

**Part 2A of Form ADV: Firm Brochure**

Item 1 Cover Page

# Berkshire Asset Management, LLC Client Brochure

*This brochure provides information about the qualifications and business practices of Berkshire Asset Management, LLC. If you have any questions about the contents of this brochure, please feel free to contact us at 570-825-2600 or by email at [mmillington@berkshiream.com](mailto:mmillington@berkshiream.com). The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority. SEC*

*Additional information about Berkshire Asset Management, LLC is also available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). Berkshire Asset Management, LLC's CRD number is: 145463*

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*Registration does not imply any level of skill of training.  
March 1, 2011*

## Item 2 Material Changes

On July 28, 2010, the United State Securities and Exchange Commission published “Amendments to Form ADV” which amends the disclosure document that Berkshire Asset Management, LLC (Berkshire) provides to clients as required by SEC Rules. This Brochure dated March 1, 2011 is a new document prepared according to the SEC’s new requirements and rules. As such, this Brochure is materially different in structure and requires certain new information that our previous brochure did not contain.

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

In the past we have offered or delivered information about qualifications and business practices to clients on at least an annual basis. Pursuant to new SEC Rules, we will ensure that you receive a summary of any materials changes to this and subsequent Brochures within 120 days of the close of the calendar year. We may further provide other ongoing disclosure information about material changes as necessary.

We will provide a new Brochure as necessary based on changes or new information, at any time, without charge. Other than the new format for this Brochure, there have been no material changes since the last annual update filed on March 24, 2010.

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#### Item 4 Advisory Business

The current organizational structure of Berkshire Asset Management, LLC (Berkshire) was formed in 2007. However, the business was started in 1986 as a corporation. Berkshire is owned by Kenneth J. Krogulski who serves as Managing Member, President, CEO and Chief Investment Officer.

Berkshire provides portfolio management and supervisory services to individuals, foundations, endowments, trusts, estates, corporations, and pension and profit sharing plans. Berkshire manages advisory accounts and monitors clients' accounts on a daily basis. We tailor our services to meet the individual needs and objectives of our clients and account supervision is guided by the stated objectives of that client (i.e. growth, safety, income, etc.). Thus, every account is governed by the individual objectives of each client. These objectives may not always take into consideration all of the related factors applicable to the rendering of "investment supervisory services"; rather, individual clients will decide on the specific direction of their account and Berkshire will manage the account under that principle.

Berkshire participates in a broker sponsored wrap fee program. The wrap fee accounts are generally equity only and mirror our core equity investment strategy that is implemented for many of our clients. Each program sponsor sets the rules, fees and requirements for these programs.

Berkshire is the general partner and investment advisor for three limited partnerships: Berkshire Growth Fund, Berkshire Partnership and Darkhorse Opportunity Fund.

As of February 16, 2011, our assets under management include \$534 million discretionary assets and \$117 million non-discretionary assets or a total approximately \$651 million in assets under management.

## Item 5 Fees and Compensation

For portfolio management services, the client will be charged fees on a quarterly basis and are payable in advance. Fees are calculated as a percentage of assets under management.

The maximum annual fee is based on the following schedule:

### Equity and Balanced Accounts

Market Value	Annual Percentage
First \$2,000,000	1.00%
Next \$3,000,000	0.75%
Next \$5,000,000	0.65%
Over \$10,000,000	0.50%

### Fixed Income Accounts

Market Value	Annual Percentage
First \$5,000,000	0.50%
Next \$5,000,000	0.40%
Over \$10,000,000	0.25%

The principal executive officer quotes an exact percentage to each client based on both the nature and dollar value of the account. Fees may be negotiable based upon factors including, but not limited to, the size of the account and other relationships that the client may have with Berkshire.

Berkshire may also provide specialized investment advisory or outside manager monitoring services to clients for a negotiated fee. These services are typically tailored to fit the individual client's needs. Berkshire does not maintain a standard fee schedule for this service and the terms of each arrangement are negotiated with the client.

Berkshire may also provide management services to clients through wrap fee programs and dual contract accounts. The services provided by Berkshire and the fees that Berkshire receives under the program are described in detail in the contract executed by each wrap fee client or dual contract account and in the disclosure document provided to each client by the wrap fee program or dual contract sponsors.

The client Agreement commences on the date it is accepted by Berkshire and shall remain in effect until termination by either party, for any reason, upon ten days written notice to the other. The client has the right to terminate the Agreement without penalty within five business days after entering into the Agreement. Upon termination, Berkshire will refund any prepaid fees, prorated from the date of termination through the end of the quarter for which fees were prepaid.

Berkshire does not accept commissions or compensation for the sale of securities or other products purchased in the client accounts. Please refer to Item 12, Brokerage practices section of this Brochure.

