finance and Marketing, for Novoste Corp., a medical device company. Mr. Kam was born on June 8, 1960, received his B.S.C. Finance from the University of Santa Clara in 1982 and received his M.B.A., Marketing from the Stanford Graduate School of Business in 1986.

## **IMPORTANT CONSIDERATIONS**

### **Other Advisory Clients**

Each potential Program Client should understand that Manager engages in an investment advisory business apart from managing the potential Program Client's portfolio, including without limitation managing Funds, the Hedge Fund and other Program Accounts, and that this other business will create conflicts of interest with the potential client's Program Account over Manager's time devoted to managing the Program Account and the allocation of investment opportunities among its portfolios (including the Program Account) managed by Manager. Manager will attempt to resolve all such conflicts in a manner that is generally fair to all of its clients.

Potential Program Clients should understand further that Manager is entitled to give advice and take action with respect to any of its other clients that may differ from advice given or the timing or nature of action taken with respect to a Program Client so long as it is Manager's policy, to the extent practicable, to allocate investment opportunities to each of its clients over a period of time on a fair and equitable basis relative to other clients.

### **Services Advisers**

Manager has entered into referral and services arrangements with certain investment advisers (each a “Services Adviser”) with regard to certain SMA clients of such Services Advisers. Each such Services Adviser is an independent contractor of Manager and performs no financial planning or investment advisory services for Manager.

If, however, as a result of Service Adviser’s referral, a Services Adviser’s SMA client becomes a Program Client of Manager and opens a Program Account, the new Program Client has the option of designating the Services Adviser to provide certain client services for Manager in respect of the new Program Client’s Program Account (“SA Services”), including acting as the Program Client’s primary contact with Manager. Please see the description of each Program for a description of the services that a Services Adviser provides under that Program.

So long as the Services Adviser’s referred SMA client (i) remains a Program Client with a Program Account, (ii) remains an SMA client of Services Adviser, (iii) designates the Services Adviser to provide SA Services in respect of the Program Client’s Program Account, and (iv) the Services Adviser provides such SA Services, Manager will compensate the Services Adviser for such SA Services by paying the Services Adviser compensation based upon the average annual assets of the potential client’s Program Account at the rates as specified for that Program in this brochure.

## **mFOLIO SEPARATELY MANAGED ACCOUNTS PROGRAM**

(subject to change at Manager’s sole discretion at any time)

### **A. FOLIOfn<sup>®</sup>, Folios and FOLIO Advisor<sup>sm</sup> Platform**

Certain of Manager’s Program Clients have established brokerage accounts at FOLIOfn<sup>®</sup> Investments, Inc., a registered broker-dealer (“FOLIOfn”). FOLIOfn brokerage customers can use their FOLIOfn brokerage accounts just like a traditional brokerage account to place market, limit, stop, or stop-limit orders for thousands of different securities, including stocks, exchange traded funds and no-load mutual funds from many different fund groups. FOLIOfn also offers various membership plans that, depending upon the particular plan, permit participating customers to (i) place up to a specified maximum number of orders (other than market or stop/limit orders) for certain more liquid securities (“Tier 1”) at no charge and for reduced charges above the specified maximum and (ii) place orders at a reduced charge for certain less liquid securities (Tier 2”) that FOLIOfn executes, along with other FOLIOfn customers’ similar orders, as block trades twice [?] per day (such Tier 1 and Tier 2 securities “Window Securities” and such orders and trades “Window Trades”).

However, FOLIOfn also offers a special FOLIOfn *Investing*<sup>®</sup> feature that its brokerage customers may use to buy, modify, and sell whole portfolios – what FOLIOfn calls “Folios” – in a single transaction. FOLIOfn customers may choose from a large variety of so-called “Ready-to-Go Folios<sup>®</sup>,” which are pre-packaged *model* baskets of stocks based on indices, sectors, geography, and the like, or may create their own model Folios from their own research, a list, newsletter, or even another web site. Through the FOLIOfn Investing feature, FOLIOfn brokerage customers can buy and sell securities, which they separately own and hold in their FOLIOfn accounts, so as to match or track

their chosen model Folios in a single transaction. Depending on the membership plan the FOLIOfn customer chooses, the FOLIOfn customer may hold and trade in single transactions securities in their FOLIOfn brokerage account corresponding up to three (3) Folios.

FOLIOfn also offers an integrated brokerage, trading and portfolio management platform, FOLIO *Advisor*<sup>sm</sup>, to registered investment advisers whose SMA clients establish brokerage accounts and custody their securities with FOLIOfn. For those SMA clients, the participating investment adviser may use the FOLIOfn *Investing*<sup>®</sup> feature in managing their SMA clients' portfolios. Thus, these investment advisers may select their SMA clients' portfolios security-by-security or "subscribe" their clients to, *i.e.*, invest all or portion of their SMA clients' account assets so as to match or track, Ready-to-Go Portfolios or to custom *model* portfolios created by the investment adviser. Using the FOLIO *Advisor*<sup>sm</sup> platform, participating investment advisers also may customize and rebalance any or all such SMA portfolios, including any Folios, from time to time.

#### **B. mFOLIO Program, mFOLIOs and mFOLIO Subscriptions**

Marketocracy has entered into a FOLIO *Advisor*<sup>®</sup> Institutional Agreement with FOLIOfn (the "FAI Agreement"). Manager uses the FOLIO *Advisor*<sup>sm</sup> platform to manage the portfolios of its Program Clients who have established brokerage accounts at FOLIOfn (each a "FOLIOfn Account") solely for the mFOLIO Separately Managed Accounts Program (the "mFOLIO Program" and each such Program Client, an "mFOLIO Client").

For the use of these mFOLIO Clients, Manager has created certain *model* Folios (each an "mFOLIO"). mFOLIOs are similar in concept to FOLIOfn's Ready-to-Go Folios, but each mFOLIO is based primarily upon MDS' research information regarding the *Virtual* Portfolio, trading and participation in MDS and MDS Site-related investment research activities, including without limitation surveys and online discussions (collectively, "Research Activities") of a single selected Member (each an "mFOLIO Master"). mFOLIOs, like the mFOLIO Masters' *Virtual* Portfolios, may vary over time as the mFOLIO Masters, and the Manager, respectively, make virtual trades in their respective model portfolios.

mFOLIO Clients wishing to benefit from Manager's use of an mFOLIO Masters' Research Activities may instruct Manager to subscribe a portion of their FOLIOfn Account assets to the mFOLIO based on that mFOLIO Master's Research Activities (such subscribed assets, "Subscribed Assets"). Subscribed Assets for each mFOLIO must be at least \$10,000. mFOLIO Clients also may instruct Manager to invest a portion of the mFOLIO Client's FOLIOfn Account assets in shares of a Fund, Marketocracy Masters 100<sub>SM</sub> Fund ("MOFQX"). Manager reviews the investments of each mFOLIO Client's FOLIOfn account at least quarterly for consistency with the mFOLIO Client's investment allocation instructions.

