

General Declarations

NOTICES: THIS POLICY PROVIDES CLAIMS-MADE COVERAGE. SUCH COVERAGE IS LIMITED TO LIABILITY FOR **CLAIMS** FIRST MADE AGAINST **INSUREDS** DURING THE **POLICY PERIOD** OR, IF APPLICABLE, THE **EXTENDED REPORTING PERIOD**. COVERAGE UNDER THIS POLICY IS CONDITIONED UPON NOTICE BEING TIMELY PROVIDED TO THE **INSURER** AS REQUIRED UNDER SECTION VI. OF THE GENERAL TERMS AND CONDITIONS. ANY COVERED **DEFENSE COSTS**, AND **INVESTIGATION COSTS** SHALL REDUCE THE LIMITS OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS, AND MAY BE APPLIED AGAINST THE RETENTION AMOUNT. EXCEPT AS EXPRESSLY PROVIDED FOR IN THE EMPLOYMENT PRACTICES LIABILITY **COVERAGE SECTION** AND THE FIDUCIARY LIABILITY **COVERAGE SECTION**, THE **INSURER** DOES NOT ASSUME ANY DUTY TO DEFEND. PLEASE READ THIS POLICY CAREFULLY AND REVIEW ITS COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

POLICY NUMBER:
UMR:

1. **NAMED INSURED:**

Named Insured Address:

2. **POLICY PERIOD:**

Inception:

Expiration:

The **Policy Period** incepts and expires as of 12:01 A.M. at the **Named Insured** Address.

3. COVERAGES AND LIMITS OF LIABILITY APPLICABLE TO THIS POLICY:

	Limit of Liability
<input type="checkbox"/> (a) Directors & Officers and Corporate Securities Liability Coverage Section	
\$	
<input type="checkbox"/> (b) Private Company Management Liability Coverage Section	\$
<input type="checkbox"/> (c) Investment Adviser Professional Liability Coverage Section	\$
<input type="checkbox"/> (d) Investment Fund Coverage Section	\$
<input type="checkbox"/> (e) Insurance Company Professional Liability Coverage Section	\$
<input type="checkbox"/> (f) Bankers Professional Liability Coverage Section	\$
<input type="checkbox"/> (g) Employment Practices Liability Coverage Section	\$
<input type="checkbox"/> (h) Fiduciary Liability Coverage Section	\$

POLICY AGGREGATE LIMIT OF LIABILITY

(i) For all **Coverage Sections** combined: \$

4. **INSURER:**

(a) **Insurer:** Certain Underwriters at Lloyd's of London

(b) Notice of **Claim** or circumstances:

By E-Mail: pcurley@kbrlaw.com

By Mail: Paul T. Curley
Kaufman Borgeest & Ryan LLP
200 Summit Lake Drive
Valhalla, NY 10595

(c) All other notices:
Euclid Financial Institution Underwriters, LLC
234 Spring Lake Drive
Itasca IL 60143

5. EXTENDED REPORTING PERIOD:
Period: 12 Months
Premium: % of the annual premium

6. PREMIUM: \$

IN WITNESS WHEREOF, the **Insurer** has caused this policy to be signed below by its President, Secretary or duly authorized representative.

AUTHORIZED REPRESENTATIVE

General Terms and Conditions

In consideration of the premium charged, and in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this policy, the **Insurer** agrees as follows:

I. TERMS AND CONDITIONS

In addition to the terms and conditions set forth in these General Terms and Conditions, the terms and conditions of each **Coverage Section** shall apply to, and only to that particular **Coverage Section** and in no way shall be construed to apply to any other **Coverage Section**. If any provision of the General Terms and Conditions is inconsistent or in conflict with terms and conditions of any **Coverage Section**, the terms and conditions of such **Coverage Section** shall control for purposes of that **Coverage Section**.

II. DEFINITIONS

The following terms whenever set forth in boldface type in this policy, whether in singular or in plural, shall have the meanings indicated. Any other terms set forth in boldface type in the General Terms and Conditions will have the meanings indicated in the applicable **Coverage Section**.

A. **Application** means

1. the signed application for this policy, if any; all applications for any policy of which this policy is a renewal or replacement; and any attachments, information, warranty, or other materials submitted therewith or incorporated therein; and
2. any filings made by the **Company** to the Securities Exchange Commission or any similar state, local, or foreign governmental entity, within the 12 months preceding the inception date of this policy.

The materials defined in 1. and 2. above shall be deemed attached to and part of this policy.

B. **Company** means

1. the **Named Insured**;
2. any **Subsidiary**; and
3. the **Named Insured** or any **Subsidiary** as a debtor-in-possession under United States of America bankruptcy law or similar legal status under foreign law.

Company does not include and coverage shall not apply under any **Coverage Section** to, any **Subsidiary**, or any **Executive** or **Employee** of any **Subsidiary**, for any **Wrongful Act** committed, attempted, or allegedly committed or attempted, prior to or subsequent to such entity having met the definition of **Subsidiary** as defined in that **Coverage Section**.