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

Except as described below, the fee charged will never be based on the capital gains or the capital appreciation of any funds or any part of any funds of any client. Fees as permitted under Rule 205-3 promulgated under the Investment Advisers Act of 1940 will be permitted for certain sophisticated, accredited investors. Berkshire Partnership, Darkhorse Opportunity Fund, L.P. and at the request of certain qualified clients, as defined by the rule, are the only advisory clients under contract that have the potential to pay a performance fee to Berkshire.

Berkshire provides investment management advice to a variety of different clients including and special portfolios and institutional accounts, ERISA accounts and investment partnerships. Some of these accounts present a conflict of interests for Berkshire, as our employees or related parties may have an interest in such accounts. We also manage several accounts that pay performance fees. Certain investment professionals manage both accounts with and without such conflicts of interests. This may be an incentive to favor one account over another account. We are conscious of these and other potential conflicts, and have designed order allocation procedures to ensure that clients are treated fairly over time.

With respect to Darkhorse Opportunity Fund, Berkshire does not offer a similar investment service to other clients, and therefore other clients will not be competing for investment opportunities with the Fund.

Item 7      Types of *Clients*

Berkshire provides portfolio management services to individuals, foundations, endowments, trusts, estates, corporations, and pension and profit sharing plans.

In general, Berkshire will establish a minimum dollar value for client accounts. The standard minimum is \$1,000,000 for non-wrap fee or non-dual contract broker accounts. However, this figure may be negotiable, depending upon the client's objectives and the nature of the account. A *suggested* minimum annual management fee of \$7,500 was implemented for new clients on January 1, 1994.

Berkshire uses fundamental analysis when selecting securities for investment. Berkshire keeps a constant focus on the company's fundamentals, as market timing is not practiced. The goal is to purchase sound businesses at reasonable prices. Other desirable characteristics we may consider include: simple businesses that are easy to understand; low sales and earnings volatility; low debt and adequate interest expense coverage; a self-funding balance sheet; low cost of production relative to others in the industry; a strategic capital reinvestment program; a strong management team which has demonstrated superior skills in operating the business and which has a significant personal investment in the equity of the company. Once these businesses are identified, the company will initiate a position in the equity at a significant discount to our estimate the company's intrinsic value. Intrinsic value is calculated by estimating the present value of future free cash flows. Free cash flow is defined as net income plus non-cash charges less capital expenditures.

Both taxable and tax-exempt bonds are purchased primarily with the intention of realizing an attractive total return. The company follows a conservative, high-quality fixed income investment strategy. A portfolio is structured using primarily taxable bonds with an A rating or better by S&P and Moody's. With municipal portfolios, our universe is generally limited to investment grade municipal general obligation bonds and essential service revenue bonds. The maturity length of all bonds purchased is zero to twenty years.

We subscribe to a number of online and paper sources of analysis of economic data, asset allocation models, evaluation of mutual funds, ETFs, separate account managers and other investments. The process of security selection incorporates client needs, resources, time horizon, risk tolerance and past investment experience with the design of an asset allocation that allows for flexibility. Active management of tactical allocations is made from time to time based on compelling market dislocations and/or longer term economic trends. Although we believe the markets are mostly efficient, it is difficult, if not impossible, to consistently exceed market indices. However, the market occasionally the market offers excellent opportunities. On such occasions, allocations may be adjusted keeping mind that markets can be unpredictable we make every effort to mitigate risks.

We use computer software and commercial databases to perform analysis that aids in measuring the level of risk and return in the client's portfolio and provide guidelines to help achieve the individual client's financial goals.

The objectives, guidelines and restrictions of each separate client are documented when the account is opened and a copy is maintained on file. The objectives, guidelines and restrictions of each Partnership are detailed in the applicable offering documents. We are mindful of the inherent risks when investing in securities and have taken steps to manage client accounts within the risk parameters agreed upon.



Item 9      Disciplinary Information

There are no legal or disciplinary events that are material to a client or prospective client's evaluation of Berkshires advisory business or the integrity of its management. Thus, there is no disciplinary information to disclose.

Item 10 Other Financial Industry Activities and Affiliations

Neither Berkshire nor its representatives are registered as a broker dealer or as representatives of a broker dealer. All material conflicts of interest are disclosed regarding the investment advisor, its representatives or any of its employees which could be reasonably expected to impair the rendering of unbiased and objective advice. When selecting other advisors or third party managers we take the same care in ensuring that that no material conflicts arise.