Unless the mFOLIO Client expressly instructs Manager otherwise, Manager effects all securities transactions under the mFOLIO Program as Window Trades, *i.e.*, no market or stop/limit orders. Under the FIA, Manager also may execute mFOLIO Program transactions involving “Tier 3” securities, which are less liquid than either Tier 1 or Tier 2 securities, as Window Trades.

Potential mFOLIO Clients should keep in mind, however, that the mFOLIO Masters’ Virtual Portfolio, mFOLIO, an mFOLIO and the mFOLIO Client’s FOLIOfn Account portfolio *are completely separate from and NOT the same as one another*:

- The mFOLIO Masters’ Virtual Portfolio is a **model** portfolio. Potential mFOLIO Clients may review mFOLIO Masters’ Virtual Portfolios only on certain MDS pages at the MDS Site, [m100.marketocracy.com](http://m100.marketocracy.com).
- An mFOLIO is a **model** portfolio that Manager manages based primarily on the mFOLIO Master’s Research. Although Manager uses the mFOLIO Manager’s Research Activities to manage the related mFOLIO, Manager, **not** the mFOLIO Master, manages the mFOLIO. Manager, in its sole discretion, may use or not use the Research Activities information of the mFOLIO Master, in whole or in part, in managing the mFOLIO. Potential mFOLIO Clients may review an mFOLIO only on Manager’s separate Internet website, [advisor.marketocracy.com](http://advisor.marketocracy.com).
- An mFOLIO Client’s FOLIOfn Account is an **actual** portfolio of securities custodied at FOLIOfn in the mFOLIO Client’s FOLIOfn Account containing Subscribed Assets, cash or shares of MOFQX. Only the mFOLIO Client and Manager may review the mFOLIO Client’s FOLIOfn Account and only on FOLIOfn’s website, [www.FOLIOfn.com](http://www.FOLIOfn.com).

Thus, while the holdings of an mFOLIO Client’s FOLIOfn Account actual securities portfolio, an mFOLIO and the related mFOLIO Master’s *Virtual* Portfolio generally will be similar to one another, they may differ significantly from time-to-time or even at all times.

### C. Suitability

Potential mFOLIO Clients should understand that the mFOLIO Program:

- Limits and narrowly constrains the investment alternatives under the mFOLIO Program to specified mFOLIO subscriptions, shares of MOFQX and cash / cash equivalents and does not permit any other securities to be held in the FOLIOfn Account.



- Is intentionally narrow in its scope, is not intended to be a complete or comprehensive investment program for the mFOLIO Client, and should constitute only a limited portion of mFOLIO Client's overall, comprehensive investment program for which the mFOLIO Client is solely responsible, including the responsibility to seek out and retain competent comprehensive financial and planning advice from financial, tax and other advisor(s) other than Manager.
- Assumes and requires that the MFOLIO Program assets constitute only a portion of the mFOLIO Client's investments that the mFOLIO Client has set aside to invest aggressively, perhaps even speculatively, and that the mFOLIO Client can afford to lose.

#### **D. Fees and Charges**

mFOLIO clients pay the fees and charges described below:

**Manager's mFOLIO Program Fee.** For its management of an mFOLIO Client's Program Account, each mFOLIO Client pays Manager a non-negotiable fee ("mFOLIO Program Fee") based on the average daily assets in the mFOLIO Client's FOLIOfn Account, including all cash and cash equivalent assets but excluding any shares of MOFQX (the "Daily Assets"), at the annual rate(s) of:

- 1.50% of the Daily Assets up to \$500,000
- 1.30% of the Daily Assets above at \$500,000 up to \$1,000,000
- 1.10% of the Daily Assets above \$1,000,000 up to \$3,000,000
- 1.00% of the Daily Assets above \$3,000,000

The mFOLIO Program Fee is separate from, and in addition to, all fees and charges that the mFOLIO Client must pay FOLIOfn for the FOLIOfn Account. FOLIOfn, on behalf of Manager and pursuant to the mFOLIO Client's FOLIOfn customer agreement and the FAI Agreement, collects the mFOLIO Program Fee for each month in arrears directly from the FOLIOfn Account.

**FOLIOfn Fees and Special Charges.** Except for the special fees and charges described below that are not related to the mFOLIO Program, each mFOLIO client pays FOLIOfn a fee for its FOLIOfn Account at an annual rate of 0.40% of the Daily Assets, which provides for having as many mFOLIOs as Manager offers and unlimited Window Trades (regardless of Tier), subject to a \$200 annual minimum fee. FOLIOfn, pursuant to the mFOLIO Client's

FOLIOfn customer agreement and the FAI Agreement, collects its fees and charges, for each month in arrears directly from the FOLIOfn Account.

For other than FOLIOfn's mFOLIO Program services, FOLIOfn currently charges mFOLIO Clients \$3.95 for each market order in excess of 10 per month and \$3.95 for each stop/limit order trade made in the FOLIOfn Account. FOLIOfn also charges mFOLIO Clients the same special fees for services such as wire transfers, paper copies of account statements / confirmations, retirement account annual fees, *etc.*, as it does all other FOLIOfn customers according to FOLIOfn's special services fee schedule, which may be viewed at:

[http://www.foliofn.com/content/retailcontent/investorlanding/service\\_fees.shtml](http://www.foliofn.com/content/retailcontent/investorlanding/service_fees.shtml).

Just as for all FOLIOfn customers, such non-mFOLIO Program order and special services charges are subject to change in FOLIOfn's sole discretion.

FOLIOfn's mFOLIO Program-related fees differ from what are available to FOLIOfn customer generally. To obtain the same fee rates for market and stop/limit orders, a FOLIOfn customer would have to pay an annual membership fee of \$399. However, such membership would allow the FOLIOfn customer up to three Folios and up to 600 Window Trades per month and a reduced charge of \$1.00 per each Tier 1 Window Trade in excess of 600 and \$2.95 per each Tier 2 Window Trade. FOLIOfn does not offer reduced rates for Tier 3 securities Window Trades to customers other than mFOLIO Clients.