- C. **Coverage Section** means collectively or individually the Directors & Officers and Corporate Securities Liability **Coverage Section**, the Private Company Management Liability **Coverage Section**, the Investment Adviser Professional Liability **Coverage Section**, the Investment Fund **Coverage Section**, the Insurance Company Professional Liability **Coverage Section**, the Bankers Professional Liability **Coverage Section**, the Employment Practices Liability **Coverage Section**, or the Fiduciary Liability **Coverage Section**, but only with respect to those indicated as included as part of this policy by all three of the following:
1. indicated by in the General Declarations. (indicates the **Coverage Section** is not included)
 2. for which a **Coverage Section** Limit of Liability is indicated in Item 4 of the General Declarations; and
 3. for which such **Coverage Section** Declarations and coverage form are attached to and form part of this policy.
- D. **Domestic Partner** means a person legally recognized as a domestic or civil union partner under the provisions of any applicable federal, state or local statutory or common law under the provisions of any formal program established by a **Company**.
- E. **Financial Insolvency** means:
1. the appointment by any government official, agency, commission, court or other governmental authority of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate a **Company**;
 2. the filing of a petition under the bankruptcy laws of the United States of America by a **Company**; or
 3. as to both 1. or 2. of this Definition, any equivalent events outside the United States of America.
- F. **Indemnifiable Loss** means **Loss** for which a **Company, Fund Organization or Outside Entity** is permitted or required to indemnify or advance to the **Individual Insureds**.
- G. **Insurer** means the insurance company set forth in Item 4 of the General Declarations.
- H. **Management Control** means
1. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the board of directors of a corporation, the management committee members of a joint venture or partnership, or the members of the management board of a limited liability company; or
 2. having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Company**, to elect, appoint or designate a majority of: the board of directors of a corporation, the management committee of a joint venture or partnership, or the management board of a limited liability company.
- I. **Named Insured** means the entity set forth in Item 1. of the General Declarations.

- J. **Non-indemnifiable Loss** means **Loss** which an **Individual Insured** becomes legally obligated to pay on account of any **Claim**, for which a **Company, Fund Organization** or **Outside Entity** fails to indemnify such **Individual Insured** and:
1. such entity's failure to indemnify is a result of such entity's insolvency; or
 2. such entity is not permitted to indemnify such **Individual Insured** pursuant to statutory or common law.
- K. **Policy Period** means the period of time from the inception date set forth in Item 2 of the General Declarations to the earlier of the expiration date set forth in Item 2 of the General Declarations or the effective date of cancellation of this policy. In the event of cancellation of this policy, the effective date of cancellation shall replace the expiration date in Item 2 of the General Declarations.
- L. **Related Wrongful Acts** means **Wrongful Acts** which are the same, repeated or continuous **Wrongful Acts**, or **Wrongful Acts** which arise from a common causal connection or cause the same or related damages, or have a common nexus or nucleus of facts. **Claims** can allege **Related Wrongful Acts** regardless of whether such **Claims** involve the same or different claimants, **Insureds** or legal causes of action.

III. SPOUSES, ESTATES

Subject otherwise to the terms, conditions and limitations of this policy, this policy provides coverage for any **Claim** solely for **Wrongful Acts** committed or allegedly committed by the **Individual Insureds** made against:

- A. the estates, heirs, or legal representatives of such **Individual Insureds**, in the event of their incompetency, insolvency or bankruptcy; or
- B. the lawful spouse or legally recognized **Domestic Partner** (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world and hereinafter included in the term "spouse") of any such **Individual Insured** for all **Claims** arising solely out of his or her status as spouse of an **Individual Insured**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Individual Insured** and the spouse, or property transferred from the **Individual Insured** to the spouse.

This extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** of the spouse, but shall apply only to **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Individual Insured**, subject to the policy's terms, conditions and exclusions.

IV. LIMITS OF LIABILITY

- A. The Policy Aggregate Limit of Liability set forth in Item 4(i) of the General Declarations shall be the maximum aggregate limit of the **Insurer's** liability for all **Loss**, including **Defense Costs**, under all **Coverage Sections** combined. The purchase of the Extended Reporting Period shall not in any way increase or reinstate any Limits of Liability.
- B. The **Coverage Section** Limit of Liability set forth in Items 4(a), 4(b), 4(c), 4(d), 4(e), 4(f), 4(g), and 4(h) of the General Declarations shall be the maximum aggregate limit of the **Insurer's** liability under each applicable **Coverage Section** for all **Loss**, including **Defense Costs**, under that respective **Coverage Section**. Each such

Coverage Section Limit of Liability shall be part of and not in addition to the Policy Aggregate Limit of Liability set forth in Item 4(i) of the General Declarations. The Policy Aggregate Limit of Liability set forth in Item 4(i) of the General Declarations shall be reduced and may be exhausted by payments of **Loss** under any one or more of the applicable **Coverage Sections**.

- C. Any sub-limits of liability set forth in any applicable **Coverage Section** Declarations shall be part of and not in addition to the Policy Aggregate Limit of Liability set forth in Item 4(i) of the General Declarations and the applicable **Coverage Section** Limit of Liability set forth in that respective **Coverage Section** Declarations.
- D. The **Insurer's** obligations for all **Claims** shall cease upon exhaustion of the Policy Aggregate Limit of Liability and, to the extent any individual applicable **Coverage Section** Limit of Liability is exhausted, the **Insurer's** obligations for all **Claims** under that particular **Coverage Section** shall cease.
- E. **Defense Costs** incurred by the **Insurer** or by the **Insureds** shall be part of and not in addition to the applicable limits of liability. Payment of **Defense Costs** by the **Insurer** shall reduce and may exhaust all applicable limits of liability.
- F. All **Claims** arising out of the same **Wrongful Act** or **Related Wrongful Acts** shall be deemed a single **Claim** and shall be deemed to be first made against the **Insureds** on the date the earliest of such **Claims** is first made against any **Insureds**.

V. RETENTIONS

- A. The Retentions set forth in the respective **Coverage Section** Declarations are separate Retentions pertaining only to **Claims** under that applicable **Coverage Section**. The application of a Retention under one **Coverage Section** shall not reduce or eliminate the Retention under any other applicable **Coverage Section**.
- B. With respect to a **Claim** under any applicable **Coverage Section**, the **Insurer** shall only pay **Loss** which is in excess of the amount set forth in the **Coverage Section** Declarations as the Retention applicable to each such **Claim** under the applicable **Coverage Section**. Such Retention shall be borne by the **Insureds** and shall remain uninsured.
- C. If more than one Retention is applicable to any one **Claim**, the applicable Retentions will be applied separately to the **Loss** resulting from such **Claim**, and the payment of any Retention under one **Coverage Section** will not reduce or eliminate the Retention under any other.
- D. Amounts incurred for **Defense Costs** shall be applied against the applicable Retention.

