

**BIRKELBACH MANAGEMENT CORP., INC.**

**SOLICITOR'S DISCLOSURE DOCUMENT**

**AND**

**AGREEMENT**

**February 2006**

Birkelbach Management Corp., Inc.  
208 S. LaSalle Street  
Suite 1700  
Chicago, Illinois 60604  
(312) 853-2820  
(312) 853-3183 (Fax)

# MEMORANDUM

To: Prospective Client of Birkelbach Management Corp., Inc.

From: \_\_\_\_\_, Solicitor

Re: Disclosure Document

Date: \_\_\_\_\_, 200\_\_\_\_\_

Securities and Exchange Commission ("SEC") Rule 206(4)-3 promulgated under the Investment Advisers Act of 1940 ("I.A. Act") requires me, as the solicitor ("Solicitor") of your potential investment advisory account with Birkelbach Management Corp., Inc. ("BMC") to make the following disclosures to you as part of the solicitation process:

Name of Solicitor: \_\_\_\_\_ ("Solicitor")

Name of Investment Adviser: Birkelbach Management Corp., Inc. ("BMC")

Address: 208 S. LaSalle Street  
Suite 1700  
Chicago, Illinois 60604  
Attn: Carl M. Birkelbach  
Telephone and 312-853-2820  
Fax: 312-853-3183 (fax)

The Nature of the Relationship and Affiliation between Solicitor and Investment Adviser:

Solicitor is either an officer, director, employee, registered representative or agent of BMC, its securities broker-dealer affiliate, Birkelbach Investment Securities, Inc. ("BIS"), or is a qualified, by registration and license, third-party independent contractor to BMC.

Statement Regarding

Compensation: I, as Solicitor will be compensated by BMC from its management fee for the investment advisory account solicitation services I render to BMC. No client funds will be used to compensate Solicitor.

Terms of Compensation: BMC will compensate me, as the solicitor of your investment advisory account with BMC on the following basis:

Solicitors will be compensated from BMC's share of its management fee according to the following schedule:

BMC Management Fee		Percent to Solicitor
	<b><u>Equity Accounts</u></b>	
2.00%		0.75%
1.00%		0.25%
0.85%		0.125%
Negotiable		Negotiable
	<b><u>Income Accounts</u></b>	
2.00%		0.75%
1.50%		0.50%
Negotiable		Negotiable

*BIS Solicitors will also be compensated for securities transactions effected in the Client's managed Account.*

Impact on Client: Because BMC will pay Solicitor his/her commission from BMC's quarterly management fee, (payable in arrears) in the percentage amounts set forth above, there will be no impact on Client.

If you have any questions, please do not hesitate to contact me or BMC's principal, Mr. Carl M. Birkelbach.

Please see attached Solicitation Agreement [Sample].

Respectfully submitted,

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, Solicitor

cc: Carl M. Birkelbach

**[SAMPLE]  
SOLICITOR'S  
SOLICITATION AGREEMENT**

AGREEMENT, made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, is by and between Birkelbach Management Corp., Inc. ("BMC" or "Advisor") and \_\_\_\_\_ ("Solicitor"), both Advisor and Solicitor being collectively referred to herein as the "Parties".

WHEREAS, BMC is an investment advisor in securities, registered as such with the Illinois Securities Department; and

WHEREAS, Solicitor desires to solicit or refer prospective investment advisory clients ("Client") to BMC for a fee; and

WHEREAS, BMC desires to obtain the solicitation and referral services of Solicitor and fairly compensate Solicitor therefor;

NOW THEREFORE, in consideration of the premises, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto, intending to be mutually bound, hereby agree:

**1. Term**

The term of this Agreement shall be for one (1) year, subject to annual renewals, and may be cancelable by either party, with our without cause and without penalty, on five (5) days written notice from one party to the other party.