***Fee and Charges Not Paid By Client.*** mFOLIO Clients do not pay certain fees and charges relating to the mFOLIO Program. Rather:

MDS. Out of the mFOLIO Program Fee, Manager pays MDS for MDS' investment research services for an mFOLIO an annual fee (pro rated monthly) based on a percentage of the average net Subscribed Assets subscribed to that mFOLIO by Manager's mFOLIO Clients (the "Subscription Fee"). The annual percentage currently is 0.30% but may vary over time or for different mFOLIOs.

mFOLIO Masters. Under the mFOLIO Program, MDS pays all or a portion of the entire Subscription Fee that MDS receives for each mFOLIO to the mFOLIO Master upon whose Research Activities that mFOLIO is based, provided that the mFOLIO Master is then participating in the mFOLIO Program. Certain mFOLIO Masters who also are Services Advisers may receive additional compensation for SA Services.

Services Advisers. Under the mFOLIO Program, a designated Services Adviser is to provide the following SA Services to an mFOLIO Client:

- Responding to the mFOLIO Client's inquiries regarding the mFOLIO Program and the FOLIOfn Account, including but not limited to the FOLIOfn Account Statement.
- Assisting the mFOLIO Client in defining the mFOLIO Client's overall investment objectives and strategies by collecting relevant information and consulting with the mFOLIO Client about mFOLIO Client's assets, financial situation, individual needs, investment goals, risk tolerance and investment experience.
- Assisting the mFOLIO Client in determining if the mFOLIO Client's continuing participation in the mFOLIO Program, including without limitation the investments thereunder, would be suitable for the mFOLIO Client.
- Assisting the mFOLIO Client in completing, signing and delivering to Manager each of the mFOLIO Program documents, including the mFOLIO Client's Managed Account Client Suitability Questionnaire that contains certain financial information about the mFOLIO Client, and the FOLIOfn Customer Agreement and assist the mFOLIO Client in completing, signing and delivering each mFOLIO Client's investment allocation instruction to Manager.
- Arranging to have Manager take control of existing non-cash assets or assist the mFOLIO Client (at the mFOLIO Client's direction) in the conversion of non-cash assets into cash for transfer to the FOLIOfn Account or, where neither of these approaches is feasible, arrange for the transfer of non-conforming, non-cash assets out of the FOLIOfn Account into a separate investment advisory or brokerage account designated by the mFOLIO Client.
- Advising the mFOLIO Client on the effect that any change in the mFOLIO Client's assets, financial situation, individual needs, investment goals, risk tolerance and investment experience has on the mFOLIO Client's suitability of continuing participation in the mFOLIO Program and the investments thereunder.
- At least annually, contacting the mFOLIO Client to determine whether there have been any changes in the mFOLIO Client's assets, financial situation, individual needs, investment goals, risk tolerance

and investment experience (including whether the mFOLIO Client wishes to modify the mFOLIO Client's existing investment allocation instruction) and confirming each such contact and the substance thereof in writing to Manager.

- At least quarterly, providing the mFOLIO Client with instructions as to how to contact Service Adviser if there have been any changes in the mFOLIO Client's assets, financial situation, individual needs, investment goals, risk tolerance and investment experience (including whether the mFOLIO Client wishes to modify the mFOLIO Client's existing investment allocation instruction).

Out of, and subject to the collection of, the mFOLIO Program Fee, Manager pays a Services Adviser for SA Services in respect of a designating mFOLIO Client's FOLIOfn Account a fee at the annual rates of:

0.25% of the Daily Assets up to \$500,000

0.20% of the Daily Assets above at \$500,000 up to \$1,000,000

0.15% of the Daily Assets above \$1,000,000 up to \$3,000,000

0.10% of the Daily Assets above \$3,000,000

Thus, the Services Adviser recommending the mFOLIO Program to the mFOLIO Client receives compensation as a result of the mFOLIO Client's participation in the mFOLIO Program, and the amount of this compensation may be more than what the Services Adviser would receive if the potential mFOLIO Client participated in other programs of the Manager or paid separately for investment advice, brokerage, and other services.

Such payments have the potential for creating a conflict of interest between the potential and actual mFOLIO Client and the Services Adviser in that the Services Adviser has a financial incentive to recommend the Program over other programs or services offered by other investment advisers who do not make such payments.

***Fees for Equivalent Services.*** Potential mFOLIO Program Clients should understand that the mFOLIO Program may cost more or less than purchasing the equivalent services separately from another investment adviser and/or another broker-dealer, depending upon the number of equivalent portfolio(s), the number and type of securities and the level of trading activity in the potential mFOLIO Client's other advisory/brokerage account(s).

#### **E. FOLIOfn Account Statements**

The mFOLIO Client's monthly FOLIOfn Account statement prepared solely by FOLIOfn pursuant to the Customer Agreement serves as the mFOLIO Client's sole account statement under the mFOLIO Program. mFOLIO Clients do

not receive separate account statements or reports from Manager. FOLIOfn is responsible for all information in such account statement, including any performance information, and Manager does not review the accuracy or bases thereof.

**Marketocracy Capital Management LLC**  
**Form ADV, Part II**

**FORM ADV**

**Uniform Application for Investment Adviser Registration**

**Part II - Page 1**

OMB APPROVAL	
OMB Number:	3235-0049
Expires:	July 31, 2008
Estimated average burden hours per response.....	9.402

Name of Investment Adviser: Marketocracy Capital Management LLC						
Address:	(Number and Street)	(City)	(State)	(Zip Code)	Area Code:	Telephone Number:
1200 Park Place, Suite 100 San Mateo, CA 94403					877-462-4180	

**This part of Form ADV gives information about the investment adviser and its business for the use of clients. The information has not been approved or verified by any governmental authority.**

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(Schedules A, B, C, D, and E are included with Part I of this Form, for the use of regulatory bodies, and are not distributed to clients.)

**Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.**

Applicant: Marketocracy Capital Management LLC	SEC File Number: 801- 57974	Date: December 22, 2010
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**1. A. Advisory Services and Fees.** (check the applicable boxes)

For each type of service provided, state the approximate % of total advisory billings from that service. (See instruction below.)

