

**INVESTMENT ADVISER AND FUND PROFESSIONAL  
AND DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY**

NOTICE: THIS IS A CLAIMS MADE POLICY. EXCEPT AS MAY BE OTHERWISE PROVIDED HEREIN, THE COVERAGE UNDER THIS POLICY IS LIMITED TO LIABILITY FOR WRONGFUL ACTS FOR WHICH CLAIMS ARE FIRST MADE WHILE THE POLICY IS IN FORCE AND WHICH ARE REPORTED TO THE INSURER NO LATER THAN SIXTY (60) DAYS AFTER THE TERMINATION OF THE POLICY. THE LIMIT OF LIABILITY AVAILABLE TO PAY LOSS, INCLUDING JUDGMENT OR SETTLEMENT AMOUNTS, SHALL BE REDUCED BY AMOUNTS INCURRED FOR COSTS, CHARGES AND EXPENSES AS PROVIDED FOR UNDER THE POLICY. FURTHER NOTE THAT AMOUNTS INCURRED FOR COSTS, CHARGES AND EXPENSES SHALL BE APPLIED AGAINST THE APPLICABLE RETENTION AMOUNT.

THIS POLICY DOES NOT PROVIDE FOR ANY DUTY OR OBLIGATION ON THE PART OF THE INSURER TO DEFEND ANY INSURED(S).

In consideration of the payment of the premium, in reliance on the statements in the **Proposal** and subject to all of the provisions of and endorsements to this Policy, the Insurer and the **Insured(s)** agree as follows:

**I. INSURING AGREEMENTS**

**A. INSURED ADVISER PROFESSIONAL AND MANAGEMENT LIABILITY INSURANCE AND CORPORATE REIMBURSEMENT**

- (1) The Insurer shall pay on behalf of the **Insured Adviser** and its **Insured Person(s)** **Loss** arising from a **Claim** first made during the **Policy Period** arising from any **Wrongful Act(s)** in the performance of **Insured Adviser Activities**.
- (2) The Insurer shall pay on behalf of the **Insured Person(s)** **Loss** which the **Insured Person(s)** is legally obligated to pay and which is not indemnified by the **Insured Adviser** (either by reason of the insolvency of the **Insured Adviser** or because the **Insured Adviser** is not permitted to indemnify the **Insured Person(s)**), and which arises from a **Claim** first made against the **Insured Person(s)** during the **Policy Period** for any **Wrongful Act(s)**.
- (3) The Insurer shall pay on behalf of the **Insured Adviser Loss** which the **Insured Adviser** pays as indemnification to the **Insured Person(s)** arising from a **Claim** first made during the **Policy Period** for any **Wrongful Act(s)**.

**B. INSURED FUND PROFESSIONAL AND MANAGEMENT LIABILITY INSURANCE AND CORPORATE REIMBURSEMENT**

- (1) The Insurer shall pay on behalf of the **Insured Fund(s)** and its **Insured Person(s)** **Loss** arising from a **Claim** first made during the **Policy Period** arising from any **Wrongful Act(s)** in the performance of **Insured Fund Activities**.

- (2) The Insurer shall pay on behalf of the **Insured Person(s) Loss** which the **Insured Person(s)** is legally obligated to pay and which is not indemnified by the **Insured Fund(s)** (either by reason of the insolvency of the **Insured Fund(s)** or because the **Insured Fund(s)** is not permitted to indemnify the **Insured Person(s)**), and which arises from a **Claim** first made against the **Insured Person(s)** during the **Policy Period** for any **Wrongful Act(s)**.
- (3) The Insurer shall pay on behalf of the **Insured Fund(s) Loss** which the **Insured Fund(s)** pays as indemnification to the **Insured Person(s)** arising from a **Claim** first made during the **Policy Period** for any **Wrongful Act(s)**.

C. **INSURED SERVICE PROVIDER PROFESSIONAL LIABILITY INSURANCE**

The Insurer shall pay on behalf of the **Insured Service Provider** and its **Insured Person(s) Loss** arising from a **Claim** first made during the **Policy Period** arising from any **Wrongful Act(s)** in the performance of **Professional Services**.

D. **EMPLOYMENT PRACTICES LIABILITY INSURANCE**

The Insurer shall pay on behalf of the **Insured(s) Loss** arising from a **Claim** first made during the **Policy Period** for any **Wrongful Act(s)** brought by or on behalf of any **Insured Person(s)** in his or her capacity as such.

E. **FIDUCIARY LIABILITY INSURANCE**

The Insurer shall pay on behalf of the **Named Insured** and any **Insured Person(s) Loss** resulting from a **Claim** first made during the **Policy Period** arising from any **Wrongful Act(s)** in connection with the creation, administration, operation or termination of an **Employee Benefit Plan**.