**2. Compensation**

Solicitors will be compensated from BMC's share of its management fee according to the following schedule:

BMC Management Fee

Percent to Solicitor

**Equity Accounts**

2.50%	1.25%
2.00%	0.75%
1.00%	0.25%
0.85%	0.125%
Negotiable	Negotiable

**Income Accounts**

2.00%	1.00%
1.50%	0.50%
Negotiable	Negotiable

*BIS Solicitors will also be compensated for securities transactions effected in the Client's managed Account.*

**3. Representations by Solicitor**

- a) Solicitor is not subject to a "Statutory Disqualification" as that term is defined in section 3(a)(39) of the Securities Exchange Act of 1934.
- b) Solicitor will undertake to perform his duties under this Agreement in a manner consistent with the instructions of BMC and the provisions of the Illinois Securities Act of 1953, as amended and the federal, Investment Adviser's Act of 1940 and the rules and regulations promulgated under such Acts.
- c) Solicitor will, at the time of solicitation of a prospective client, provide the client with a copy of BMC's Disclosure Document and Brochure and, Form ADV – Part II and related documents, as well as a copy of Solicitor's Disclosure Document and Agreement, incorporated herein by this reference, and BMC's Signature Packet.
- d) Solicitor agrees to cooperate with BMC in its obligation to make a bona fide effort to ascertain that Solicitor has complied with this Agreement, so as to enable BMC to form a reasonable basis belief that Solicitor has so complied.

#### **4. Solicitor's Duties**

To solicit, on behalf of BMC, by personal contact, telephone, mail, electronic means and otherwise: qualified individuals, banks, thrift institutions, investment companies, pension and profit sharing plans, trusts, estates, charitable organizations, foundations, ERISA accounts, corporations, other organizations, business entities, associations and the like, to open discretionary, managed investment advisory accounts, within or outside BMC's "Socially Responsible Investing" program, as described in BMC's Disclosure Document and Brochure.

#### **5. Arbitration**

Any dispute regarding this Agreement, its interpretation or enforcement, fees due, etc., shall be submitted exclusively to binding arbitration at the arbitration facilities of NASD Dispute Resolution, Inc. ("NASD-DR") in Chicago, Cook County, Illinois by the written demand of either party hereto, under NASD-DR's Code of Arbitration Procedure then in effect. In any such arbitration proceeding between Solicitor and the Advisor, the prevailing party shall be entitled to reimbursement of the party's costs, filing fees, expenses and reasonable attorney's fees incurred in connection with the proceeding from the initiation of the case through conclusion of the hearing to judgment or a final determination on an Application to Confirm or Vacate Arbitration Award, as the case may be. [Carl this should probably be AAA. Let's discuss.]

#### **6. Notices**

Communications may be sent to Solicitor at: \_\_\_\_\_,  
\_\_\_\_\_ or at such other address as Solicitor may hereafter give BMC in writing, and all communications so sent, whether by mail, fax, e-mail, telephone, messenger, or otherwise, shall be deemed given to Solicitor personally, whether or not actually received, or to BMC at:

208 South LaSalle Street  
Suite 1700  
Chicago, Illinois 60604  
Attn: Carl M. Birkelbach  
(312) 853-2820  
(312) 853-3183 (FAX)  
E-mail: [carlbis@aol.com](mailto:carlbis@aol.com)

Each party shall be entitled to presume the correctness of such address unless informed in writing to the contrary.

**7. Waiver**

No waiver of any provision of this Agreement shall be deemed a waiver of any other provision, nor a continuing waiver of the provision or provisions so waived.

**8. Governing Law**

This Agreement, its validity and construction shall be governed by the laws of the State of Illinois and its provisions shall be continuous.

**9. Invalidity**

If any provision hereof is or at any time should become inconsistent with any present or future law, court decision, statute, rule or regulation of any securities industry SRO, the SEC, or of any other sovereign government agency, and if any of these bodies have jurisdiction over the subject matter of this Agreement, said provision shall be deemed, or be superseded or modified, to conform to such law, rule, or regulation, but in all other respects this Agreement shall continue and remain in full force and effect.

**10. Assignment**

No assignment of this Agreement may be made except with the written consent of the Parties.

**11. Amendment**

This Agreement may not be amended unless such Amendment is in writing and signed by both Parties.

**12. Captions**

The captions in the Agreement are included for the convenience of reference only and in no way define or limit any of the provisions hereof or otherwise affect their construction or effect.

**13. Complete Agreement**

This Agreement contains the final and complete Agreement between the Parties hereto and may not be altered or modified without the signed written consent of both Parties.

IN WITNESS HEREOF, the Parties hereto, intending to be legally bound, have executed this Agreement as of the day and year written above.

Solicitor:

Birkelbach Management Corp., Inc.

\_\_\_\_\_

By:

\_\_\_\_\_  
Carl M. Birkelbach, authorized  
Corporate signatory