Applicant:

- |   |       |   |
|---|-------|---|
| <input checked="" type="checkbox"/> (1) Provides investment supervisory services.....   | 100   | % |
| <input type="checkbox"/> (2) Manages investment advisory accounts not involving investment supervisory services .....   | _____ | % |
| <input type="checkbox"/> (3) Furnishes investment advice through consultations not included in either service described above.....  | _____ | % |
| <input type="checkbox"/> (4) Issues periodicals about securities by subscription .....  | _____ | % |
| <input type="checkbox"/> (5) Issues special reports about securities not included in any service described above .....  | _____ | % |
| <input type="checkbox"/> (6) Issues, not as part of any service described above, any charts, graphs, formulas, or other devices which clients may use to evaluate securities..... | _____ | % |
| <input type="checkbox"/> (7) On more than an occasional basis, furnishes advice to clients on matters not involving securities .....  | _____ | % |
| <input type="checkbox"/> (8) Provide a timing service.....  | _____ | % |
| <input type="checkbox"/> (9) Furnishes advice about securities in any manner not described above.....   | _____ | % |

(Percentages should be based on applicant's last fiscal year. If applicant has not completed its first fiscal year, provide estimates of advisory billings for that year and state that the percentages are estimates.)

B. Does applicant call any of the services it checked above financial planning or some similar term?

Yes  No

C. Applicant offers investment advisory services for: (check all that apply)

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> (1) A percentage of assets under management | <input type="checkbox"/> (4) Subscription fees |
| <input type="checkbox"/> (2) Hourly charges                                     | <input type="checkbox"/> (5) Commissions       |
| <input type="checkbox"/> (3) Fixed fees (not including subscription fees)       | <input checked="" type="checkbox"/> (6) Other  |

D. For each checked box in A above, describe on Schedule F:

- the services provided, including the name of any publication or report issued by the adviser on a subscription basis or for a fee
- applicant's basic fee schedule, how fees are charged and whether its fees are negotiable
- when compensation is payable, and if compensation is payable before service is provided, how a client may get a refund or may terminate an investment advisory contract before its expiration date

**2. Types of Clients --** Applicant generally provides investment advice to: (check those that apply)

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> A. Individuals                      | <input checked="" type="checkbox"/> E. Trusts, estates, or charitable organizations                    |
| <input type="checkbox"/> B. Banks or thrift institutions                | <input checked="" type="checkbox"/> F. Corporations or business entities other than those listed above |
| <input checked="" type="checkbox"/> C. Investment companies             | <input checked="" type="checkbox"/> G. Other (describe on Schedule F)                                  |
| <input checked="" type="checkbox"/> D. Pension and profit sharing plans |  |

**Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).**



**3. Types of Investments.** Applicant offers advice on the following: (check those that apply)

- |   |   |
|---|---|
| <p>A. Equity Securities</p> <p><input checked="" type="checkbox"/> (1) exchange-listed securities</p> <p><input checked="" type="checkbox"/> (2) securities traded over-the-counter</p> <p><input checked="" type="checkbox"/> (3) foreign issuers</p> <p><input checked="" type="checkbox"/> B. Warrants</p> <p><input checked="" type="checkbox"/> C. Corporate debt securities<br/>(other than commercial paper)</p> <p><input checked="" type="checkbox"/> D. Commercial paper</p> <p><input checked="" type="checkbox"/> E. Certificates of deposit</p> <p><input checked="" type="checkbox"/> F. Municipal securities</p> <p>G. Investment company securities:</p> <p><input type="checkbox"/> (1) variable life insurance</p> <p><input type="checkbox"/> (2) variable annuities</p> <p><input checked="" type="checkbox"/> (3) mutual fund shares</p> | <p><input checked="" type="checkbox"/> H. United States government securities</p> <p>I. Options contracts on:</p> <p><input checked="" type="checkbox"/> (1) securities</p> <p><input checked="" type="checkbox"/> (2) commodities</p> <p>J. Futures contracts on:</p> <p><input checked="" type="checkbox"/> (1) tangibles</p> <p><input checked="" type="checkbox"/> (2) intangibles</p> <p>K. Interests in partnerships investing in:</p> <p><input type="checkbox"/> (1) real estate</p> <p><input type="checkbox"/> (2) oil and gas interests</p> <p><input checked="" type="checkbox"/> (3) other (explain on Schedule F)</p> <p><input checked="" type="checkbox"/> L. Other (explain on Schedule F)</p> |
|---|---|

**4. Methods of Analysis, Sources of Information, and Investment Strategies.**

A. Applicant's security analysis methods include: (check those that apply)

- |   |   |
|---|---|
| (1) <input checked="" type="checkbox"/> Charting    | (4) <input checked="" type="checkbox"/> Cyclical                      |
| (2) <input checked="" type="checkbox"/> Fundamental | (5) <input checked="" type="checkbox"/> Other (explain on Schedule F) |
| (3) <input checked="" type="checkbox"/> Technical   |   |

B. The main sources of information applicant uses include: (check those that apply)

- |   |   |
|---|---|
| (1) <input checked="" type="checkbox"/> Financial newspapers and magazines    | (5) <input type="checkbox"/> Timing services  |
| (2) <input checked="" type="checkbox"/> Inspections of corporate activities   | (6) <input checked="" type="checkbox"/> Annual reports, prospectuses, filings with the Securities and Exchange Commission |
| (3) <input checked="" type="checkbox"/> Research materials prepared by others | (7) <input checked="" type="checkbox"/> Company press releases  |
| (4) <input checked="" type="checkbox"/> Corporate rating services             | (8) <input checked="" type="checkbox"/> Other (explain on Schedule F)   |

C. The investment strategies used to implement any investment advice to clients include: (check those that apply)

- |  |   |
|--|---|
| (1) <input checked="" type="checkbox"/> Long term purchases<br>(securities held at least a year) | (5) <input checked="" type="checkbox"/> Margin transactions   |
| (2) <input checked="" type="checkbox"/> Short term purchases<br>(securities sold within a year)  | (6) <input checked="" type="checkbox"/> Option writing, including covered options,<br>uncovered options or spreading strategies |
| (3) <input checked="" type="checkbox"/> Trading (securities sold within 30 days)                 | (7) <input checked="" type="checkbox"/> Other (explain on Schedule F)   |
| (4) <input checked="" type="checkbox"/> Short sales  |   |

**5. Education and Business Standards.**

Are there any general standards of education or business experience that applicant requires of those involved in determining or giving investment advice to clients?

Yes No

(If yes, describe these standards on Schedule F.)

**6. Education and Business Background.**

For:

- each member of the investment committee or group that determines general investment advice to be given to clients, or
- if the applicant has no investment committee or group, each individual who determines general investment advice given to clients (if more than five, respond only for their supervisors)
- each principal executive officer of applicant or each person with similar status or performing similar functions.