Berkshire is the General Partner and investment adviser to Berkshire Partnership (“BP”) and Berkshire Growth Fund (“BGF”). Additionally, BDF Partners, LLC, a Delaware LLC and a wholly owned subsidiary of Berkshire, is the General Partner of Darkhorse Opportunity Fund, L.P. (“DOF”). BP, BGF and DOF are Pennsylvania limited partnerships offered privately to investors that qualify in accordance with the requirements of the applicable offering documents. BP, BGF and DOF invest substantially all their assets in equity and debt securities listed on national securities exchanges. DOF may also invest in: equity securities of foreign companies including companies in emerging markets; option contracts on securities and securities indices; preferred shares; depository receipts; and money market instruments. Some advisory clients of Berkshire may also be investors in BP, BGF and DOF and we may in the future offer other advisory clients investment interests in the partnerships. Berkshire has a financial investment in BP and BGF and employees may also have financial investments in the partnerships.

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

Berkshire requires of those individuals directing or determining investment advice, that they demonstrate their successful completion of a college or university degree in a related field (such as banking, finance, economics) and/or have prior equivalent experience. In addition, all employees of Berkshire annually become a signatory to the Berkshire's Code of Ethics, Policy on Insider Trading and Policy restricting most personal security transactions.

All applicable individuals must exhibit a keen understanding of the economic, financial and market factors necessary to make wise and informed decisions regarding portfolio management practices. Berkshire may, from time to time, recommend to clients that they buy or sell securities in which related persons, such as its employees, have a financial interest. However, if one or more of the Berkshire's employees has a financial interest in a security recommended to clients, the Berkshire will follow the procedures outlined below regarding employee trading. From time to time, the Berkshire's employees may have a position in a certain security that may also be recommended to a client. Berkshire has established the following restrictions and disclosure procedures to ensure, at all times, that it fulfills its fiduciary obligation.

- (1) Employees and their immediate family residing in the same household are prohibited from acquiring any securities in an initial public offering. The only exception is that employees are permitted to exercise subscription rights in mutual thrift conversions where the employee is a customer.
- (2) Employees and their immediate family residing in the same household, acquiring securities in a private placement must receive express prior approval from the President or Chief Compliance Officer. The basis for granting approval or not will take into account whether the investment opportunity should be reserved for the Berkshire's clients, and whether the opportunity is being offered to the employee by virtue of his or her position with the Berkshire. Employees who have been authorized to acquire securities in a private placement are required to disclose that investment when they play a part in any subsequent consideration by Berkshire to invest on behalf of clients in the issue.
- (3) All transactions by employees, either for themselves or members of their immediate family residing in the same household, shall require approval prior to the purchase or sale as stated in the personal securities trading policy.
- (4) Blackout Period: Employees and their immediate family residing in the same household are prohibited from executing personal securities transactions on a day Berkshire has a pending buy or sell order in that same *security*, *until that order is executed or withdrawn*. In addition, all employees and their immediate family residing in the same household are prohibited from buying or selling a security if Berkshire executed a trade in the same security the previous trading day. Any profits realized on trades executed in violation of this policy will be disgorged.

Berkshire maintains that it is always acting in the best interest of the client. However, investing in securities can be unpredictable thus every attempt is made to ensure that clients' interests are placed first.

Item 12 Brokerage Practices

For discretionary accounts, Berkshire receives from such client's written authority empowering Berkshire to determine which securities and amounts thereof to be bought or sold and the broker-dealer to be used to execute transactions. For the selection of broker-dealers and in determining commission rates paid, Berkshire chooses firms it believes provide quality execution, competitive commission rates and other research related services deemed important to Berkshire's ability to successfully and competitively discharge its fiduciary responsibility to its clients.

In selecting a brokerage firm, Berkshire will not necessarily direct transactions to the broker or dealer offering the lowest commissions. Berkshire may also consider a variety of factors, including the brokerage firm's execution capabilities, ability to avoid significant market impact, reputation, access to the markets for the securities being traded, and willingness to provide products and services that assist Berkshire in the investment decision-making process. Berkshire may direct transactions to brokers in return for research services that assist it in the investment decision-making process (such as written research reports on companies, sectors, or the economy, or subscriptions to on-line data bases that provide real time and historical pricing information). When Berkshire does so, Berkshire may pay the executing broker a commission greater than another qualified broker (which does not provide research) might charge to effect the same transaction. Such arrangements are generally referred to as "soft dollar arrangements." Berkshire only enters into a soft dollar arrangement if it determines in good faith that the commission paid is reasonable in relation to the value of the execution and research services provided. Soft dollar arrangements generally take one of two forms: proprietary or third party. Under a proprietary arrangement, the executing broker directly provides research services to Berkshire. Brokers that provide proprietary research generally charge a bundled commission that includes the cost of execution and the additional research services, and they do not typically assign a particular value to their research services.

Berkshire regularly assesses the value of the research services provided by the brokers with which it deals. Over time, Berkshire attempts to direct commission business to a broker in an amount that is fair and reasonable under the circumstances and proportional to Berkshire's assessment of the value added by that broker. Subject to best execution and the relevant factors referenced above, a significant percentage of client trades may be executed with broker-dealers that research and brokerage execution services to Berkshire

From time to time, clients may select a directed broker. A letter is signed by the client upon selection of a Directed Broker. The Firm keeps an original copy of this letter on file for the duration of the arrangement. Generally, trades for clients directing their transactions to a particular broker, may be executed after trades in which the Firm has discretion over the broker to be used.