VI. REPORTING AND NOTICE

- A. The **Insured** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give notice to the **Insurer** by mail or electronically to the address set forth in Item 4(b) of the General Declarations of:
 - 1. any **Claim** made against an **Insured**,
 - 2. any matter which could involve the payment of **Voluntary Compliance Loss** under the **Fiduciary Liability Coverage Section**, if purchased; or

3. any **Derivative Demand** under the Directors & Officers and Corporate Securities Liability **Coverage Section**, Private Company Management Liability **Coverage Section**, or Investment Fund **Coverage Section**, if purchased,

as soon as practicable but no later than (i) the earlier of 60 days after the expiration date shown in Item 2 of the General Declarations or cancellation of the policy or (ii) prior to the end of the Extended Reporting Period, if applicable.

Any subsequent **Claim** which is made against an **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the facts, circumstances, or a **Wrongful Act** alleged in a prior **Claim** for which notice already has been given, or which alleges any **Wrongful Act** which is a **Related Wrongful Act** shall be deemed a **Claim** first made at the time the prior **Claim** was first noticed to the **Insurer**.

- B. If during the **Policy Period** or the Extended Reporting Period, if applicable, the **Insureds** become aware of any circumstances and a **Wrongful Act** which may reasonably be expected to give rise to a **Claim** being made against the **Insureds** and notice is given to the **Insurer** by mail or electronically to the address set forth in Item 4 (b) of the General Declarations of such circumstances, along with a description of the alleged **Wrongful Act**, the allegations anticipated, the reasons for anticipating a **Claim**, and full particulars as to dates, persons and entities involved, then any **Claim** which subsequently is made against the **Insureds** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstances and a **Wrongful Act** which is the same as or is a **Related Wrongful Act** to that alleged or contained in such circumstances, shall be considered made at the time such notice of such circumstance or **Wrongful Act** originally was reported.

Notice pursuant to A. or B. above shall reference the policy number set forth in the General Declarations. If mailed, the date received by the **Insurer** shall constitute the date that such notice was given.

- C. All notices other than those notices provided for in A. and B. above shall be sent to the **Insurer** at the address set forth in Item 4(c) of the General Declarations.

VII. CANCELLATION

This policy or any individual **Coverage Section** may be canceled by the **Named Insured** at any time by mailing written notice to the **Insurer** stating which **Coverage Sections** are to be canceled or that the entire policy is to be canceled and when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation shall be the date the **Insurer** received such notice or any later date specified in the notice, and such effective date shall become the end of the **Policy Period** either for the entire policy or for that respective **Coverage Section**, whichever is cancelled.

This policy may be canceled by or on behalf of the **Insurer** only in the event of non-payment of premium by the **Named Insured**. In the event of non-payment of premium by the **Named Insured**, the **Insurer** may cancel this policy by delivering to the **Named Insured** or by mailing to the **Named Insured**, by registered, certified or other first class mail, at the **Named Insured's** address as stated in Item 1 of the General Declarations, written notice stating when, not less than 10 days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The **Policy Period** terminates at the date and hour specified in such notice.

If the policy or any **Coverage Section** shall be canceled by the **Named Insured**, the **Insurer** shall retain the short rate proportion of the applicable premium herein.

If the Policy is canceled by the **Insurer**, the **Insurer** shall retain the pro rata proportion of the applicable premium herein.

Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

VIII. EXTENDED REPORTING PERIOD

Upon expiration or cancellation of this policy, other than for non-payment of premium, the **Insureds** shall have the right, upon payment of the additional premium indicated in Item 5. of the General Declarations, to an extension of the Notice of Claim provision described in VI. Reporting and Notice of these General Terms and Conditions, for the length of time shown in Item 5 of the General Declarations, commencing on the earlier of the expiration date or effective date of cancellation. Such extension of time to report a **Claim** (herein referred to as the Extended Reporting Period wherever it appears in this policy) shall apply only to **Wrongful Acts** committed, attempted, or allegedly committed or attempted, prior to the earlier of the expiration date or effective date of cancellation, and which are not otherwise excluded by any terms and conditions of this policy. Any **Claim** first made during the Extended Reporting Period shall be deemed to have been made during the **Policy Period**.

As a condition precedent to the right to purchase the Extended Reporting Period, the total premium for this policy must have been paid and the premium for the Extended Reporting Period must be paid in full with written notice of the **Insured's** election to purchase the Extended Reporting Period not more than 30 days after the earlier of the expiration date or effective date of cancellation. The **Insured's** right to purchase the Extended Reporting Period shall otherwise lapse.

If the Extended Reporting Period is purchased, the additional premium shall be deemed fully earned, and the Extended Reporting Period cannot be canceled by any **Insured** or the **Insurer**.

If any premium is owed for the policy, any premium received from the **Named Insured** shall first be applied to the premium owing for the policy with the remainder applied to the premium for the Extended Reporting Period. The Extended Reporting Period shall not take effect unless the outstanding premium for the policy is paid in full and the premium for the Extended Reporting Period is paid when due.

The purchase of the Extended Reporting Period shall not in any way increase or reinstate any limits of liability.

IX. CHANGE OF CONTROL

If during the **Policy Period**:

- A. the **Named Insured** shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert, or

B. any person or entity or group of persons or entities acting in concert shall acquire **Management Control** of the **Named Insured**,

(A. and/or B. herein referred to as a Change In Control), then this policy may not be cancelled thereafter and it shall not, in any event, apply to any **Claim** alleging in whole or in part any **Wrongful Acts** committed, attempted or allegedly committed or attempted by any **Insured** subsequent the date of such Change In Control.