On Schedule F, give the:

- name
- formal education after high school
- year of birth
- business background for the preceding five years

**7. Other Business Activities.** (check those that apply)

- A. Applicant is actively engaged in a business other than giving investment advice.
- B. Applicant sells products or services other than investment advice to clients.
- C. The principal business of applicant or its principal executive officers involves something other than providing investment advice.

(For each checked box describe the other activities, including the time spent on them, on Schedule F.)

**8. Other Financial Industry Activities or Affiliations.** (check those that apply)

- A. Applicant is registered (or has an application pending) as a securities broker-dealer.
- B. Applicant is registered (or has an application pending) as a futures commission merchant, commodity pool operator or commodity trading adviser.
- C. Applicant has arrangements that are material to its advisory business or its clients with a related person who is a: See Schedule F
  - (1) broker-dealer
  - (2) investment company
  - (3) other investment adviser
  - (4) financial planning firm
  - (5) commodity pool operator, commodity trading adviser or futures commission merchant
  - (6) banking or thrift institution
  - (7) accounting firm
  - (8) law firm
  - (9) insurance company or agency
  - (10) pension consultant
  - (11) real estate broker or dealer
  - (12) entity that creates or packages limited partnerships

(For each checked box in C, on Schedule F identify the related person and describe the relationship and the arrangements.)

D. Is applicant or a related person a general partner in any partnership in which clients are solicited to invest?

Yes No

(If yes, describe on Schedule F the partnerships and what they invest in.)

Applicant:  
Marketocracy Capital Management LLC

SEC File Number:  
801- 57974

Date:  
December 22, 2010

**9. Participation or Interest in Client Transactions.**

Applicant or a related person: (check those that apply)

- A. As principal, buys securities for itself from or sells securities it owns to any client.
- B. As broker or agent effects securities transactions for compensation for any client.
- C. As broker or agent for any person other than a client effects transactions in which client securities are sold to or bought from a brokerage customer.
- D. Recommends to clients that they buy or sell securities or investment products in which the applicant or a related person has some financial interest.
- E. Buys or sells for itself securities that it also recommends to clients.

(For each box checked, describe on Schedule F when the applicant or a related person engages in these transactions and what restrictions, internal procedures, or disclosures are used for conflicts of interest in those transactions.)

**10. Conditions for Managing Accounts.** Does the applicant provide investment supervisory services, manage investment advisory accounts or hold itself out as providing financial planning or some similarly termed services *and* impose a minimum dollar value of assets or other conditions for starting or maintaining an account? .....

Yes No

(If yes, describe on Schedule F.)

**11. Review of Accounts.** If applicant provides investment supervisory services, manages investment advisory accounts, or holds itself out as providing financial planning or some similarly termed services:

- A. Describe below the reviews and reviewers of the accounts. **For reviews**, include their frequency, different levels, and triggering factors. **For reviewers**, include the number of reviewers, their titles and functions, instructions they receive from applicant on performing reviews, and number of accounts assigned each.

Applicant, Marketocracy Capital Management LLC ("MCM"), reviews each portfolio of its registered investment company clients (each a "Fund") and of the pooled investment vehicles ("Pools") on a daily basis. MCM reviews the portfolios of its separately managed account ("SMA") clients not less frequently than on a quarterly basis. Kendrick W. Kam, MCM's President and portfolio manager, leads the review of each client's portfolio or account.

- B. Describe below the nature and frequency of regular reports to clients on their accounts.

Funds receive daily reports on the status of its account, including account balances and trading activity as well as quarterly reports appropriate for registered investment companies. Other clients, e.g., a Pool or SMA client, receive reports on the status of its account, including account balances and trading activity, but on a less frequent basis, e.g., monthly or quarterly, as set forth in the investment advisory agreement for each client.

Applicant:  
Marketocracy Capital Management LLC

SEC File Number:  
801- 57974

Date:  
December 22, 2010

**12. Investment or Brokerage Discretion.**

A. Does applicant or any related person have authority to determine, without obtaining specific client consent, the:

(1) securities to be bought or sold?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
(2) amount of the securities to be bought or sold?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
(3) broker or dealer to be used?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
(4) commission rates paid?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

---

B. Does applicant or a related person suggest brokers to clients? Yes  No

For each yes answer to A describe on Schedule F any limitations on the authority. For each yes to A(3), A(4) or B, describe on Schedule F the factors considered in selecting brokers and determining the reasonableness of their commissions. If the value of products, research and services given to the applicant or a related person is a factor, describe:

- the products, research and services
- whether clients may pay commissions higher than those obtainable from other brokers in return for those products and services
- whether research is used to service all of applicant's accounts or just those accounts paying for it; and
- any procedures the applicant used during the last fiscal year to direct client transactions to a particular broker in return for products and research services received.

---

**13. Additional Compensation.**

Does the applicant or a related person have any arrangements, oral or in writing, where it:

A. is paid cash by or receives some economic benefit (including commissions, equipment or non-research services) from a non-client in connection with giving advice to clients? .....	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
B. directly or indirectly compensates any person for client referrals? .....	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

(For each yes, describe the arrangements on Schedule F.)

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**14. Balance Sheet.** Applicant must provide a balance sheet for the most recent fiscal year on Schedule G if applicant:

- has custody of client funds or securities (unless applicant is registered or is registering only with the Securities and Exchange Commission); or
- requires prepayment of more than \$500 in fees per client and 6 or more months in advance

