

MARKETOCRACY MFOLIO MASTERS PROGRAM AGREEMENT

Marketocracy.com[®] and Investment Research

Marketocracy Data Services LLC (“MDS”), a financial publisher subsidiary of Marketocracy, Inc. (“MI”), operates the Marketocracy.com website (the “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 publishes research about certain top-ranked Marketocracy.com portfolios and stocks for its subscribers, including its investment adviser affiliate, Marketocracy Capital Management LLC (“MCM”). MCM uses this research information in the management of its clients’ portfolios, including both pooled investment vehicles, such as mutual and hedge funds, and separately managed accounts (“SMAs”).¹

FOLIOfn[®] and Folios

Certain of MCM’s SMA clients have established brokerage accounts at FOLIOfn[®] Investments, Inc., a registered broker-dealer (“FOLIOfn”). Just as with a traditional brokerage account, FOLIOfn brokerage customers can place a market, limit, stop, or stop-limit order for thousands of different securities, including stocks, exchange traded funds and no-load mutual funds from many different fund groups.

However, FOLIOfn also offers a special FOLIOfn *Investing*[®] feature that its brokerage customers may use to buy, modify, and sell whole portfolios – what FOLIOfn calls “Folios” – in a single transaction. FOLIOfn says that Folios offer its customers one of the best aspects of mutual funds (diversification) with the benefits of owning individual securities directly through a traditional brokerage service rather than indirectly through a pooled investment vehicle. FOLIOfn customers may choose from a large variety of so-called Ready-to-Go Folios[®], which are pre-packaged *model* baskets of stocks based on indices, sectors, geography, and the like, or may create their own Folios from their own research, a list, newsletter, or even another web site.

SMAs and the FOLIO Advisorsm Platform

An investment adviser uses an SMA to provide more individually tailored and personalized portfolio management for the SMA client than would be possible if the client invested in a mutual, exchange traded or hedge fund. Through SMAs, investment advisers can provide an SMA client the assistance and oversight of a registered investment adviser while also providing their client greater control over taxes, more flexibility in investing, *e.g.*, adding or excluding certain issuers or securities, and an ability to customize portfolio holdings to better satisfy the client’s own risk tolerance and investing style.

¹ Not all MCM clients’ portfolios qualify for the Marketocracy mFOLIO Masters Program.

With these benefits in mind, FOLIOfn offers an integrated brokerage, trading and portfolio management platform, FOLIO Advisorsm, to registered investment advisers whose SMA clients establish brokerage accounts with FOLIOfn. For those SMA clients, the participating investment adviser may use the FOLIOfn Investing[®] feature in managing their SMA clients' portfolios. Thus, these investment advisers may select their SMA clients' portfolios security-by-security or "subscribe" their clients, i.e., invest all or portion of their SMA clients' account assets, to Ready-to-Go Portfolios or to custom *model* portfolios created by the investment adviser. Using FOLIO Advisorsm platform, investment advisers may customize and rebalance any or all such SMAs or Folios at any time.

Marketocracy mFOLIO Masters Program

In connection with the Marketocracy mFOLIO Masters Program (the "Program"), MCM has created certain *model* Folios (each an "mFOLIO") for its SMA clients. 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 Site-related investment research activities, including without limitation surveys and online discussions (collectively, "Research Activities") of single selected Member (each an "mFOLIO Master").

However, just as for the pooled investment vehicles that MCM manages using MDS investment research regarding many top-performing Members, MCM 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. Thus, while an mFOLIO may be the same or even similar to the related mFOLIO Master's Virtual Portfolio, the mFOLIO may differ significantly from the mFOLIO Master's Virtual Portfolio from time-to-time or at all times.

For an MCM SMA client who wishes to benefit from an mFOLIO Masters' Research Activities, MCM may subscribe a portion of a client's SMA client's FOLIOfn brokerage account's assets to the mFOLIO based on that mFOLIO Master's Research Activities (such subscribed assets, "Subscribed Assets"). The amount of Subscribed Assets may vary from time to time for a variety of reasons, including but not limited to (i) the SMA client's particular investment objectives, policies, restrictions and instructions concerning the SMA, which may vary from time to time, (ii) the particular and changing circumstances of the SMA client, and (iii) MCM's fiduciary duty to its SMA clients to use its best investment judgment in managing their SMAs.

For MDS' investment research services for an mFOLIO, MCM pays MDS an annual fee (pro rated monthly) based on a percentage of the average net Subscribed Assets subscribed to that mFOLIO by MCM's SMA clients (the "Subscription Fee"). Currently, the percentage is thirty basis points (0.30%) but may vary over time or for different mFOLIOs. Under the Program, MDS pays all or a portion of the entire Subscription Fee that MDS receives for an mFOLIO to the mFOLIO Master upon whose Research Activities that mFOLIO is based, provided that the mFOLIO Master is then participating in the Program. Currently, MDS pays the mFOLIO Master 100% of the Subscription Fee it receives from MCM for the mFOLIO.