The **Named Insured** shall give the **Insurer** written notice of the Change In Control as soon as practicable, but no later than 30 days after the effective date of the Change In Control together with such other information as the **Insurer** may require.

X. SUBROGATION

In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery thereof, and the **Insureds** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to bring suit effectively in the name of any **Insured**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Individual Insured** under this policy unless such **Individual Insured** has been convicted of a criminal act or been determined by a final, non-appealable adjudication in any underlying proceeding to have committed a dishonest or fraudulent act or to have obtained any profit or advantage to which such **Individual Insured** was not legally entitled.

In the event that the **Insurer** shall for any reason pay **Indemnifiable Loss** on behalf of an **Individual Insured**, the **Insurer's** subrogation rights shall include, but not be limited to, the assertion of indemnification or contribution rights with respect to any such payments it makes or advances. Additionally, upon the **Insurer** making any payment of **Loss** within the applicable Retention, the **Insurer** shall have a direct contractual right under this policy to recover from the **Company**, or in the event of the bankruptcy of the **Company**, from the debtor-in-possession (or equivalent status outside the United States), such **Loss** which was paid within the Retention. Such direct contractual right of recovery against the **Company** shall be in addition to and independent of the **Insurer's** subrogation right pursuant to this Section X. and any other rights the **Insurer** may have under applicable law.

XI. REPRESENTATIONS AND SEVERABILITY

A. The **Insureds** represent that the information contained in the **Application** is true, accurate and complete. This policy is issued in reliance upon the material representations contained in the **Application**. If the **Application** contains material misrepresentations or omissions made with intent to deceive or that materially affect the acceptance of the risk or the hazard assumed by the **Insurer**, this policy shall not afford any coverage for any **Insured** who knew at the inception of the **Policy Period** of the facts that were misrepresented in, or were omitted from, the **Application**. The **Application** shall be deemed attached to, and incorporated into, this policy.

B. For the purpose of determining coverage for each **Insured**:

1. the **Application** shall be construed as a separate application for coverage by each **Insured**;

2. knowledge possessed by any **Insured** shall not be imputed to any **Individual Insured**; and
 3. only knowledge possessed by the **Named Insured's** chief executive officer, chief financial officer, or general counsel or the person signing the **Application** shall be imputed to a **Company**.
- C. Except as described above, knowledge possessed by any **Insured** shall not be imputed to any other **Insured**.
- D. Notwithstanding any other provision of this policy, the **Insurer** shall not rescind this Policy.

XII. NOTICE AND AUTHORITY

The **Named Insured** shall act on behalf of all **Insureds** with respect to the giving of notice of any **Claim**, the giving and receiving of notice of cancellation and non-renewal, the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy, the exercising or declining of the right to tender the defense of a **Claim** to the **Insurer**, and the exercising or declining to exercise any right to an Extended Reporting Period.

XIII. ASSIGNMENT

No change in, modification of or assignment of interest under this policy shall be effective except when made by written endorsement to this policy which is signed by an authorized representative of the **Insurer**.

XIV. ACTION

No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by final judgment against the **Insured** or by written agreement of the **Insured**, the claimant and the **Insurer**.

Any person or entity, or the legal representative thereof, who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or entity shall have any right under this policy to join the **Insurer** as a party to any action against the **Insured** or a **Company** to determine the **Insured's** liability, nor shall the **Insurer** be impleaded by the **Insured** or a **Company** or their legal representative.

XV. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or the **Insured's** estate shall not relieve the **Insurer** of its obligations nor deprive the **Insurer** of its rights or defenses under this policy.

XVI. COVERAGE TERRITORY

Where legally permissible, this policy shall apply to any **Claim** made against any **Insured** anywhere in the world.

For **Claims** made and maintained and **Wrongful Acts** committed in any jurisdiction other than the United States of America or any of its territories or possessions, all

premiums, limits of liability, Retentions, **Loss** and other amounts are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or other elements of **Loss** are stated or incurred in a currency other than United States of America dollars, payment of covered **Loss** (subject to the terms, conditions and limitations of this policy) will be made either in such other currency (at the option of the **Insurer** and if agreeable to the **Named Insured**) or in United States of America dollars at the rate of exchange published in The Wall Street Journal on the next publication date of The Wall Street Journal after the **Insurer's** obligation to pay such **Loss** is established.

XVII. GOVERNMENTAL RESTRICTIONS

This policy does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit the **Insurer** from providing insurance.

XVIII. HEADINGS

The descriptions in the headings and subheadings of this policy, including in any **Coverage Section**, are solely for convenience and form no part of the terms and conditions of coverage.

**Directors & Officers and Corporate Securities Liability Coverage Section
Declarations**

1. NAMED INSURED:

- 2. POLICY PERIOD:** Inception:
Expiration:
The **Policy Period** incepts and expires as of 12:01 A.M. at the
Named Insured Address.

3. (a) **COVERAGE SECTION LIMIT OF LIABILITY:** \$
(b) **Derivative Demand** Investigation Sub-Limit of Liability: \$

4. RETENTIONS:

- (a) Each **Claim** under Coverage A: \$
(b) Each **Claim** other than a **Securities Claim** under Coverage B:\$
(c) Each **Securities Claim** under Coverage B or C: \$
(d) Each **Derivative Demand** under Coverage D: \$

5. CONTINUITY DATE:

Directors & Officers and Corporate Securities Liability Coverage Section

In consideration of the premium charged, in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this policy, and subject to all terms and conditions, the **Insurer** agrees as follows:

I. Insuring Agreements

Coverage A: Individual Insurance Coverage

The **Insurer** shall pay **Loss** of an **Individual Insured** arising from a **Claim** first made against such **Individual Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for any **Wrongful Act** of such **Individual Insured**, except when and to the extent that a **Company** has indemnified the **Individual Insured** for such **Loss**.