II. **DEFINITIONS**

- A. **Broker** means any person engaged in the business of effecting transactions in securities for the account of others.
- B. **Change in Control** means:
  - (1) the acquisition by any person or entity of a controlling interest in the outstanding equity interest or securities controlling the right to manage the affairs of the **Insured Organization**;
  - (2) the merger of the **Insured Organization** into another entity such that the **Insured Organization** is not the surviving entity;
  - (3) the consolidation of the **Insured Organization** with another entity, or the acquisition of substantially all of the assets of the **Insured Organization** by another entity; or

- (4) the liquidation or dissolution of the **Insured Organization**, or the appointment of a conservator, receiver or administrator to manage the affairs of the **Insured Organization**.

C. **Claim** means:

- (1) any written demand for monetary damages against any **Insured(s)** commenced by receipt of such demand by the **Insured(s)**;
- (2) any civil, judicial, administrative, regulatory or arbitration proceeding (including any appeal therefrom) commenced by the service of a complaint or similar pleading and initiated against the **Insured(s)**, including any administrative or regulatory investigation commenced by a formal order of investigation;
- (3) criminal proceedings commenced by the return of an indictment or information; or
- (4) with respect to Insuring Agreement D., any judicial or administrative proceeding, including any proceeding before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body with jurisdiction over **Wrongful Employment Practices** initiated against any **Insured(s)** for **Wrongful Act(s)**.

D. **Costs, Charges and Expenses** mean reasonable and necessary legal fees and expenses (including expert fees) and cost of attachment or similar bonds incurred by the **Insured(s)** in defense of any **Claim**, but shall not include:

- (1) directors' fees, salaries, wages, overhead or benefit expenses associated with directors, officers, equivalent executives or employees of the **Insured Organization**, or
- (2) any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.

E. **Dealer** means any person engaged in the business of buying and selling securities for his or her own account through a broker or otherwise.

F. **Discrimination** means termination of the employment relationship, a demotion or failure or refusal to hire or promote or denial of an employment benefit or the taking of any adverse or differential employment action including, but not limited to, retaliation because of race, color, religion, age, sex, sexual orientation, sexual preference, disability (including "AIDS"), pregnancy or national origin, or any other basis prohibited by federal, state or local law.

G. **Employee Benefit Plan** means any plan as defined by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or any other benefit plan, sponsored solely by the **Named Insured** which is maintained solely for the benefit of the employees of the **Named Insured**.

- H. **Harassment** means unwelcome sexual or non-sexual advances, requests for sexual or non-sexual favors or other verbal or physical conduct of a sexual or non-sexual nature that: (1) explicitly or implicitly are made a condition of employment; (2) are used as a basis for employment decisions; or (3) create a work environment that interferes with performance. **Harassment** includes allegations of assault and battery, but only if they are related to a charge of sexual harassment.
- I. **Independent Director** means a director of any **Insured Fund(s)** who is not an “Interested Person” as defined by Section 2(a)(19) of the Investment Company Act of 1940, as amended.
- J. **Insured(s)** means the **Insured Organization** and the **Insured Person(s)**.
- K. **Insured Adviser** means any partnership, trust or corporation pursuant to an endorsement to this Policy.
- L. **Insured Adviser Activities** mean financial, economic or investment advice or consulting regarding investments or investment management services performed or required to be performed for or on behalf of a customer pursuant to an agreement between such customer and the **Insured Adviser** for a fee, commission or other monetary consideration or other remuneration which inures to the benefit of the **Insured Adviser**.
- M. **Insured Fund(s)** means:
- (1) any investment company pursuant to an endorsement to this Policy; and
  - (2) any investment company registered under the Investment Company Act of 1940, as amended, including any portfolio of an investment company created or sponsored by an **Insured Organization**, after the inception date of this Policy, but only for a period of 60 days from the date the securities of such investment company or portfolio are first sold to the public unless the Insurer, in its sole discretion and upon receipt of whatever underwriting information and payment of whatever additional premium it requires, endorses this Policy to extend coverage beyond such period for such investment company or portfolio.
- N. **Insured Fund Activities** mean the management or operation of the **Insured Fund(s)**.
- O. **Insured Organization** means:
- (1) the **Named Insured**;
  - (2) the **Insured Fund(s)**;
  - (3) the **Insured Service Provider**; and
  - (4) the **Insured Adviser**.
- P. **Insured Person(s)** means:

- (1) for purposes of Insuring Agreement A.(1), any natural person who was, is, or shall become an employee of the **Insured Adviser**, but solely while providing **Insured Adviser Activities** on behalf of the **Insured Adviser**;
- (2) for purposes of Insuring Agreements A.(2) and A.(3), any natural person who was, is, or shall become a duly appointed or elected director, officer or equivalent executive of an **Insured Adviser** or the functional equivalent thereof in the event the **Insured Adviser** is incorporated or domiciled outside the United States;
- (3) for purposes of Insuring Agreement B.(1), any natural person who was, is, or shall become an employee of the **Insured Fund(s)**, but solely while providing **Insured Fund Activities** on behalf of the **Insured Fund(s)**;
- (4) for purposes of Insuring Agreements B.(2) and B.(3), any natural person who was, is, or shall become a duly appointed or elected director, officer or equivalent executive of an **Insured Fund(s)** or the functional equivalent thereof in the event the **Insured Fund(s)** is incorporated or domiciled outside the United States, or an **Independent Director**;
- (5) for purposes of Insuring Agreement C., any natural person who was, is, or shall become an employee of the **Insured Service Provider**, but solely while providing **Professional Services** on behalf of the **Insured Service Provider**;
- (6) for purposes of Insuring Agreement D., any natural person who was, is or shall become a duly appointed or elected director, officer or equivalent executive of an **Insured Organization** or any employee of an **Insured Organization**;
- (7) for purposes of Insuring Agreement E., any natural person who was, is or shall become an employee of the **Named Insured**, but solely in connection with creating, administering, operating or terminating an **Employee Benefit Plan**.

Q. **Insured Service Provider** means any partnership, trust or corporation pursuant to an endorsement to this Policy.

R. **Interrelated Wrongful Acts** mean any **Wrongful Act(s)** which has as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.

S. **Loss** means damages, judgments, settlements and **Costs, Charges and Expenses** incurred by the **Insured(s)** including punitive damages where insurable under the law pursuant to which this Policy shall be construed; however, **Loss** shall not include:

- (1) multiplied damages or the multiple portion of any multiplied damage award or fines or penalties other than, with respect to Insuring Agreement E. only, the five percent or less, or the twenty percent or less, of the civil fines imposed upon the **Named Insured** or any **Insured Person(s)** under Section 502(i) or (1) of ERISA;
- (2) taxes or the loss of tax benefits, criminal or civil fines or penalties imposed by law;

- (3) matters deemed uninsurable under the law pursuant to which this Policy shall be construed;
- (4) any amount allocable to uncovered **Loss** under this Policy;
- (5) any non-monetary or injunctive relief;
- (6) any amount for which the **Insured(s)** is not financially responsible or which are without valid legal recourse;
- (7) the return or restitution of any money, assets or personal profit received by any **Insured(s)** to which such **Insured(s)** is not legally entitled;
- (8) the costs to modify or adapt any building or property to be more accessible or accommodating to any disabled person;
- (9) with respect to Insuring Agreement D., any salary, benefits or other remuneration contemplated by any express or implied employment agreement;
- (10) with respect to Insuring Agreement D., any direct, indirect or derivative consequential damages to any claimant's domestic partner, spouse, parent, child, brother, sister, step-parent, step-child, step-brother or step-sister; or
- (11) with respect to Insuring Agreement E.:
  - (a) benefits paid or payable to a participant or beneficiary of an **Employee Benefit Plan** if such benefits are or may be lawfully paid from the **Employee Benefit Plan**; or
  - (b) contributions paid or payable to the **Employee Benefit Plan** pursuant to the **Named Insured's** obligation to fund the **Employee Benefit Plan**.

- T. **Named Insured** means the entity identified in Item A. of the Declarations of this Policy.
- U. **Optional Extension Period** means the period described in Item H.(2) of the Declarations of this Policy.
- V. **Policy Period** means the period from the effective date and hour of this Policy to the Policy expiration date and hour, as set forth in Item B. of the Declarations of this Policy, or its earlier cancellation date and hour, if any.
- W. **Professional Services** mean the professional services rendered by any **Insured Service Provider** for another **Insured(s)** for a fee, commission or other monetary consideration or other remuneration which inures to the benefit of the **Insured Service Provider**.
- X. **Proposal** means the proposal for this Policy or any policy or policies of which this Policy is a renewal or replacement.
- Y. **Underwriter** means any person who has purchased securities from an issuer (which shall include any person directly or indirectly controlling or controlled by, or under direct or

indirect common control with, an issuer) with a view to offering or selling, or who offers or sells, for an issuer in connection with the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but does not mean a person who merely receives a usual and customary distributors' or sellers' commission.