Berkshire received no referrals from broker dealers or third parties in exchange for using that broker.

Item 13      Review of Accounts

Due to the nature of our services, most accounts will be reviewed by the investment manager for the account on a daily basis to measure the impact of factors including, but not limited to, daily market activity, general economic or political trends, interest rate movements, and/or changes in the regulatory environment. However, depending upon the current market conditions and the particular position of the account, not all accounts need daily review. Client accounts will be monitored by the investment manager to ensure that the client's primary objectives are maintained (e.g. growth, safety, income, etc.). The number of accounts assigned to an investment manager will never exceed that number which would compromise the high standards established by Berkshire. In addition to regular review by the investment manager of each account, all accounts will be reviewed for accuracy on a monthly basis by office support staff. This review will follow strict procedures as approved by Berkshire's President. Berkshire's investment policy committee meets periodically to review all portfolios to ensure each account is structured in compliance with client investment policy guidelines.

In response to Item 11 B, all clients will receive, no less than quarterly, reports containing the following information: (1) Portfolio Appraisal Report; (2) Realized Gain/ Loss Report; (3) Interest Dividend and Expense Report; (4) Purchase and Sale Report; (5) Performance Report and Performance History Report in compliance with Global Investment Performance (GIPS) standards. Investors in limited partnerships offered privately and managed by the Berkshire will receive reports as described in the applicable offering documents.

We strongly encourage our clients to review their monthly statements received directly from their custodians and to report any discrepancies immediately.

Item 14      *Client Referrals and Other Compensation*

Berkshire may, from time to time, compensate persons for client referrals. Persons introducing new client accounts to Berkshire may receive a portion of the advisory fee generated by the account for a period which varies on a case-by-case basis. Berkshire is aware of the special considerations set forth in Rule 206(4)-3 of the Investment Advisers Act of 1940, as amended, and as such, all referral arrangements will be conducted in accordance with the applicable rules and regulations.

Berkshire is not a custodian but does engage in certain activities that result in being deemed to have custody or possession of client funds or securities under Advisers Act Rule 206(4)-2. In circumstances where Berkshire may be deemed to have custody, we will comply with the requirements of Rule 206(4)-2 to avoid the requirement that we retain an independent public accountant to perform an annual verification of funds and securities in the Firm's custody.

In circumstances where the Berkshire is deemed to have custody or possession of client funds or securities we will ensure that:

- Qualified Custodian holds the client's assets;
- If the Firm opens an account with a qualified custodian on the client's behalf the Firm will notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information; and
- There is a reasonable basis for believing that the Qualified Custodian sends an account statement, at least quarterly, to the client that identifies the amount of funds and of each security in the account at the end of the period and sets forth all transactions in the account during that period.
- Limited partnerships, in which the Firm, or a subsidiary of the Firm, serves as general partner and investment adviser, are audited annually and the audited financial statements, prepared in accordance with generally accepted accounting principles, are sent to all limited partners within 120 days of the end of its fiscal year.

Berkshire provides both discretionary and nondiscretionary investment advisory services. The majority of our clients grant discretion, which allows us to manage portfolios and make investment decisions without client consultation regarding the securities and other assets that are bought and sold for the account. In such accounts, we do not require client approval for the total amount of the securities and other assets to be bought and sold, the choice of executing brokers or the price and commission rates for such transactions. In some instances, clients may seek to limit or restrict our discretionary authority on these matters by imposing investment guidelines or restrictions on their account.

We make every effort to manage restricted portfolios along with other clients within similar mandates. However, it is possible that security selection and trade placement may be delayed for these portfolios while we determine whether a proposed investment decision complies with the account guidelines and restrictions or identify alternatives. Accounts subject to investment restrictions or directed broker agreements may forfeit some of the advantages that may result from aggregated orders and may be disadvantaged by the market impact of trading for other portfolios.

In non-discretionary relationships, we make periodic investment recommendations to clients about the securities that should be bought or sold and the total amount of such transactions. Clients may ask Berkshire to place orders for the purchase or sale of the securities being recommended, either through executing brokers of our choice or according to the client's request. Orders placed by Berkshire will be aggregated with those discretionary clients in the same security, based on standard procedures. We will not, however, delay trading for discretionary client orders while a non-discretionary client considers and approves an investment recommendation. In addition, nondiscretionary clients will not share in the allocation of those trades that were completed before they approved an order. In cases where the non-discretionary client places its own orders without our involvement, procedures are adopted to ensure that we have a reasonable opportunity to trade a substantial portion of any current orders for discretionary accounts before an investment recommendation is passed to non-discretionary clients.