Coverage B: Company Reimbursement Coverage

The **Insurer** shall pay **Loss** of a **Company** arising from a **Claim** first made against an **Individual Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for any **Wrongful Act** of such **Individual Insured**, but only when and to the extent that such **Company** has indemnified such **Individual Insured** for such **Loss**.

Coverage C: Company Coverage

The **Insurer** shall pay **Loss** of a **Company** arising from a **Securities Claim** first made against a **Company** during the **Policy Period** or the Extended Reporting Period if applicable for any **Wrongful Act** of a **Company**.

Coverage D: Derivative Demand Investigation Costs Coverage

The **Insurer** shall pay **Investigation Costs** up to the amount of the **Derivative Demand** Investigation Sub-Limit of Liability set forth in Item 3(b) of the Directors & Officers and Corporate Securities Liability **Coverage Section** Declarations incurred by a **Company** solely in response to a **Derivative Demand** first made and reported to the **Insurer** during the **Policy Period**. Payment of any **Investigation Costs** under this **Coverage Section** shall not waive any of the **Insurer's** rights under this policy or at law.

II. Definitions

In addition to the Definitions in the General Terms and Conditions, the following terms whenever set forth in boldface type in this **Coverage Section**, whether in singular or in plural, shall have the meanings indicated.

A. **Claim** means

1. a written demand, other than a **Derivative Demand**, for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute

- of limitations and including any demand for mediation, arbitration or any other alternative dispute resolution process);
2. a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, nonmonetary or injunctive relief which is commenced by:
 - (i) service of a complaint or similar pleading;
 - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges;
 3. a civil, criminal, administrative or regulatory investigation of an **Individual Insured**:
 - (i) once such **Individual Insured** is identified in writing by such investigating authority or enforcement body as a person against whom a proceeding described in subparagraph 2 of this Definition may be commenced; or
 - (ii) in the case of an investigation by the Securities and Exchange Commission (“**SEC**”) or a similar state or foreign government authority, after:
 - (a) the service of a subpoena upon such **Individual Insured**; or
 - (b) the **Individual Insured** is identified in a written “Wells” or other notice from the **SEC** or a similar state or foreign government authority that describes actual or alleged violations of laws by such **Individual Insured**;
 4. a formal request for the extradition of an **Individual Insured** in any country by another country for trial or to answer a criminal accusation.
- B. **Defense Costs** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, but excluding compensation of any **Individual Insured**. **Defense Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.
- C. **Derivative Demand** means a written demand by one or more security holders of a **Company**, without the assistance, participation or solicitation of any **Executive**, upon the board of directors (or equivalent management body) of such **Company** requesting that it file on behalf of the **Company** a civil proceeding in a court of law against any **Executive** for a **Wrongful Act**.
- D. **Employee** means any past, present or future employee of a **Company**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including:
1. any part-time, seasonal and temporary employee,
 2. volunteer, individual who is contracted to perform work for a **Company**, or independent contractor for a **Company** in his or her capacity as such, or
 3. any individual who is leased to a **Company**,

but only if such **Company** provides indemnification to such employees, volunteers or individuals in the same manner as is provided to such **Company's** own employees; provided, however, a **Company** may request that no coverage be provided under this **Coverage Section** for an independent contractor or leased employee named in a specific **Claim**. Such request must be made in writing and within 90 days of the **Claim** being reported to the **Insurer**. If no such request is made, this **Coverage Section** shall apply as if the **Company** determined that such independent contractor or leased employee shall receive coverage.

E. **Employment Practices Violation** means the following actual or alleged acts whether committed directly or indirectly, intentionally or unintentionally:

1. wrongful, including constructive termination of employment (actual or constructive), dismissal or discharge;
2. breach of an implied contract of employment;
3. harassment, sexual harassment or creation of a hostile work environment;
4. discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability);
5. **Retaliation**;
6. employment-related misrepresentations to an **Employee** of a **Company** or applicant for employment with a **Company** or an **Outside Entity**;
7. employment-related libel, slander, humiliation, defamation or invasion of privacy;
8. wrongful failure to employ or promote;
9. wrongful deprivation of a career opportunity with a **Company**, wrongful discipline, wrongful demotion or negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an **Employee** reference;
10. failure to grant tenure; or
11. with respect to 1 through 10 above, negligent hiring, retention, training, supervision, infliction of emotional distress or mental anguish, failure to provide or enforce adequate or consistent organizational policies and procedures, or violation of an individual's civil rights;

but only if the actual or alleged **Employment Practices Violation** is brought by an **Employee** or an **Outside Entity Employee**, or by an applicant for employment with a **Company** or an **Outside Entity**.

F. **Executive** means

1. any natural person who was, now is or shall become a duly elected or appointed director, officer, trustee, governor, general partner, managing general partner, venture partner, administrative general partner, principal, management committee member of a duly constituted committee, or member of the Board of Managers of a **Company**;
2. any past, present or future person in a duly elected or appointed position in a **Company** which is organized and operated in a jurisdiction other than the United States of America or any of its territories or possessions that is equivalent to an executive position listed in paragraph 1. of this Definition; or
3. any past, present or future General Counsel, Chief Compliance Officer, or Risk Manager (or equivalent position) of the **Named Insured**.

G. **Individual Insured** means any

1. **Executive;**
2. **Employee;** or
3. **Outside Entity Executive**

H. **Insured** means any

1. **Company;** or
2. **Individual Insured.**

I. **Investigation Costs** means the reasonable and necessary costs, charges, fees and expenses consented to by the **Insurer** (including, but not limited to, attorney's fees and expert's fees but not including any settlement, judgment or damages and not including any compensation or fees of any **Individual Insured**) incurred by the **Company** or its board of directors (or any equivalent management body), or any committee of the board of directors (or any equivalent management body), solely in connection with the investigation or evaluation of a **Derivative Demand**.