Z. **Wrongful Act(s)** means:

- (1) with respect to Insuring Agreements A.(1), B.(1) and C., any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or negligent act by the **Insured Person(s)**, or by any person for whom the **Insured Organization** is legally liable;
- (2) with respect to Insuring Agreements A.(2), A.(3), B.(2) and B.(3), any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or negligent act by the **Insured Person(s)** in its capacity as such, or any matter claimed against it solely by reason of its status as an **Insured Person(s)**;
- (3) with respect to Insuring Agreement D., any **Wrongful Employment Practices**;
- (4) with respect to Insuring Agreement E., any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or negligent act by the **Named Insured** or any **Insured Person(s)** in connection with the creation, administration, operation or termination of an **Employee Benefit Plan**.

AA. **Wrongful Employment Practices** mean any actual or alleged:

- (1) **Discrimination**;
- (2) **Harassment**;
- (3) termination, actual or constructive, of an employment relationship in any manner which is allegedly against the law and wrongful;
- (4) wrongful demotion, retaliation, misrepresentation, promissory estoppel and intentional interference with a contract, which arises from an employment relationship;
- (5) libel, slander, defamation, infliction of emotional distress or mental anguish, humiliation, false imprisonment, invasion of privacy and other personal injury allegations which arises from the employment relationship;
- (6) breach of an implied employment contract and breach of the covenant of good faith and fair dealing in an employment contract;
- (7) employment terminations, disciplinary actions, demotions or other employment decisions which violate public policy or the Family Medical Leave Act or similar state law;

- (8) violations of the Uniformed Services Employment and Reemployment Rights Act;
- (9) breach of an employee's federal, state or local civil rights including, but not limited to, any violation of the Civil Rights Act of 1866 or 42 U.S.C. Section 1983;
- (10) retaliation against any **Insured Person(s)** including, but not limited to, retaliation for filing claims under the Federal False Claims Act, retaliation in connection with whistleblowing, retaliation for union activities or in connection with strikes or lockouts;
- (11) wrongful deprivation of career opportunity or failure to grant tenure; or
- (12) negligent hiring or negligent supervision in connection with (1) or (2) above.

### III. EXTENSIONS

#### A. ESTATE AND REPRESENTATIVES EXTENSION

Subject otherwise to the terms hereof, this Policy shall cover **Loss** arising from a **Claim** first made during the **Policy Period** against the estates, heirs, or legal representatives of any deceased **Insured Person(s)**, and the legal representatives of any **Insured Person(s)** in the event of incompetency, insolvency or bankruptcy, who was an **Insured Person(s)** at the time the **Wrongful Act(s)** upon which such **Claim** is based was committed.

#### B. SPOUSAL EXTENSION

Subject otherwise to the terms hereof, this Policy shall cover **Loss** arising from a **Claim** first made during the **Policy Period** against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of any **Insured Person(s)** for a **Claim** arising solely out of his or her status as the spouse of any **Insured Person(s)**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held or transferred from the **Insured Person(s)** to the spouse.

#### C. OPTIONAL EXTENSION PERIOD

- (1) If this Policy is not renewed or is canceled by the Insurer for any reason other than nonpayment of premium, then the **Insured(s)** shall have the right, upon payment of an additional premium calculated at the percentage(s) shown in Item H.(1) of the Declarations of the total annual premium for this Policy, to elect an extension of coverage granted by this Policy with respect to any **Claim** first made during the period of time set forth in Item H.(2) of the Declarations after the effective date of such cancellation or, in the event of a refusal to renew, after the Policy expiration date but only with respect to any **Wrongful Act(s)** committed before such date.
- (2) As a condition precedent to election of the **Optional Extension Period**, the total premium for this Policy must have been paid. The election of the **Optional**

**Extension Period** shall terminate unless written notice together with full payment of premium for the **Optional Extension Period** is given to the Insurer within thirty (30) days after the effective date of such cancellation, or in the event of a refusal to renew, within thirty (30) days after the Policy expiration date. If such notice and premium payment is not timely given to the Insurer, there shall be no right to elect or purchase the **Optional Extension Period**.

- (3) In the event of the purchase of the **Optional Extension Period**, the entire premium therefore shall be deemed earned at its commencement.
- (4) The exercise of the **Optional Extension Period** shall not in any way increase the Limit of Liability of the Insurer.
- (5) The rights contained in Clause III.C. of this Policy shall not apply to any cancellation resulting from the nonpayment of premium.