Client orders executed through the same broker dealer may be aggregated to achieve best execution. Generally clients will receive the average share price of all orders executed to fill the aggregated order. Individual transaction fees and commissions will not be affected. The client will incur the same transaction fee or commission charge regardless if the order was aggregated or executed individually. Aggregation saves time and all accounts receive same price. We will attempt to aggregate orders when it is determined it is prudent to place orders for the same security, at the same time, in one or more client accounts. Allocations for these orders are completed on a pro rata basis.



Item 17      Voting *Client* Securities

Investment advisers are subject to specific rules related to voting authority over client securities. For example, advisers must provide clients with a description of their voting policies and procedures disclose where clients can get a full copy of the policies and procedures and disclose how they can obtain information about how their adviser voted with respect to their securities.

As a registered investment adviser that exercises proxy voting authority over client securities, we have a fiduciary duty to vote proxies in a timely manner and make voting decisions that are in our clients' best interests.

Berkshire Asset Management has adopted a Proxy Voting Policy, which reflects the policies of the firm and its investment management subsidiaries. The Proxy Voting Policy is a set of voting guidelines intended to maximize the value of the securities in our client accounts. It describes our approach to analyzing voting issues, identifies the persons responsible for determining how to vote proxies and includes procedures to address material conflicts of interests that may arise between Berkshire and clients relating to proxy voting.

Our Proxy Voting Policy provides further detail on the voting process and a range of specific voting issues. Clients may obtain a copy of the Proxy Voting Policy, the Proxy Voting Manual and information about how Berkshire voted with respect to their securities by contacting is:

Berkshire Asset Management, LLC  
Attn: Chief Compliance Officer  
46 Public Square, Suite 700  
Wilkes-Barre, PA 18701

Item 18 Financial Information

Berkshire does not require or solicit prepayment of more than \$1,200 in fees per client, six months or more in advance and therefore does not need to include a balance sheet with this Brochure. Neither Berkshire nor its management has reason to believe that anything would impair our ability to meet contractual commitments to clients. Neither Berkshire nor its management has been the subject of a bankruptcy petition at any time during the past ten years.

**BERKSHIRE ASSET MANAGEMENT, INC.**  
**PROXY VOTING**

**BACKGROUND**

As outlined in the Investment Management Agreement, Berkshire Asset Management, Inc. (“Berkshire”) may assume responsibility for voting proxies for securities held in client accounts unless such responsibility and authority have been expressly retained by the client.

Berkshire has adopted and implemented policies and procedures that we believe are reasonably designed to ensure that proxies are voted in the best interest of the clients, in accordance with our fiduciary duties under applicable laws, rules and regulations. If authority to vote proxies is established by the client in the Investment Management Agreement, our proxy voting guidelines have been tailored to reflect this specific contractual obligation. In addition to requirements under the securities laws governing advisers, our proxy voting policies reflect the long-standing fiduciary standards and responsibilities for ERISA accounts. Unless a manager of ERISA assets has been expressly precluded from voting proxies, the Department of Labor has determined that the responsibility for these votes lies with the Investment Manager.

In exercising its voting authority, Berkshire will not consult or enter into agreements with officers, directors or employees of Legg Mason Inc. or any of its affiliates (other than Berkshire) regarding the voting of any securities owned by its clients.

**POLICY**

Berkshire’s proxy voting procedures are designed and implemented in a way that is reasonably expected to ensure that proxy matters are handled in the best interest of clients for whom we have voting authority. While the guidelines included in the procedures are intended to provide a benchmark for voting standards, each vote is ultimately cast on a case-by-case basis, taking into consideration Berkshire’s contractual obligations to our clients and all other relevant facts and circumstances at the time of the vote (such that these guidelines may be overridden to the extent Berkshire deems appropriate).

**PROCEDURES**

**RESPONSIBILITY AND OVERSIGHT**

The Berkshire proxy voting committee (the “Proxy Committee”) is responsible for administering and overseeing the proxy voting process. Berkshire’s proxy coordinator (the “Proxy Coordinator”) coordinates the gathering of proxies. The chairman of the Proxy Committee is responsible for determining appropriate voting positions on each proxy utilizing any applicable guidelines contained in these procedures.

**CLIENT AUTHORITY**

Each client Investment Management Agreement is reviewed at account startup or upon amendment to determine proxy voting responsibility. If the Investment Management Agreement so provides or if the account represents assets of an ERISA plan and Berkshire has not received written instruction from the client that precludes the firm from voting proxies, Berkshire will assume responsibility for proxy voting. The Portfolio Accounting Administrator maintains a matrix of proxy voting authority and will regularly provide the Proxy Coordinator with the most current information.