Your Participation

Your participation in the Program as an mFOLIO Master, including without limitation receiving payments of all or portions of the Subscription Fee, is subject to the terms, conditions and requirements set forth in this Marketocracy mFOLIO Masters Program Agreement (this "Agreement"), which, together with the exhibits hereto, are in addition to all other Site rules, terms and conditions, all of which are hereby incorporated by this reference (collectively, the "Terms"). Either you or MDS may terminate this Agreement for any reason or no reason upon written notice to the other, but such termination shall not affect any obligations accrued prior to termination, including but not limited to your right to receive payments you have earned prior to termination (provided you met all of the requirements of the Program and this Agreement in earning such payments).

Please indicate your express acknowledgement and agreement to the Program and this Agreement, including without limitation the foregoing and the specific points enumerated below, by signing and dating this Agreement in the signature block below on page 6.

You shall comply with all United States federal, state or other jurisdictions' laws, rules and regulations (collectively "Applicable Laws") in connection with your being a Member and an mFOLIO Master under the Program, and your use of the Site and the Program, including without limitation your Research Activities (all collectively your "Site Use"). Without limiting the immediately preceding sentence in any way, you shall not use your status as a Member or your Site Use to engage in any fraudulent or manipulative activities, including without limitation "insider trading," "front-running," "touting" or "scalping" securities, or otherwise deriving compensation of any kind from your status as a Member or your Site Use except compensation from MDS pursuant to this Agreement and as disclosed on the Site.

Your compliance with all Applicable Laws is and shall be solely your responsibility and is not and shall not be the responsibility of MDS, MCM or MI (collectively "Marketocracy") or any of their respective affiliates (including but not limited to their respective officers, directors, partners, members, managers, employees, contractor and agents (each an "Affiliate").

Without limiting the immediately preceding two paragraphs in any way, you represent and warrant to Marketocracy that as a Member and in connection with your Site Use, you have in the past complied with, and in the future shall comply with, all Applicable Laws, including without limitation the specific legal requirements under applicable federal and state securities laws, rules and regulations, including without limitation those pertaining to persons offering analyses or opinions regarding securities (*see*, for example, those described in more detail in Exhibit A - "Program Special Legal Requirements," including without limitation any materials referenced there).

At all times, you shall conduct your Site Use, including but not limited to your participation as reasonably requested by MDS in MDS and Site-related investment research activities, including without limitation surveys and online discussions, in good faith and to the best of your abilities.

Any compensation that you receive from MDS under the Program is solely for your Research Activities.

You represent and warrant to Marketocracy that neither your status as a Member nor your Site Use require or have required you to register as an investment adviser² under any Applicable Laws, regardless of whatever your status, actions or inactions are or have been other than in connection with your status as a Member or your Site Use.

If notwithstanding the immediately preceding paragraph, you are, or in the foreseeable future will become, registered as an investment adviser under any Applicable Laws, you represent and warrant to Marketocracy that you have so registered or will so register solely because of your separate status, actions or inactions other than in connection with or as a result of your status as a Member or your Site Use.

You shall conduct (i) yourself as a Member and (ii) your Site Use, including, but not limited to, any communications through the Site's forums or otherwise of opinions, analyses or recommendations regarding securities, so that you shall not be required to register as an investment adviser under any Applicable Laws.

You shall comply with the [MDS Research/Blogging Guidelines and Disclaimers] **[to come]**, as currently in effect and as revised from time to time by MDS in its sole discretion.

You agree to indemnify, defend and hold Marketocracy and each of its Affiliates harmless from against any losses, liabilities, damages, claims, expenses and costs (including without limitation attorneys fees and expenses), arising out of or in any way relating to your Site Use in breach of this contract. This paragraph shall survive the termination of this Agreement.

You shall not make any public or private communication that in any way contradicts or is inconsistent with your Site Use for the purpose of fraudulent gain, whether orally, in writing, electronically or otherwise, including without limitation making any announcement of any kind, posting anything on your own or any other website, or participating in any third party forums / message boards.

Neither you nor your affiliates shall engage in any actual securities or other investment or financial transaction, including buying or selling any security, option, future, contract, derivative or other investment or financial instrument, that in any way contradicts or is inconsistent with your Site Use for the purpose of fraudulent gain.

Without limiting Marketocracy's rights, actions, inactions or discretion in any way, Marketocracy may qualify or impose on any communication or publication regarding your Site Use with any oral or written, electronic or otherwise, disclaimers, legends,

² For example, Section 202(a)(11) of the Investment Advisers Act of 1940, as amended (the "Act"), defines an investment adviser as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities."

qualifications or other statements that in its sole discretion determines to be necessary, appropriate, useful or advisable. This paragraph shall survive the termination of this Agreement.