#### IV. EXCLUSIONS

The Insurer shall not be liable to make any payment in connection with any **Claim**:

- A. for bodily injury, sickness, disease, death, false arrest, false imprisonment, damage to or destruction of tangible property (including loss of the use thereof), and, except to the extent a **Claim** is made for **Wrongful Employment Practices**, assault, battery, invasion of privacy, emotional distress, libel, slander or defamation;
- B. for, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
  - (1) any demand, suit, action or other proceeding against any **Insured(s)** which was pending on or existed prior to the date stated in Item I. of the Declarations, or based upon or arising from the same or substantially similar facts, circumstances or allegations which are the subject of the basis for such demand, suit, action or other proceeding;
  - (2) any **Wrongful Act(s)** or any fact, circumstance or situation which has been the subject of any notice given prior to the **Policy Period** or policy period under any other policy or policies of which this Policy is a renewal or replacement; or
  - (3) any other **Wrongful Act(s)**, fact, circumstance or allegation, whenever occurring, which, together with a **Wrongful Act(s)** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;
- C. for an accounting of profits made from the purchase or sale of securities of the **Insured Organization** by any **Insured Person(s)** within the meaning of Section 16(b) of the 1934 Securities Exchange Act and amendments thereto or similar provisions of any federal, state, local or common law;
- D. for, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, actual or alleged seepage, pollution or contamination of any kind;

provided, however, this exclusion will not apply to **Loss** for which the **Insured Person(s)** is not entitled to indemnification from the **Insured Organization** or any third party;

- E. brought about or contributed to in fact by any dishonest, fraudulent or criminal act or omission, or any personal profit or advantage gained by the **Insured(s)** to which it was not legally entitled;
- F. for, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act(s)** actually or allegedly committed subsequent to a **Change in Control**;
- G. for the liability of any **Insured(s)** arising under any contract or agreement, regardless of whether such liability is direct or assumed; provided, however, this exclusion shall not apply to any **Claim** for the rendering or failure to render **Insured Adviser Activities**, **Insured Fund Activities**, or **Professional Services**, or to liability which would attach to any **Insured(s)** even in the absence of a contract or agreement;
- H. by or on behalf of any **Insured(s)**; provided, however, this exclusion shall not apply to:
  - (1) a **Claim** brought directly or derivatively by a security or interest holder of an **Insured Organization**, if such **Claim** is brought and maintained without the solicitation or assistance of any **Insured(s)**; provided, however, that with respect to any **Claim** against the **Insured Organization** brought on behalf of any **Insured(s)** who also is an interest holder in any **Insured Fund(s)**, such **Claim** will not be excluded solely because such **Insured(s)** may be an interest holder in the **Insured Fund(s)** if such **Claim** is brought without the solicitation or assistance of any **Insured(s)**;
  - (2) a cross-claim or third party complaint or similar judicial process seeking contribution or indemnity which is part of, and results directly from, a **Claim** not otherwise excluded by this Policy;
  - (3) a **Claim** brought by or on behalf of any **Insured Person(s)** for **Wrongful Employment Practices**, except under Insuring Agreement D. where the **Insured Organization** is a corporate entity and such **Claim** is brought by or on behalf of any **Insured Person(s)** who owns or controls twenty-five percent (25%) or more of the voting stock of the **Insured Organization**;
  - (4) a **Claim** brought by any **Insured Fund(s)** where, in the opinion of independent legal counsel selected by and at the expense of an **Insured Organization** (selection of such counsel being subject to the approval of the Insurer, such consent not to be unreasonably withheld), the failure to make such **Claim** would result in liability upon the directors, officers, or equivalent executives of the **Insured Fund(s)**, for failure to assert such **Claim**;
  - (5) a **Claim** made against an **Independent Director** which is brought and maintained without the solicitation, assistance or participation of any **Insured Organization** or any other **Insured Person(s)**; or

- (6) a **Claim** brought by a natural person who formerly was a duly appointed or elected director, officer, or equivalent executive of any **Insured Fund(s)**;
- I. for, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, the service of any **Insured Person(s)** as a director, officer, or equivalent executive of any entity other than the **Insured Organization**;
- J. for, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, the rendering or failure to render advice or other services to clients of any **Insured(s)** in connection with any merger, acquisition, restructuring or divestiture of such client; provided, however, this exclusion shall not apply to **Loss** under Insuring Agreement A.(1) for the **Insured Adviser** and its **Insured Person(s)** in managing securities portfolios, giving financial advice or investment management services relating to or in connection with investing in securities of entities which are involved in any merger, acquisition, restructuring or divestiture, as long as the **Insured Adviser** and its **Insured Person(s)** are not participants in such transaction;
- K. for any **Wrongful Act(s)** concerning any **Insured Fund(s)** or portfolio of any **Insured Fund(s)** occurring prior to the date the registration statement for such **Insured Fund(s)** or portfolio was declared effective by the United States Securities and Exchange Commission or by any other similar agency or authority in any other jurisdiction;
- L. for, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any activities by any **Insured(s)** as an **Underwriter, Broker or Dealer**; provided, however, this exclusion shall not apply to the underwriting, distribution or resale of securities purchased directly from any **Insured Fund(s)** by an **Insured Service Provider** for resale to any **Broker or Dealer**;
- M. for that part of **Loss**, other than **Costs, Charges and Expenses**, for, based upon, or arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, the return or reimbursement of fees or other compensation including but not limited to brokerage fees, commissions, or investment adviser or management fees;
- N. for, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, the inability or delay by any bank or banking firm or broker and/or dealer in securities or commodities to make any payment or settle or effect any transaction of any kind;
- O. for, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, the purchase or sale of securities for which any **Insured(s)** received commissions or other remuneration or where any **Insured(s)** had an equity interest in the issue of such securities;
- P. for, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any actual or alleged violation of the responsibilities, obligations and duties imposed by ERISA or any similar federal, state, local or common law in connection with the activities of any **Insured(s)** as a fiduciary for, or in the administration of, any pension and/or welfare plan sponsored, established, created or maintained for the benefit of the employees of any **Insured Organization**, except: (i) with respect to any **Claim** under