**PROXY GATHERING**

Registered owners of record, client custodians, client banks and trustees (“Proxy Recipients”) that receive proxy materials on behalf of clients should forward them to the Proxy Coordinator. Proxy Recipients for new clients (or, if Berkshire becomes aware that the applicable Proxy Recipient for an existing client has changed) are notified at start-up of appropriate routing to the Proxy Coordinator of proxy materials received and also reminded of their responsibility to forward all proxy materials on a timely basis. If Berkshire personnel other than the Proxy Coordinator receive proxy materials, they should promptly forward the materials to the Proxy Coordinator.

**PROXY VOTING**

Once proxy materials are received, the Proxy Coordinator will initiate the following actions:

- a. Proxies are reviewed to determine accounts impacted.
- b. Impacted accounts are checked to confirm Berkshire’s voting authority.
- c. The Chairman of the Proxy Committee reviews proxy issues to determine any material conflicts of interest. (See Conflicts of Interest Section of these procedures for further information on determining material conflicts of interest.)
- d. If a material conflict of interest exists (i) to the extent reasonably practicable and permitted by applicable law, the client is promptly notified, the conflict is disclosed and Berkshire obtains the client’s proxy voting instructions, and (ii) to the extent to which it is not reasonably practicable and permitted by applicable law to notify the client and obtain such instructions (e.g., the client is a mutual fund or other commingled vehicle or is an ERISA plan client), Berkshire seeks voting instructions from an independent third party.
- e. The Chairman of the Proxy Committee determines votes on a case-by-case basis taking into account the voting guidelines contained in these procedures. Subject to the best interest of each individual client, Berkshire votes proxies in the same way for similarly situated clients. The Chairman of the Proxy Committee’s basis for decision is documented and maintained by the Proxy Coordinator.
- f. The Proxy Coordinator votes the proxy pursuant to the instructions received in (d) or (e) and returns the voted proxy as indicated in the proxy materials.

**TIMING**

Berkshire personnel act in such a manner to ensure that, absent special circumstances, the proxy gathering and proxy voting steps noted above can be completed before the applicable deadline for returning proxy votes.

**RECORD KEEPING**

Berkshire maintains records of proxies voted pursuant to applicable securities laws, rules and regulations and ERISA DOL Bulletin 94-2. These records include:

1. A copy of Berkshire’s policies and procedures.
2. Copies of proxy statements received regarding client securities.
3. A copy of any document created by Berkshire that was material to making a decision how to vote proxies.
4. Each written client request for proxy voting records and Berkshire’s written response to both verbal and written client requests.

A proxy log including:

1. Issuer Name;
2. Exchange ticker symbol of the issuer's shares to be voted;
3. Council on Uniform Securities Identification Procedures ("CUSIP") number for the shares to be voted;
4. A brief identification of the matter voted on;
5. Whether the matter was proposed by the issuer or by a shareholder of the issuer;
6. Whether a vote was cast on the matter;
7. A record of how the vote was cast; and
8. Whether the vote was cast for or against the recommendation of the issuer's management team.

Records are maintained in an easily accessible place for five years, the first two in Berkshire's offices.

#### **DISCLOSURE**

New clients will be provided a copy of these policies and procedures upon account inception. In addition, upon request, clients may receive reports on how their proxies have been voted by contacting Berkshire.

#### **CONFLICTS OF INTEREST**

All proxies are reviewed for potential material conflicts of interest by the Chairman of the Proxy Committee. Issues to be reviewed include, but are not limited to:

1. Whether Berkshire manages assets for the issuer, a shareholder proponent or an employee group of the issuer or otherwise has a current or potential business relationship with the issuer;
2. Whether Berkshire, an officer or director of the adviser or the applicable portfolio manager, analyst or other person(s) responsible for recommending the proxy vote (together, "Voting Persons") is a close relative of or has any personal or business relationship with the issuer (excluding normal commercial transactions and investment relationships where there is not special treatment), with an officer, director or other executive person at the issuer, with a candidate for election to the board of the issuer or with a shareholder proponent;
3. Whether there is any other material business or personal relationship as a result of which a Voting Person has an interest in the outcome of the matter before shareholders; or
4. Whether an affiliate of Berkshire has a conflict as described in # 1-3 above and such conflict is known to the adviser's Voting Persons.

All of the conflicts noted above should be deemed material. If the conflict resides with an individual Voting Person, that person will exclude himself or herself from the vote determination process in order to shield the adviser and the other Voting Persons from the conflict, provided that the other Voting Persons can determine a vote without undue influence from the conflicted Voting Person. If the conflict cannot be walled off, the vote will be passed on to a neutral party such as a third-party service provider or to the client directly. Any time a material conflict is encountered, Berkshire will keep records on the nature of the conflict, the actual vote and the basis for the vote determination.