All ownership and other beneficial interests and rights of each and every kind with respect to the Site, Marketocracy's businesses and clients and any information relating thereto, including without limitation your Site Use and all information and relationships regarding all clients for whom MCM has subscribed to an mFOLIO, are and shall remain Marketocracy's sole property and are strictly confidential and proprietary to Marketocracy. You have no rights or interests of any kind with respect thereto. You shall maintain the confidentiality thereof except to the extent intentionally published by Marketocracy for the general public. This paragraph shall survive the termination of this Agreement.

You shall not solicit any Marketocracy mFOLIO clients at any time during the term of this Agreement and within two (2) years following the termination of this Agreement, provided that this paragraph shall not apply solely with respect to any person that (i) you identify in writing to Marketocracy and (ii) Marketocracy agrees in writing that this paragraph shall not apply to such person, in each case prior to such person becoming a Marketocracy client. This paragraph shall survive the termination of this Agreement.

Without limiting any other provision of this Agreement in any way, in consideration of MDS entering into this Agreement with you, you hereby grant Marketocracy a perpetual, worldwide, fully paid, irrevocable and non-exclusive license to use in good faith your name, likeness, image and biographical information in connection with Marketocracy's businesses, including without limitation MCM's management of mFOLIOS.

Without limiting any other provision of this Agreement or the Terms, you acknowledge and agree that (i) Marketocracy has exclusive control over any references, statements or hyperlinks of any kind regarding its names, its websites and its businesses (including without limitation your status as a Member and your Site Use) (collectively, "Marketocracy Business"), including but not limited to permitting or prohibiting any, in whole or in part, in its sole discretion in each case; and (ii) your participation in the Program as mFOLIO Master and payments thereunder expressly are conditioned upon your observance, support and cooperation in the protection, preservation and enhancement of Marketocracy's proprietary and other rights to Marketocracy Business in good faith and to the best your abilities, including without limitation your immediate compliance with any Marketocracy instructions, written or oral, to cease or modify any references, statements or hyperlinks to Marketocracy Business. This paragraph shall survive the termination of this Agreement.

You are and shall be responsible for all governmental or other taxes, fees, charges or levies of any nature in respect of any payments that you earn or receive from Marketocracy or under the Program, including but not limited to federal, state, local income taxes. This paragraph shall survive the termination of this Agreement.

The truth, accuracy and completeness of the foregoing paragraphs are solely your responsibility (including without limitation the responsibility to seek legal counsel regarding same) and are not the responsibility of Marketocracy.

You have reviewed and understood this Agreement and have not relied upon Marketocracy in any way in making your decision to enter into this Agreement,

You shall re-certify in writing at any other time(s) as requested by MDS (including without limitation following the termination of this Agreement), that (i) you at all times as a Member and in connection with your Site Use have been and are in compliance with all Applicable Laws, the Program and this Agreement, and (ii) each of your representations or warranties in this Agreement are true, complete and accurate in all respects. This paragraph shall survive the termination of this Agreement for a period of one quarter.

You shall notify Marketocracy immediately if you violate or breach any provision of any Applicable Laws, the Program or this Agreement, or if any of your representations or warranties in this Agreement are no longer true, complete or accurate in all respects.

MDS, at any time in its sole discretion in each such case, may change any provision of the Program and this Agreement without any notice to you or any agreement on your part. If MDS changes the Program or this Agreement in any respect, your participation under the current Program and this Agreement immediately shall terminate. To participate under the changed Program, you first must sign the changed Marketocracy mFOLIO Masters Program Agreement.

This Agreement is the sole and entire agreement between you and MDS with respect to the Program and your participation thereunder and supersedes any prior agreements or communications, written or oral, with respect to the Program.

IN WITNESS WHEREOF, the parties have executed this document, and this document is effective, as of the latest dated signature below.

PLEASE PRINT CLEARLY OR TYPE:

Name: _____

Login ID: _____

Signature: _____

Date: _____

Accepted:

MARKETOCRACY DATA SERVICES LLC

By: _____

Kendrick Kam, CEO, Marketocracy, Inc.

Date: _____

Exhibit A**Program Special Legal Requirements**

To participate in the Program, MDS requires you to qualify for the "publisher's" exception set forth in Section 202(a)(11)(D) of the Investment Advisers Act of 1940, as amended (the "Act") and similar provisions under other Applicable Laws (collectively, the "Publisher's Exceptions"). The federal Publisher's Exception excludes from the Act's definition of investment adviser (and thus from its registration requirements) any "publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation." Most states' securities laws offer similar exceptions.