Insuring Agreement D. for retaliation for the filing for benefits under such laws; or (ii) to the extent that coverage is provided under Insuring Agreement E.;

- Q. for, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any obligation under any workers' compensation law; disability benefits, social security or unemployment compensation law; or any similar law; except solely with respect to Insuring Agreement D., any **Claim** for retaliation for the filing for benefits under such laws;
- R. for, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any actual or alleged violation of the National Labor Relations Act, the Workers' Adjustment and Retraining Notification Act, Public Law 100-379, the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Occupational Safety and Health Act, all as amended, or any rules or regulations promulgated thereunder, or similar provisions of any federal, state, local statutory or common law; provided, however, this exclusion does not apply to any **Claim** for retaliation for the filing for benefits under such laws;
- S. for, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, strikes, lockouts, picket lines, replacement or other similar action resulting from labor disputes or labor negotiations or any protections contained within the National Labor Relations Act;
- T. under Insuring Agreement D. where the **Insured Organization** is a partnership with less than ten (10) partners or a corporate entity with less than ten (10) stockholders and such **Claim** is brought by or on behalf of any **Insured Person(s)** who is a domestic partner, spouse, parent, child, brother, sister, step-parent, step-child, step-brother or step-sister of:
- (1) any individual who owns or controls, directly or indirectly, more than 50% of the voting stock of the **Insured Organization**; or
  - (2) the trustees or beneficiaries of any trust created by the **Insured Organization**, any individuals described in paragraph (1) of this exclusion or their relatives or representatives.

For purposes of Exclusion E., it is agreed that the acts of any **Insured(s)** shall not be imputed to any **Insured Person(s)** for the purpose of determining the applicability of the above stated Exclusion E.

## V. **LIMIT OF LIABILITY, RETENTIONS AND DATE OF CLAIM**

- A. The Insurer shall be liable to pay the percentage of **Loss** set forth in Item G. of the Declarations in excess of the amount of the individual Retentions set forth in Item D. of the Declarations for Insuring Agreements A.(1), A.(3), B.(1), B.(3), C., D. and E. up to the Limit of Liability, it being warranted that the remaining percentage of **Loss** shall be uninsured.
- B. In the event a single **Claim** is covered in part under more than one of the Retentions set forth in Item D. of the Declarations, each applicable Retention shall be applied separately to

that part of the **Loss** resulting from such **Claim** covered by each Insuring Agreement. The sum of the total Retentions as finally applied shall constitute the Retention applicable to such **Claim**. The total Retentions as finally determined shall in no event exceed the largest single Retention.

- C. The Insurer's maximum liability under the Policy, whether covered under one or more Insuring Agreements, shall be the Limit of Liability shown in Item C. of the Declarations of this Policy.
- D. More than one **Claim** involving the same **Wrongful Act(s)** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times:
  - (1) the time at which the earliest **Claim** involving the same **Wrongful Act(s)** or **Interrelated Wrongful Acts** is first made, or
  - (2) the time at which the **Claim** involving the same **Wrongful Act(s)** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Clause VII.B.
- E. Payments of **Loss** by the Insurer, including **Costs, Charges and Expenses**, shall reduce the Limit of Liability.
- F. The Insurer shall pay **Costs, Charges and Expenses** no more than once every ninety days.
- G. The Retentions applicable to Insuring Agreements A.(3) and B.(3) shall apply to **Loss** covered by such Insuring Agreements if indemnification by the **Insured Organization** is required by law or legally permissible to the fullest extent permitted by law, regardless whether actual indemnification is made, unless the **Insured Organization** is unable to make such actual indemnification by reason of its insolvency.