#### **VOTING GUIDELINES**

Berkshire's substantive voting decisions turn on the particular facts and circumstances of each proxy vote and are evaluated by the Chairman of the Proxy Committee. The examples outlined below are meant as guidelines to aid in the decision making process.

Guidelines are grouped according to the types of proposals generally presented to shareholders. Part I deals with proposals which have been approved and are recommended by a company's board of directors; Part II deals with proposals submitted by shareholders for inclusion in proxy statements; Part III addresses issues relating to voting shares of investment companies; Part IV addresses unique considerations pertaining to foreign issuers.

##### **I. BOARD APPROVED PROPOSALS**

The vast majority of matters presented to shareholders for a vote involve proposals made by a company itself that have been approved and recommended by its board of directors. In view of the enhanced corporate governance practices currently being implemented in public companies, Berkshire generally votes in support of decisions reached by independent boards of directors. More specific guidelines related to board-approved proposals are as follows:

##### **Matters Relating to the Board of Directors**

Berkshire votes proxies for the election of a company's nominees for directors and for board approved proposals on matters relating to the board of directors with the following exceptions:

Votes are withheld for the entire board of directors if the board does not have a majority of independent directors or the board does not have nominating, audit and compensation committees composed solely of independent directors.

Votes are withheld for any nominee director who is considered an independent director by the company and who has received compensation from the company other than for service as a director.

Votes are withheld for any nominee for director who attends less than 75% of board and committee meetings without valid reasons for absences.

Votes are cast on a case-by-case basis in contested elections of directors.

### **Matters Relating to Executive Compensation**

Berkshire generally favors compensation programs that relate executive compensation to a company's long-term performance. Votes are cast on a case-by-case basis on board-approved proposals relating to executive compensation except as follows:

Except where the firm is otherwise withholding votes for the entire board of directors, Berkshire votes for stock option plans that will result in a minimal annual dilution.

Berkshire votes against stock option plans or proposals that permit replacing or repricing of underwater options.

Berkshire usually votes against stock option plans that permit issuance of options with an exercise price below the stock's current market price.

Except where the firm is otherwise withholding votes for the entire board of directors, Berkshire votes for employee stock purchase plans that limit the discount for shares purchased under the plan to no more than 15% of their market value, have an offering period of 27 months or less and result in dilution of 10% or less.

### **Matters Relating to Capitalization**

The management of a company's capital structure involves a number of important issues, including cash flows, financing needs and market conditions that are unique to the circumstances of each company. As a result, Berkshire votes on a case-by-case basis on board-approved proposals involving changes to a company's capitalization except where Berkshire is otherwise withholding votes for the entire board of directors.

Berkshire votes for proposals relating to the authorization of additional common stock.

Berkshire votes for proposals to effect stock splits (excluding reverse stock splits).

Berkshire votes for proposals authorizing share repurchase programs.

### **Matters Relating to Acquisitions, Mergers, Reorganizations and Other Transactions**

Berkshire votes these issues on a case-by-case basis on board-approved transactions.

### **Matters Relating to Anti-Takeover Measures**

Berkshire votes against board-approved proposals to adopt anti-takeover measures except as follows:

Berkshire votes on a case-by-case basis on proposals to ratify or approve shareholder rights plans.

Berkshire votes on a case-by-case basis on proposals to adopt fair price provisions.

### **Other Business Matters**

Berkshire votes for board-approved proposals approving such routine business matters such as changing the company's name, ratifying the appointment of auditors and procedural matters relating to the shareholder meeting.

Berkshire votes on a case-by-case basis on proposals to amend a company's charter or bylaws.

Berkshire votes against authorization to transact other unidentified, substantive business at the meeting.

## **II. SHAREHOLDER PROPOSALS**

SEC regulations permit shareholders to submit proposals for inclusion in a company's proxy statement. These proposals generally seek to change some aspect of a company's corporate governance structure or to change some aspect of its business operations. Berkshire votes in accordance with the recommendation of the company's board of directors on all shareholder proposals, except as follows:

Berkshire votes for shareholder proposals to require shareholder approval of shareholder rights plans.

Berkshire votes for shareholder proposals that are consistent with Berkshire's proxy voting guidelines for board-approved proposals.

Berkshire votes on a case-by-case basis on other shareholder proposals where the firm is otherwise withholding votes for the entire board of directors.

## **III. VOTING SHARES OF INVESTMENT COMPANIES**

Berkshire may utilize shares of open or closed-end investment companies to implement its investment strategies. Shareholder votes for investment companies that fall within the categories listed in Parts I and II above are voted in accordance with those guidelines.

Berkshire votes on a case-by-case basis on proposals relating to changes in the investment objectives of an investment company taking into account the original intent of the fund and the role the fund plays in the clients' portfolios.