J. **Loss** means

1. the amount that any Insured becomes legally obligated to pay in connection with any covered **Claim**, including, but not limited to:
 - (i) judgments (including pre-judgment and post-judgment interest on any covered portion thereof) and settlements; and
 - (ii) damages, including punitive or exemplary damages and the multiple portion of multiplied damages relating to punitive or exemplary damages to the extent allowed by applicable law. The enforceability of this subparagraph (ii) shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages;
2. **Defense Costs;**
3. with respect to Coverage D of this **Coverage Section, Investigation Costs.**

Loss shall not include, other than **Defense Costs**:

1. any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**;
1. matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed, provided that the **Insurer** shall not assert that, in a **Securities Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933, as amended, the portion of any amounts incurred by **Insureds** which is attributable to such violations constitutes uninsurable loss, and, unless precluded from doing so in a court order, shall treat that portion of all such settlements, judgments and **Defense Costs** as constituting **Loss** under this **Coverage Section**;
2. civil or criminal fines or penalties;
3. taxes or tax penalties (whether imposed by federal, state, local or other governmental authority);
4. the costs and expenses of complying with any injunctive relief or other form of nonmonetary relief;
5. compensation, salary, wages, fees, benefits, overhead, charges or expenses of any **Insured**;

6. any amounts owed pursuant to the terms of any contract or agreement, including any amounts related to any such exposures based on the contract or agreement;
 7. any amount representing the increase in price or consideration where the **Claim** involves allegations that the price or consideration paid or offered to be paid for a merger, consolidation or acquisition of all or a majority of stock issued by or assets owned by any person or entity is inadequate or unfair; or
 8. any reimbursement required under the Sarbanes-Oxley Act of 2002 or any rules, regulations or amendments promulgated thereunder, or any other type of reimbursement, restitution or disgorgement.
- K. **Outside Entity** means any not-for-profit organization, other than a **Subsidiary**.
- L. **Outside Entity Executive** means any **Executive** of a **Company** serving in the capacity as director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only if such service is at the specific request or direction of a **Company**. In the event of a disagreement between a **Company** and an individual as to whether such individual was acting at the specific request or direction of such **Company**, this **Coverage Section** shall abide by the determination of the **Named Insured** on this issue and such determination shall be made by written notice to the **Insurer** within 90 days after the **Claim** first is reported to the **Insurer** pursuant to the terms of the policy. In the event no determination is made within such period, this **Coverage Section** shall apply as if the **Named Insured** determined that such **Executive** was not acting at such **Company**'s specific request or direction.
- M. **Pollutants** means any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and Waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
- N. **Securities Claim** means a **Claim** made against any **Insured**:
1. alleging a violation of any federal, state, local or foreign regulation, rule or statute regulating securities, including, but not limited to, the purchase or sale, or offer or solicitation of an offer to purchase or sell securities which is:
 - (i) brought by any person or entity alleging, arising out of, based upon or attributable to the purchase or sale of, or offer or solicitation of an offer to purchase or sell, any securities of a **Company**; or
 - (ii) brought by a security holder of a **Company** with respect to such security holder's interest in securities of such **Company**; or
 2. brought derivatively on behalf of a **Company** by a security holder of such **Company**.
- O. **Subsidiary** means
1. any entity in which the **Company** has or had **Management Control** on or before the inception date of the policy either directly or indirectly through one or more other **Subsidiaries**;
 2. any entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries**; and whose assets do not exceed 35% of the assets of the **Company**, prior to the **Company** acquiring **Management Control** of the **Subsidiary**; or
 3. any entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries** and whose assets exceed 35% of the assets of the **Company**,

prior to the Company acquiring **Management Control** of the **Subsidiary** but only for a period of 90 days subsequent to the **Company** acquiring **Management Control** of the **Subsidiary**.

P. **Wrongful Act** means

1. any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act, including but not limited to an **Employment Practices Violation**, by an **Individual Insured** in his or her capacity as such, or any matter claimed against such **Individual Insured** solely by reason of his or her status as an **Executive, Employee, or Outside Entity Executive**; or
2. any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by a **Company** in connection with a **Securities Claim**.

III. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

A. alleging, arising out of, based upon or attributable to:

1. gaining of any profit, remuneration or advantage to which the **Insured** was not legally entitled, if a final, non-appealable adjudication in any underlying proceeding establishes the gaining of such profit, remuneration or advantage; or
2. committing of any deliberate criminal or deliberate fraudulent act, or any willful violation of any statute, rule or law, if a final, non-appealable adjudication in any underlying proceeding establishes that such deliberate criminal or deliberate fraudulent act, or willful violation of statute, rule or law was committed.

For purposes of determining the applicability of this Exclusion, (i) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any **Individual Insured**; and (ii) only facts pertaining to and knowledge possessed by any past, present or future chief executive officer or chief financial officer shall be imputed to such **Company**;

B. alleging, arising out of, based upon or attributable to the circumstances alleged or the same **Wrongful Act** or **Related Wrongful Act** alleged or contained in any claim or demand which has been reported, or to any circumstances, **Wrongful Act** or **Related Wrongful Act** of which notice has been given, under any prior insurer's policy or policy of which this **Coverage Section** is a renewal or replacement or which it may succeed in time;

C. alleging, arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against, any **Insured** on or prior to the Continuity Date set forth in Item 5 of the Directors & Officers and Corporate Securities Liability **Coverage Section** Declarations, or the alleging of any **Wrongful Act** which is the same as or a **Related Wrongful Act** to that alleged in such pending or prior demand, suit or proceeding or in the underlying demand, order, decree or judgment;

D. alleging, arising out of, based upon or attributable to any **Wrongful Act** committed or allegedly committed by an **Individual Insured** in his or her capacity as an **Outside Entity Executive** prior to the Continuity Date set forth in Item 5 of the Directors & Officers and Corporate Securities Liability **Coverage Section** Declarations if any **Insured**, as of such **Continuity Date**, knew or could have

reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Coverage Section**;

E. alleging, arising out of, based upon or attributable to any actual or alleged act, error or omission of an **Individual Insured** serving in any capacity other than as an **Executive** or **Employee** of a **Company** or as an **Outside Entity Executive** of an **Outside Entity**;

F. which is brought by or on behalf of any **Insured** in any capacity, or by any entity that owns more than 50% of the outstanding securities of the **Named Insured**.