Has applicant provided a Schedule G balance sheet? ..... Yes  No

**Schedule F of  
Form ADV  
Continuation Sheet for Form ADV Part II**

Applicant: Marketocracy Capital Management LLC	SEC File Number: 801- 57974	Date: December 22, 2010
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Marketocracy Capital Management LLC		IRS Empl. Ident. No.: Not applicable
Item of Form (identify)	Answer	
Items 1.A; 1.C; 1.D; 2; 8.C & 8.D. Advisory Services and Fees; Types of Clients & Other Financial Industry Activities or Affiliations	<p>Applicant, Marketocracy Capital Management LLC ("MCM"), currently provides discretionary portfolio advisory services to (i) investment companies registered under the Investment Company Act of 1940, as amended (the "Company Act"), including Marketocracy Funds (the "Trust"), whose series are mutual funds (each series advised by MCM, a "Fund" and collectively, together with any subsequently added series of the Trust that are advised by MCM, the "Funds"); (ii) private pooled investment vehicles (each a "Pool"); and (iii) separately managed accounts ("SMAs"). Such services are provided in accordance with each Fund's, Pool's or SMA's objectives as outlined in (i) each such Fund's or Pool's prospectus and statement of additional information or offering memorandum, respectively, and in accordance with MCM's investment management agreement with each such client, or (ii) each SMA's managed account agreement.</p> <p>For its services provided the Trust and each Fund, MCM is paid a management fee equal to 1.50% per annum of the average daily net assets of each Fund, payable and computed at the end of each month. In addition, MCM's investment management agreement with each Fund requires MCM to waive its management fee, and if necessary, reimburse expenses of the Fund to the extent necessary to limit each Fund's total annual operating expenses to 1.95% of each Fund's average daily net assets up to \$200 million, 1.90% of such assets from \$200 million to \$500 million, 1.85% of such assets from \$500 million to \$1 billion, and 1.80% of such assets in excess of \$1 billion. Upon termination of a Fund investment advisory agreement, fees are pro rated based on the number of days in the month in which the agreement terminated.</p> <p>Each Pool pays MCM a base management fee equal to 0.1875% of each Pool investor's capital account payable on the last day of each calendar quarter. For Pool capital accounts of \$10,000,000 or more, the Pool pays MCM 0.125% of the Pool investor's capital account payable on the last day of the calendar quarter. At the end of each calendar quarter, the Pool pays MCM an incentive management fee selected by each Pool investor at the time of investing in the Pool: (i) 20% of any positive difference ("Difference") in performance of the Fund versus the S&amp;P 500 Index, if any, with the quarterly Difference determined after deducting the base management fee or (ii) 20% of the excess of the Fund's performance over a 1% annual return.</p> <p>An SMA client generally pays MCM a management fee at the annual rate of 1.50% of the average daily net assets of the SMA (excluding for such purposes any SMA assets invested in a Fund -- the remaining balance, "Daily Assets") up to \$250,000, 1.40% of Daily Assets if above \$250,000 up to \$500,000, 1.30% of Daily Assets if above \$500,000 up to \$1,000,000, 1.10% of Daily Assets if above \$1,000,000 up to \$2,500,000 and 1.00% of Daily Assets above \$2,500,000.</p> <p>Certain SMA clients also may invest in Pools, but MCM generally does not solicit clients to invest in Pools unless such client is a "qualified client" as described in Rule 205-3(d)(1) under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). See Item 10 below.</p> <p>MCM's fees (i) are payable in arrears; (ii) upon termination are (a) for non-performance fees, pro rated based on days elapsed and (b) for performance fees, based on performance since the last determination of performance fees; and (iii) are negotiable (but generally only for accounts greater than \$750,000).</p>	
Items 3.I; 3.J & 3.K Types of Investments	<p>MCM does not invest in physical commodities unless acquired as a result of ownership of securities or other instruments. However, MCM may invest in options, futures contracts and other derivative instruments or securities backed by physical commodities. MCM also offers advice regarding investments in closed-end investment companies and unit investment trusts such as exchange traded funds ("ETFs").</p>	

**Schedule F of  
Form ADV  
Continuation Sheet for Form ADV Part II**

Applicant: Marketocracy Capital Management LLC	SEC File Number: 801- 57974	Date: December 22, 2010
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Marketocracy Capital Management LLC		IRS Empl. Ident. No.: Not applicable
Item of Form (identify)	Answer	
Items 4.A.(5); 4.B(8); 4.C(7); 8.C & 8.D Methods of Analysis, Sources of Information, and Investment Strategies, & Other Financial Industry Activities or Affiliations	<p>MCM and Marketocracy Data Services LLC, a financial publisher ("MDS"), are wholly owned subsidiaries of Marketocracy, Inc. ("Parent"). Through MDS, Parent operates a World Wide Web Internet site, Marketocracy.com® (the "Site"). MDS operates the Site seeking to identify members who can achieve superior and verifiable (simulated) investment performances. The Site's members have created and managed over 100,000 model portfolios. Each such model portfolio is a sophisticated <i>computer simulation</i> of an equity mutual fund portfolio managed by a Site member, <i>i.e.</i>, it is a <i>hypothetical</i> portfolio. The Site's members use these model portfolios to show how they might perform in managing real (rather than hypothetical) equity mutual funds and to establish their verifiable and easily comparable (simulated) investment performance records.</p> <p>For each member's model mutual fund portfolio(s), the Site automatically provides all of the portfolio accounting and other support services that would be necessary to operate an actual mutual fund. The Site also offers its members professional investment tools that allow the members to analyze the performances of their model mutual fund portfolios and accurately compare those performances with the portfolio performances of other members, professional investors and actual mutual funds, all on a consistent basis and in accordance with investment company industry requirements and practices.</p> <p>In buying and selling securities for its clients, MCM generally uses information regarding the hypothetical investments and performances of certain of the model portfolios maintained on Site. MDS collects and publishes various data and statistics about certain "top-ranked" portfolios on the Site for its subscribers, including MCM. MDS's proprietary ranking methodology assesses long and short-term model portfolio performances as well as other factors, including the specific contributions that market, sector, style, and trading factors make to those performances. MDS uses this ranking methodology to identify Site members whose model portfolios demonstrate superior long- and short-term (simulated) stock-picking skill and whose investing style is successful in the prevailing securities market environments. Because no single investment style works at all times and in all circumstances, however, MDS repeats its ranking process periodically to quickly replace lagging "top-ranked" performers with leading performers. MDS provides information for all of these "top-ranked" model portfolios to MCM. In managing clients' portfolios, MCM may use a smaller subsets of these "top-ranked" model portfolios that MDS has ranked the highest for performance and may not choose all of the investments in all of the "top-ranked" model portfolios. In managing certain clients' accounts, MCM may use information from only one "top ranked" model portfolio. For every client, however, MCM retains sole discretion to use or not use any information regarding any "top-ranked" portfolio.</p>	
Items 6 & 8 Education and Business Background & Other Financial Industry Activities and Affiliations	<p>Kendrick W. Kam is MCM's sole portfolio manager for all mutual funds advised and administered by MCM, and he is the primary portfolio manager for most other client accounts. Since March 23, 2005, Mr. Kam has served as President and sole Manager of MCM. Prior to this time, Mr. Kam served as Vice President-Investments since July 2001. Mr. Kam was born on June 8, 1960, received his B.S.C. Finance from the University of Santa Clara in 1982 and received his M.B.A., Marketing from the Stanford Graduate School of Business in 1986. From July 2000 to March 2002, Mr. Kam was President and sole Manager of MCM. From August 1999 to the present, Mr. Kam has also been President and a director of Parent. From July 1999 to the present, Mr. Kam also has been President and Trustee of the Trust. From July 1999 to the present, Mr. Kam has been portfolio manager for the Funds and also President and sole manager and member of Ingenuity Capital Management LLC, a registered investment adviser that served as the investment adviser to a former series of the Trust. From 1993 to 1999, Mr. Kam served as President of</p>	