Berkshire votes on a case-by-case basis all proposals that would result in increases in expenses (e.g., proposals to adopt 12b-1 plans, alter investment advisory arrangements or approve fund mergers) taking into account comparable expenses for similar funds and the services to be provided.

#### **IV. VOTING SHARES OF FOREIGN ISSUERS**

In the event Berkshire is required to vote on securities held in foreign issuers – i.e. issuers that are incorporated under the laws of a foreign jurisdiction and that are not listed on a U.S. securities exchange or the NASDAQ stock market, the following guidelines are used, which are premised on the existence of a sound corporate governance and disclosure framework. These guidelines, however, may not be appropriate under some circumstances for foreign issuers and therefore apply only where applicable.

Berkshire votes for shareholder proposals calling for a majority of the directors to be independent of management.

Berkshire votes for shareholder proposals seeking to increase the independence of board nominating, audit and compensation committees.

Berkshire votes for shareholder proposals that implement corporate governance standards similar to those established under U.S. federal law and the listing requirements of U.S. stock exchanges, and that do not otherwise violate the laws of the jurisdiction under which the company is incorporated.

Berkshire votes on a case-by-case basis on proposals relating to (1) the issuance of common stock in excess of 20% of a company's outstanding common stock where shareholders do not have preemptive rights, or (2) the issuance of common stock in excess of 100% of a company's outstanding common stock where shareholders have preemptive rights.

#### **VOTING PROCEDURES WHEN BERKSHIRE UTILIZES A THIRD PARTY PROXY SERVICE**

If Berkshire is utilizing a third party proxy service in connection with certain client accounts, the Proxy Coordinator will ensure that the proxy service receives updated holdings for the affected accounts. The Proxy Coordinator will also ensure that the proxy service delivers its recommendations on a timely basis and that such information is provided to the Proxy Voting Chairman. After the Proxy Voting Chairman authorizes the proxy service to vote, the Proxy Coordinator will maintain records of the proxy service recommendations and voting reports.

#### **CORPORATE ACTIONS**

All corporate action related material will be delivered to Berkshire's corporate action coordinator (the "Corporate Action Coordinator"), who will pay strict attention to any pending corporate actions that may be undertaken by, or with respect to, the issuers of securities held in client accounts. When the Corporate Action Coordinator receives notice of a pending corporate action, that party will be responsible for coordinating with the Proxy Voting Chairman to determine the firm's desired course of action and communicating the firm's instructions to the custodian in a timely manner.

The Corporate Action Coordinator will also keep accurate records of each corporate action and the steps that were taken by the firm in a corporate actions log.

## **Brochure Rule**

Berkshire Asset Management, LLC (“Berkshire”) is a registered investment advisor with the Securities and Exchange Commission. Rule 204-3 of the Investment Advisors Act of 1940 requires that we annually offer all of our clients the opportunity to receive a written disclosure statement describing our background and business practices. This rule is typically referred to as the ‘*Brochure Rule*’.

On July 28, 2010, the United State Securities and Exchange Commission published “Amendments to Form ADV” which amends the disclosure document that we provide to clients as required by SEC Rules. This enclosed Brochure dated March 1, 2011 is a new document prepared according to the SEC’s new requirements and rules. As such, this Brochure is materially different in structure and requires certain new information that our previous brochure did not contain.

In the past we have offered or delivered information about qualifications and business practices to clients on at least an annual basis. Pursuant to new SEC Rules, we will ensure that you receive a summary of any materials changes to this and subsequent Brochures within 120 days of the close of the calendar year. We may further provide other ongoing disclosure information about material changes as necessary.

We will provide a new Brochure as necessary based on changes or new information, at any time, without charge. Other than the new format for this Brochure, there have been no material changes since the last annual update filed on March 24, 2010.

## **Privacy Policy**

Berkshire Asset Management, LLC is committed to keeping nonpublic personal information about you secure and confidential. This notice is intended to help you understand how we fulfill this responsibility.

Periodically, we collect a variety of personal information about you, including:

- Account application and registration information on paper or via the telephone or email.
- Transaction and practice information with us, our affiliates, or others (such as your purchases, sales, or account balances).

We do not disclose your personal information unless authorized by you, or required by law or regulation. For example, we may share this information with others in order to process your transactions. We may also provide this information to companies that perform marketing or administrative services on our behalf, such as printing and mailing, or to other financial institutions with whom we have joint marketing agreements. We require these companies to protect the confidentiality of this information and to use it only to perform the services for which we engaged them.

We take precautions to ensure your information is protected by implementing strict internal security procedures. Only authorized individuals have access to this information. We maintain physical, electronic, and procedural safeguards to protect your nonpublic personal information.

If you decide at some point either to close your account(s) or become an inactive customer, we will continue to adhere to our privacy policies and practices with respect to your nonpublic personal information.

This notice is provided by Berkshire Asset Management, LLC. If you have any questions, please contact us at 570-825-2600.