A PRINCIPAL ASSUMPTION OF THE PROGRAM IS THAT YOUR SITE USE AND YOUR RESEARCH ACTIVITIES CONSTITUTES YOUR PUBLICATION OF AN NON-REGISTERED INVESTMENT NEWSLETTER. PLEASE [CLICK HERE](#) FOR INFORMATION, INCORPORATED HEREIN BY THIS REFERENCE, REGARDING QUALIFICATION FOR THE FEDERAL PUBLISHER'S EXCEPTIONS BY INVESTMENT NEWSLETTERS AND THEIR PUBLISHERS.

CAUTION: SUCH INFORMATION IS PROVIDED SOLELY FOR YOUR NOTIFICATION AND CONVENIENCE. IT IS ONLY A BRIEF AND GENERAL SUMMARY AND DOES NOT PURPORT TO BE COMPLETE OR TO REFLECT YOUR PARTICULAR CIRCUMSTANCES. YOU MAY NOT RELY ON IT FOR ANY PURPOSE. IT DOES NOT CONSTITUTE LEGAL ADVICE. YOU MUST CONSULT WITH YOUR OWN LEGAL AND OTHER ADVISORS TO DETERMINE WHETHER OR NOT YOU (I) QUALIFY FOR THE NECESSARY PUBLISHER'S EXCEPTIONS AND (II) MAY PARTICIPATE IN THE PROGRAM IN COMPLIANCE WITH APPLICABLE LAWS.

Exhibit B**INVESTMENT NEWSLETTERS AND THE FEDERAL PUBLISHER'S EXCEPTION**

The following brief description of the federal Publisher's Exception is provided solely for your notification and convenience. It is only a brief and general summary and does not purport to be complete or to reflect your particular circumstances. You may not rely on it for any purpose. It does not constitute legal advice. You must consult with your own legal and other advisors to determine whether or not you (i) qualify for the necessary Publisher's Exceptions and (ii) may participate in the Program in compliance with Applicable Laws.

In *Lowe v. Securities and Exchange Commission*, 472 U.S. 181 (1985) ("Lowe"), the United States Supreme Court held that even an "irregularly published" investment newsletter and "telephone hotline" qualified for the Act's Publisher's Exception. The newsletter and hotline were prepared by a former investment adviser whose registration had been revoked previously by the SEC for various alleged securities laws violations (the "Publisher"). In doing so, the Court carefully analyzed each component of the federal Publisher's Exception.

The Court first stated that the Publisher's publications (impliedly including the telephone hotline) was bona fide because it was "genuine" in the sense that it "contained disinterested commentary and analysis by one who is solely in the publishing business as opposed to containing merely promotional material disseminated by a 'tout' or 'hit and run tipster'." The Court emphasized a qualifying publication must not be "personalized communications masquerading in the clothing of newspapers, news magazines, [etc.]," i.e., an investment adviser could not escape the Act by elevating "form over substance." Most importantly, the Court required that a qualifying publication may contain securities analyses, commentaries, etc., only of a generalized and not personalized nature (meaning not directed toward particular individuals or portfolios).

The Court interpreted "of regular and general circulation" to mean that a qualifying publication must be offered to the general public on a regular schedule (the newsletters in *Lowe* qualifying even though they seldom published in conformance to the advertised schedule). However, the Court held that a publication's production need not necessarily be "regular" in the sense of consistent circulation, but rather "regular" in the sense important to the securities market and not timed to specific market activity or events affecting or having the ability to affect the securities industry."

Accordingly, the Program assumes that a Member's Site Use and Research Activities, including providing of virtual portfolio and trade data information to MDS, could qualify for the federal Publisher's Exception because:

1. A Site Member's Research Activities constitutes a "publication of securities analyses, commentaries, etc." The Court stated that whether "a given publication fits within this exclusion must depend upon the nature of its practices rather than upon the purely formal 'indicia of a newspaper' which it exhibits on its face and in the size and nature of its subscription list." Even though the Site Members portfolio and trade information are not in the form of a newspaper article or lengthy commentaries, such information nevertheless presents the results of thoughtful and considered securities analyses and self-directed "recommendations" to buy, sell or hold the virtual fund's securities. Further such portfolio and trading data is available to the general public through the Site's subscription services.
2. The Site Members' Research Activities, are bona fide and genuine because the Site Members manage their virtual portfolios while participating in the on-going Site competition to become Master Members, not to tout any securities in which the Site Members have interests, directly through ownership, promotion arrangements or otherwise, or to receive undisclosed compensation.
3. The Site Members are interested in the performances of their own virtual portfolios for purposes of the Site's competition. Thus, Research Activities do not constitute personalized investment advice to other persons or with respect to other portfolios.
4. The Site Members publish their Research Activities every day the New York Stock Exchange is open for trading, a very regular publication schedule important to the securities markets that is not timed to specific market activities or events.