**Complete amended pages in full, circle amended items and file with execution page (page 1).**

**Schedule F of  
Form ADV  
Continuation Sheet for Form ADV Part II**

Applicant: Marketocracy Capital Management LLC	SEC File Number: 801- 57974	Date: December 22, 2010
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Marketocracy Capital Management LLC	IRS Empl. Ident. No.: Not applicable
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Item of Form (identify)	Answer
Items 6 & 8 (continued)	<p>Interactive Research Advisers, Inc., the investment adviser for Firsthand Funds, a registered investment company, for whom Mr. Kam also served as a portfolio manager. From 1988 to 1992, Mr. Kam served as Vice President, Finance and Marketing, for Novoste Corp., a medical device company.</p> <p>Thomas E. Krouse, Jr., has been MCM's portfolio manager since May 2007 for mFOLIO Program Accounts invested in strategies based upon Virtual Portfolios for which he is the mFOLIO Master. He is also MCM's Executive Vice President. Mr. Krouse currently consults to Marketocracy Data Services ("MDS") and contributes to MCM's management of the Marketocracy Masters 100 Fund as well as other client portfolios. Mr. Krouse was born on September 21, 1968, was named a CFA Charter holder in 1997 and earned an MBA from the University of Southern California in 2001. He also has studied at Thomas Jefferson School of Law in San Diego and received a BA degree in Economics from Stanford University in 1990.</p> <p>From 2006 until joining MCM, Mr. Krouse was the COO and Tactical Portfolio Manager at Connective Capital Management, LLC in Palo Alto. Previously, Mr. Krouse was the COO, CCO and CFO at Parallax Fund, L.P., a relative value volatility trading hedge fund and SEC registered broker dealer in San Francisco. From January 2004 until joining Parallax in June 2004, Mr. Krouse was a Professor of Finance, Economics, and Accounting at Moscow University Touro in Moscow, Russian Federation. Mr. Krouse has over 16 years of finance and investment management experience in North America and Europe. His work in the hedge fund industry commenced in 1992 at Montgomery Securities/SiMont Advisors, and his roles over the years have included that of SEC Registered Investment Advisor, Co-Manager of Palomar Offshore Partners, Ltd., and President &amp; CEO of Palomar Capital Management, Inc. He has also previously worked as an Analyst and Director of Hedge Fund Operations at Pilgrim Baxter &amp; Associates and as COO at Meisenbach Capital Management. Since 1999, Mr. Krouse has provided investment advisory, business strategy, and executive-level management consulting services on a global basis with The Konodomo Group.</p>
Items 9.D & 9.E Participation or Interest in Client Transactions	<p>Certain SMA clients may instruct MCM to invest a portion of SMA assets in shares of a Fund for which MCM serves as investment advisor and administrator. To avoid duplicate investment advisory and administration fees, MCM does not receive an SMA management fee for any SMA assets so invested in Fund shares.</p> <p>MCM and its related persons from time to time may buy or sell securities that MCM also recommends to clients. However, neither MCM nor its related persons buy securities from, or sell securities to, clients. While MCM and its related persons are permitted to trade in the same stock as MCM's clients, such trades are subject to restrictions that to prevent the use of inside information and conflicts of interest pursuant to MCM's Code of Ethics, which include policies and procedures applicable to all of its employees designed to prevent insider trading and certain additional policies and procedures applicable to certain related persons who are "access persons," e.g., portfolio managers, having a higher degree of knowledge about client portfolios and transactions. For example, most personal trades require written pre-approval and except in the case of block trading, such persons may not knowingly purchase a security within one day of MCM's trades in that same security for a client (except securities of companies with a market capitalization of \$1 billion or more). Copies of MCM's Code of Ethics are provided to MCM's employees. See also Items 12 and 13 below regarding MCM's discretion in selecting broker-dealers and "soft dollars."</p>

**Schedule F of  
Form ADV  
Continuation Sheet for Form ADV Part II**

Applicant: Marketocracy Capital Management LLC	SEC File Number: 801- 57974	Date: December 22, 2010
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Marketocracy Capital Management LLC	IRS Empl. Ident. No.: Not Applicable
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Item of Form (identify)	Answer
Item 10 Conditions for Managing Accounts	<p>See Item 2 regarding clients who invest in Pools. Such clients must be "qualified clients" within the meaning of Rule 205-3(d)(1) under the Advisers Act, which include investors who each have at least \$750,000 invested in the Pool and otherwise under management with MCM or have a net worth of \$1,500,000 upon becoming an investor in a Pool.</p> <p>SMA clients must invest at least \$100,000 in the account in order to open an SMA account with Marketocracy Capital Management. In addition, certain SMA clients must select and direct MCM to use one or more specific broker-dealers to effect all portfolio transactions for such SMA client (each a "Discretionary Brokerage Client" or "DB Client"), including DB Clients who so direct MCM so that the DB Client may obtain access to one or more broker-dealers' brokerage, trading and/or portfolio management platform(s) through which MCM may manage the portfolio(s) in such DB Client's brokerage account(s). See Items 12 and 13 below.</p>
Item 12 Investment or Brokerage Discretion	<p>MCM's authority to determine, without obtaining specific client consent, (i) the securities to be bought or sold, (ii) the amount of the securities to be bought or sold, (iii) the broker-dealer to be used, and (iv) the commission rates paid, is limited by the terms of the investment management agreements entered into between MCM and each client, which generally provide that MCM has full discretion with respect to the matters described in clauses (i) through (iv) above and, in the case of a Fund, by the parameters of the prospectus and statement of additional information of such Fund and in the case of a Pool, the similar offering documents for the Pool.</p> <p>Except as described below for DB Clients, in selecting broker-dealers to effect portfolio transactions for clients, MCM will allocate such transactions to such broker-dealers for execution on such markets, at such prices and at such commission rates (which may be in excess of the prices or commission rates that might have been charged for execution on other markets or by other broker-dealers) as in the good faith judgment of MCM are appropriate. MCM takes into consideration in the selection of such broker-dealers not only the available prices and rates of brokerage commissions, but also other relevant factors, which may include (without limitation) the: (i) size of the transaction, (ii) timing of the transaction, (iii) nature of the market for the security, including the effect of the proposed transaction on such market, (iv) risks in positioning a block transactions, (v) execution capabilities of the broker-dealer, including operational facilities and presence in the market for the security, (vi) reputation, experience and financial stability of the broker-dealer involved, and (vii) quality of service rendered by the broker-dealer in other transactions. Also, MCM considers compares commissions to investment management industry averages.</p> <p>MCM may cause a client's account to pay a broker-dealer an amount of commission for effecting a transaction for the client's account in excess of the amount of commission another broker-dealer would have charged for effecting that transaction if MCM determines in good faith that the amount of commission is reasonable in relation to the value of the brokerage and research services provided by the broker-dealer, viewed in terms of either the particular transaction or MCM's overall responsibilities with respect to the accounts as to which MCM exercises investment discretion.</p>