This Exclusion shall not apply to:

1. any **Claim** brought or maintained derivatively on behalf of a **Company** by one or more securityholders of such **Company**; provided such **Claim** is brought and maintained without any active assistance or participation of, or solicitation by any **Individual Insured**, other than assistance, for which 18 U.S.C. 1514A(a) (the Sarbanes-Oxley Act of 2002), or any similar “whistleblower” protection provision of any applicable federal, state, local or foreign securities law, affords protection to such **Individual Insured**;
2. any employment **Claim** brought or maintained by or on behalf of an **Individual Insured**;
3. any **Claim** brought or maintained by an **Individual Insured** for contribution or indemnity, if such **Claim** directly results from another **Claim** covered under this **Coverage Section**;
4. any **Claim** brought or maintained against an **Individual Insured** by a bankruptcy or insolvency trustee, examiner, receiver, any assignee of such trustee, examiner or receiver, or any creditors’ committee, that has been appointed to take control of, supervise, manage or liquidate the **Named Insured**;
5. any **Claim** brought or maintained by an **Individual Insured** if such **Individual Insured** has not served in the capacity of an **Individual Insured** within any of the three (3) years immediately preceding the date the **Claim** was made, and such **Claim** is brought and maintained totally independent of and without the solicitation, assistance, active participation, or intervention of any other **Insured**;
6. any **Claim** brought and maintained outside the United States of America or any of its territories or possessions, Canada or any other common law country (including any territories thereof); or
7. any **Claim** brought or maintained by an **Employee** of a **Company**; provided such **Employee** is not and has never been an **Executive** of any **Company**;

G. for bodily injury, personal injury, emotional distress, mental anguish, sickness, disease or death of any person, or damage to, loss of use or destruction of any data or tangible property. This Exclusion shall not apply to a **Securities Claim**;

H. for any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**. Other than for expenses (including, but not limited to, legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**, this Exclusion shall not apply to:

- A. a **Claim** under Coverage A of this **Coverage Section**; or
- B. **Loss** in connection with a **Securities Claim**;

- I. for any actual or alleged violations of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any workers' compensation, unemployment compensation, unemployment insurance, retirement benefits, social security benefits, disability benefits, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto, or any similar federal, state, local or foreign statutory law or common law. This Exclusion shall not apply to a **Securities Claim**;
- J. The **Insurer** shall not be liable to make any payment for any **Investigation Costs** in connection with any **Derivative Demand** under Coverage D:
 1. alleging, arising out of, based upon or attributable to any fact, circumstance, situation, transaction, event or **Wrongful Act** which has been reported under any policy of which this **Coverage Section** is a renewal or replacement or which it may succeed in time;
 2. alleging, arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against, any **Insured** on or prior to the Continuity Date set forth in Item 5 of the Directors & Officers and Corporate Securities Liability **Coverage Section** Declarations, or involving any **Derivative Demand** which is the same or related to that at issue in any pending or prior demand, suit, proceeding or in the underlying demand, order, decree or judgment;

IV. Limit of Liability

The following provisions shall apply in addition to the provisions of Section IV. Limit of Liability of the General Terms and Conditions:

- A. Subject to the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations, the **Coverage Section** Limit of Liability set forth in Item 3(a) of the Directors & Officers and Corporate Securities Liability **Coverage Section** Declarations shall be the maximum aggregate limit of the **Insurer's** liability for all **Loss** under this **Coverage Section**. Upon exhaustion of the Limit of Liability set forth in Item 3(a) of the Directors & Officers and Corporate Securities Liability **Coverage Section** Declarations, or the Policy Aggregate Limit of Liability in Item 3 of the General Declarations, the **Insurer's** obligations under this **Coverage Section** shall be deemed completely fulfilled and extinguished.
- B. The maximum limit of the **Insurer's** liability for all **Investigation Costs** incurred in response to **Derivative Demands** made during the **Policy Period**, in the aggregate, shall be the **Derivative Demand Investigation** Sub-Limit of Liability set forth in Item 3(b) of the Directors & Officers and Corporate Securities Liability **Coverage Section** Declarations. The **Derivative Demand Investigation** Sub-Limit of Liability shall be the maximum limit of the **Insurer** under this **Coverage Section** for all **Investigation Costs** regardless of the number of **Derivative Demands** made during the **Policy Period** or the number of **Executives** subject to such **Derivative Demands** and shall be part of, and not in addition to, the **Coverage Section** Limit of Liability set forth in Item 3(a) of the Directors & Officers and Corporate Securities Liability **Coverage Section** Declarations which is also part of and not in addition to the Policy Aggregate Policy Limit of Liability set forth in Item 3 of the General Declarations.