## VI. SETTLEMENTS AND DEFENSE

As a condition precedent to coverage, no settlement negotiations or settlement agreements shall occur and no **Costs, Charges and Expenses** shall be incurred without the Insurer's consent, such consent not to be unreasonably withheld.

The Insurer shall have the right to associate themselves in the defense and settlement of any **Claim**. The Insurer may make any investigation it deems appropriate; however, it shall be the duty of the **Insured(s)**, and not the duty of the Insurer, to defend any **Claim**.

## VII. NOTIFICATION

- A. The **Insured(s)** shall, as a condition precedent to its rights to payment under this Policy, give to the Insurer notice in writing of any **Claim** as soon as practicable but in no event later than 60 days after the end of the **Policy Period**.
- B. If, during the **Policy Period**, the **Insured(s)** first becomes aware of any specific **Wrongful Act(s)**, and if the **Insured(s)** during the **Policy Period** gives written notice to the Insurer of:
  - (1) the specific **Wrongful Act(s)**;
  - (2) the consequences which have resulted or may result

therefrom; and (3) the circumstances by which the **Insured(s)** first became aware thereof, then any **Claim** made subsequently arising out of such **Wrongful Act(s)** shall be deemed for the purposes of this Policy to have been made at the time such notice was first given.

- C. Notice to the Insurer provided for in Clauses VII.A. and VII.B. shall be given in writing to the individual identified in Item K. of the Declarations.

## VIII. OTHER INSURANCE

If any **Loss** arising from any **Claim** is insured by another valid policy or policies, then this Policy shall apply only in excess of the amount of any deductibles, retentions and limits of liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to the Policy Number indicated on this Policy's Declarations page.

## IX. GENERAL CONDITIONS

### A. WARRANTY CLAUSE

It is warranted that the particulars and statements contained in the **Proposal** and the information incorporated by reference therein are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy.

By acceptance of this Policy, the **Insured(s)** agrees that:

- (1) the statements in the **Proposal** are its representations and warranties, that it shall be deemed material to the acceptance of the risk or the nature of the risk assumed by the Insurer under this Policy and that this Policy is issued in reliance upon the truth of such representations and warranties;
- (2) in the event the **Proposal** contains misrepresentations which materially affect either the acceptance of the risk or the nature of the risk assumed by the Insurer under this Policy, this Policy in its entirety shall be void and of no effect whatsoever with respect only to that **Insured Person(s)** who had knowledge of any such misrepresentation; and
- (3) except as provided in Clause IX.A.(2) above, this Policy shall be deemed a single unitary contract and not a severable contract of insurance or a series of individual contracts of insurance with each **Insured(s)**.

### B. COVERAGE FOR ACQUISITIONS, MERGERS AND MATERIAL CHANGES

- (1) In the event that after the inception of this Policy the **Named Insured**:
  - (a) acquires all or substantially all the assets of another organization representing less than 10% of the **Named Insured's** total assets, or

- (b) merges with another organization such that the **Named Insured** is the surviving organization and the other organization's assets were less than 10% of the **Named Insured's** total assets,

then coverage shall automatically apply to any **Claim** first made against such new organization acquired by the **Named Insured** following the formation or sponsorship of such acquisition or merger. Such automatic coverage shall be subject to the Insurer's receipt of written notice of the aforementioned event from the **Named Insured** not more than thirty (30) days after the effective date thereof.

- (2) No coverage shall be afforded under this Policy for the assets acquired by the **Named Insured**, the **Wrongful Act(s)** or **Wrongful Employment Practices** of the organization merged with, acquired by or created by the **Named Insured**:
  - (a) for new acquisitions, mergers or changes involving another organization whose assets are equal to or greater than 10% of the **Named Insured's** total assets under management at the time of acquisition, merger or change, or
  - (b) where, after the inception of this Policy, the **Named Insured** otherwise changes its business as described in the **Proposal** in a manner material to the risk underwritten by the Insurer, unless and until:
    - (i) the **Named Insured** provides written notice of the aforementioned event to the Insurer not more than thirty (30) days after the effective date thereof;
    - (ii) the **Named Insured** provides the Insurer with such information in connection therewith as the Insurer may deem necessary;
    - (iii) the **Named Insured** accepts any special terms, conditions, exclusions or additional premium required by the Insurer; and
    - (iv) the Insurer in its sole discretion specifically agrees in writing to provide such coverage.
- (3) If the Insurer does agree to provide coverage for the newly purchased or created organization or subsidiary, or for the **Named Insured's** changed business activities, such coverage will be only for any **Wrongful Act(s)** or **Wrongful Employment Practices** first committed following the effective date of the aforementioned event.