**Schedule F of  
Form ADV  
Continuation Sheet for Form ADV Part II**

Applicant: Marketocracy Capital Management LLC	SEC File Number: 801- 57974	Date: December 22, 2010
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Marketocracy Capital Management LLC	IRS Empl. Ident. No.: Not Applicable
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Item of Form (identify)	Answer
Item 12 Investment or Brokerage Discretion (continued)	<p>If a DB Client directs MCM to use a specific broker-dealer (<i>e.g.</i>, in order for the client to receive cash rebates, products, services, expense payments or expense reimbursements from the broker-dealer, including without limitation, access by the DB Client to one or more broker-dealers' brokerage, trading and/or portfolio management platform(s) through which MCM may manage the portfolio(s) in such DB Client's brokerage account(s) with such broker-dealer(s)), MCM will not negotiate the terms and conditions (including, but not limited to, commission rates) relating to the services provided by such broker-dealer. By so directing MCM, the DB Client expressly will be acknowledging and agreeing that MCM would not have any responsibility for obtaining for the DB Client from any such broker-dealer the execution, including without limitation the best prices or any particular commission rates, with or through any such broker-dealer and that the DB Client may not be obtaining rates as low as it might otherwise obtain if MCM had discretion to select broker-dealers other than those chosen by the DB Client. In general, MCM receives no soft dollar credits for DB Client portfolio transactions through the broker-dealer selected by the DB Client.</p>
Item 13A Additional Compensation ("Soft Dollars")	<p>In addition to execution quality, MCM may consider the value of various products and services a broker-dealer may provide to MCM. Selecting a broker-dealer in recognition of services or products other than simply transaction execution is known as paying for those services or products with "soft dollars."</p> <p>Research provided by brokers includes the type that brokerage houses customarily provide to institutional investors, such as statistical and economic data and research reports on particular companies, industries and securities markets. Brokers may produce Research themselves or may arrange for Research to be produced by third parties, <i>e.g.</i>, including but not limited to corporate action data, portfolio company fundamental research data, real time securities pricing data, end-of-day pricing data, general industrial code classification data and other market data.</p> <p>Because many of those services could be considered to provide some benefit to MCM and its affiliates, and because the "soft dollars" generated by the clients' securities transactions and used by MCM to acquire the benefits will be assets of MCM's clients, MCM could be considered to have a conflict of interest in allocating client brokerage business. That is, MCM could receive valuable benefits by selecting a particular broker-dealer to execute client transactions, and the transaction compensation charged by that broker-dealer might not be the lowest compensation MCM might otherwise be able to negotiate. In addition, MCM could have an incentive to cause clients to engage in more securities transactions than would otherwise be optimal in order to generate brokerage compensation with which to acquire products and services.</p>

**Schedule F of  
Form ADV  
Continuation Sheet for Form ADV Part II**

Applicant: Marketocracy Capital Management LLC	SEC File Number: 801- 57974	Date: December 22, 2010
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Marketocracy Capital Management LLC	IRS Empl. Ident. No.: Not Applicable
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Item of Form (identify)	Answer
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Item 13A Additional Compensation ("Soft Dollars") (continued)	<p>Except as described below, MCM will make decisions involving "soft dollars" in a manner that satisfies the requirements of the "safe harbor" provided by Section 28(e) of the Securities Exchange Act of 1934, as amended. That is, before placing orders with a particular broker-dealer, MCM will generally determine, considering all the factors described in the discussions relating to Items 12 and 13, that the commissions to be paid are reasonable in relation to the value of all the brokerage and research products and services provided by that broker-dealer. In making that determination, MCM may consider not only the particular transaction or transactions, and not only the value of brokerage and research services and products to a particular client, but also the value of those services in MCM's performance of its overall responsibilities to all of its clients. In some cases, the commissions charged by a particular broker-dealer for a particular transaction or set of transactions may be greater than the amounts another broker-dealer who did not provide research services or products might charge. In some cases, a client's transactions may be executed by a broker-dealer in recognition of services or products that are not used in managing that client's account, <i>i.e.</i>, "cross-subsidization," on the management of one client's account by the transactions of another client. MCM may use "soft dollars" generated by the transactions of clients (other than registered investment companies) to pay for office rent, salaries of personnel, and general office expenses of its investment management business.</p>
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	<p>In addition to the factors described above, for clients (other than registered investment companies), MCM may select a broker-dealer to execute transactions in recognition of that broker-dealer's referral of clients, or in anticipation of future referrals. As with soft dollar payments for research or other services or products, in some cases the transaction compensation paid in connection with such a selection might be higher than that obtainable from another broker-dealer who did not provide (or undertake to provide) referrals. However, MCM will always seek "best execution" except to the extent limited by client instructions, including instructions by DB Clients. Awarding transaction business to broker-dealers in recognition of past or future referrals may involve an incentive for MCM to cause clients (other than registered investment companies) to effect more transactions than they might otherwise do in order to stimulate more referrals.</p>
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Item 13.B Additional Compensation ("Client Referrals")	<p>MCM pays cash or a portion of the advisory fees paid by clients, including SMA clients, referred to MCM by certain persons, generally registered investment advisers, who also perform certain administrative services for MCM in respect of such referred clients' accounts (each such referring person a "Services Provider"). This practice is disclosed in writing to each client referred by the Services Provider in compliance with the requirements of Rule 206(4)-3 under the Advisers Act.</p>
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