## C. CANCELLATION AND TERMINATION OF COVERAGE

- (1) By acceptance of this Policy, the **Insured(s)** hereby confers the exclusive power and authority to cancel this Policy on its behalf to the **Named Insured**. Such entity may cancel this Policy by surrender thereof to the Insurer, or by mailing to the Insurer written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective

date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.

- (2) The Insurer may cancel this Policy for nonpayment of premium by mailing to the **Named Insured** written notice stating when, not less than 10 days thereafter, such cancellation shall be effective. The Insurer may cancel this Policy for any reason other than nonpayment of premium by mailing to the **Named Insured** written notice stating when, not less than 30 days thereafter, such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the Insurer shall be equivalent to mailing. If the foregoing notice period is in conflict with any governing law or regulation, then such period shall be amended to afford the minimum notice period permitted thereunder.
- (3) If this Policy is cancelled pursuant to (1) hereinabove, the Insurer shall retain the customary short rate proportion of the premium hereon. If this Policy is cancelled pursuant to (2) hereinabove, the Insurer shall retain the pro rata proportion of the premium hereon. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation.

#### D. **INSURED ORGANIZATION AUTHORIZATION CLAUSE**

By acceptance of this Policy, the **Insured(s)** agrees that the **Named Insured** will act on its behalf with respect to the giving of all notices to the Insurer, the receiving of notices from the Insurer, the payment of the premium and the receipt of any return premium.

#### E. **TERRITORY**

This Policy extends to any **Wrongful Act(s)** taking place or a **Claim** made anywhere in the world.

#### X. **ASSISTANCE, COOPERATION, SUBROGATION AND RECOVERIES**

- A. As a condition precedent to coverage, the **Insured(s)** agrees to provide the Insurer with such information, assistance and cooperation as the Insurer or its counsel may reasonably request in connection with the defense, negotiation and settlement of any **Claim**, and the **Insured(s)** further agrees that it shall not take any action which in any way increases the Insurer's exposure under this Policy.
- B. In the event of any payments under this Policy, the Insurer shall be subrogated to the rights of recovery of the **Insured(s)** against any person or entity. The **Insured(s)** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents as are necessary to enable the Insurer effectively to bring suit in its name, and shall provide all other assistance and cooperation which the Insurer may reasonably require.

- C. All recoveries from third parties for payments made under this Policy shall be applied (after first deducting the costs and expenses incurred in obtaining in such recovery) in the following order of priority:
- (1) the **Insured(s)** shall first be reimbursed for the amount by which its legal liability exceeds the amounts paid under this Policy;
  - (2) the Insurer shall then be reimbursed for the amount of its liability under this Policy; and
  - (3) any remaining sum shall be applied towards reimbursement of the Retention borne by the **Insured(s)** under this Policy.

## **XI. ASSIGNMENTS AND ACTION AGAINST THE INSURER**

No action shall lie against the Insurer unless, as a condition precedent thereto, the **Insured(s)** shall have fully complied with all of the terms of this Policy and the amount of the obligation of the **Insured(s)** to pay shall have been fully and finally determined either by judgment against it or by written agreement between it, the claimant and the Insurer. Nothing contained herein shall give any person or organization any right to join the Insurer as a party to any **Claim** against the **Insured(s)** to determine its liability, nor shall the Insurer be impleaded by the **Insured(s)** or its legal representative in any **Claim**. Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed hereon.

## **XII. ENTIRE AGREEMENT**

By acceptance of this Policy, the **Insured(s)** agrees that this Policy embodies all agreements existing between it and the Insurer or any of its agents relating to this Policy. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer shall not effect a waiver or a change in any part of this Policy or estop the Insurer from asserting any right under the terms of this Policy, nor shall the terms be waived or changed except by written endorsement or rider issued by the Insurer to form a part of this Policy.

## **XIII. SERVICE OF SUIT**

It is agreed that in the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer, at the request of the **Insured(s)**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of the Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon Director of Claims, Professional Indemnity Agency, Inc., 37 Radio Circle Drive, Mount Kisco, New York 10549, and that in any suit instituted against any one of them upon this contract, the Insurer will abide by the final decision of such court or of any appellate court in the event of an appeal.

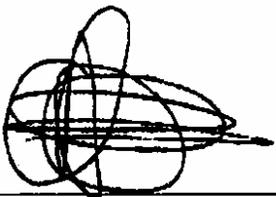
The above-named are authorized and directed to accept service of process on behalf of the Insurer in any such suit and/or upon the request of the **Insured(s)** to give a written undertaking

to the **Insured(s)** that it will enter a general appearance upon the Insurer's behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Insurer hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or such individual's successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured(s)** or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

BY Michael L. Bell  
PRESIDENT

  
SECRETARY