V. Retentions

The following provisions shall apply in addition to the provisions of Section V. Retentions of the General Terms and Conditions:

- A. The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention set forth in Item 4 of the Directors & Officers and Corporate Securities Liability **Coverage Section** Declarations. The Retention shall be borne by the **Insureds** and shall remain uninsured, with regard to:
 - 1. all **Loss** for which the **Company** is required or permitted to provide indemnification to an **Individual Insured**; and
 - 2. **Loss** of a **Company**.
- B. A single Retention shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Acts**.
- C. The Retention set forth in Item 4(a) of the Directors & Officers and Corporate Securities Liability **Coverage Section** Declarations shall apply to each **Claim** under Coverage A of this **Coverage Section**. The Retention set forth in Item 4(b) of the Directors & Officers and Corporate Securities Liability **Coverage Section** Declarations shall apply to each **Claim** other than a **Securities Claim** under Coverage B of this **Coverage Section**. The Retention set forth in Item 4(c) of the Directors & Officers and Corporate Securities Liability **Coverage Section** Declarations shall apply to each **Securities Claim** under Coverage B or Coverage C of this **Coverage Section**. The Retention set forth in Item 4(d) of the Directors & Officers and Corporate Securities Liability **Coverage Section** Declarations shall apply to each **Derivative Demand** under Coverage D of this **Coverage Section**.
- D. The Retention applicable to Coverage B shall apply to **Indemnifiable Loss**, whether or not actual indemnification is made, unless such indemnification is not made by a **Company** solely by reason of its **Financial Insolvency**. A **Company's** certificate of incorporation, charter or other organization documents, including by-laws and resolutions, shall be deemed to require indemnification and advancement to an **Individual Insured** to the fullest extent permitted by law. In the event a **Company** is unable to pay the applicable Retention due to **Financial Insolvency**, then the **Insurer** shall advance payment for **Loss** within the applicable Retention. The **Insurer** shall be entitled to recover the amount of **Loss** advanced within the Retention from such **Company** pursuant to Section VI.B. of this **Coverage Section** and Section X. Subrogation of the General Terms and Conditions.

VI. Defense Costs, Defense Counsel, Settlements & Judgments

A. Defense

The **Insurer** does not assume any duty to defend a **Claim**. The **Insureds** shall defend and contest any **Claim** made against them. An **Insured** shall not retain defense counsel or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. An **Insured** may select a defense counsel different from that selected by other **Insureds** if such selection is required due to an actual conflict of interest and only with the express prior written consent of the **Insurer**.

B. Advancement

The **Insurer** shall advance **Defense Costs** in excess of the applicable Retention on behalf of the **Insured** prior to final disposition of the **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured**, severally according to their respective interests, in the event and to the extent that any such **Insured** shall not be entitled under the Terms and Conditions of this **Coverage Section** to payment of such **Loss**.

C. Cooperation

The **Insurer** shall have the right to associate fully and effectively with each and every **Insured** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Insured** agrees to provide such information as the **Insurer** may reasonably require and to give the **Insurer** full cooperation and take such actions which, in such **Insurer's** judgment, are deemed necessary and practicable to prevent or limit **Loss** arising from any **Wrongful Act**.

D. Prior Written Consent

The **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** or **Investigation Costs** without the prior written consent of the **Insurer**. If the **Insured** admits or assumes any liability in connection with any **Claim** without the consent of the **Insurer**, then the **Insurer** shall not have any obligation to pay **Loss** with respect to such **Claim**. Only those settlements, stipulated judgments, **Defense Costs** and **Investigation Costs** which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this **Coverage Section**. The **Insurer** shall not unreasonably withhold any consent required under this **Coverage Section**, provided that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Claim** (or any portion thereof) is not covered under the terms of this **Coverage Section**. In addition, the **Insured** shall not take any action which prejudices the **Insurer's** rights under this **Coverage Section**.

VII. Other Insurance

Such insurance as is provided by this **Coverage Section** shall apply only as excess over any other valid and collectible insurance, unless such other insurance is expressly written to be excess over any applicable Limit of Liability for this policy or any **Coverage Section**. This policy specifically shall be excess of any other policy pursuant to which any other **Insurer** has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**. For any **Claim** involving an **Outside Entity Executive**, this policy shall be specifically excess of any indemnification by the **Outside Entity** and any insurance coverage afforded to any such **Outside Entity Executive** or **Outside Entity**.

VIII. Allocation

If both **Loss** covered under this **Coverage Section** and loss not covered under this **Coverage Section** are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters and/or includes both covered and non-covered parties, then amounts incurred by the **Insured** on account of such **Claim** shall be allocated between covered **Loss** and non-covered loss based on the relative legal liability and financial exposure of the **Insureds**

to covered and non-covered matters and/or based on the relative legal and financial exposure of the covered and non-covered parties. The **Insureds** and **Insurer** agree to use their best efforts to determine a fair and proper allocation.

If the **Insureds** and the **Insurer** cannot agree on an allocation of covered **Loss** and non-covered loss:

- A. the **Insurer** shall pay the amount of **Loss** that the **Insurer** and **Insureds** agree is not in dispute until a different allocation is negotiated, arbitrated, or judicially determined;
- B. no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
- C. the **Insurer**, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two arbitrators.

IX. Coverage under Coverage D

It is understood and agreed that the **Company** shall be entitled to payment under Coverage D of this **Coverage Section** for **Investigation Costs** not greater than 90 days after the **Company** has made its final decision not to bring a civil proceeding in a court of law against any of its **Executives**, and such decision has been communicated to the security holders who made the demand upon the **Company**.

Nothing in this **Coverage Section**, including Coverage D, shall be construed to afford coverage for any **Claim** brought by the **Company** against one or more of its own **Executives**, other than **Investigation Costs** incurred in a covered **Derivative Demand** or as otherwise provided under Section III.F. of this **Coverage Section**.

X. Order of Payments

In the event of **Loss** arising from any **Claim** for which payment is due under the provisions of this **Coverage Section** but which **Loss**, in the aggregate, exceeds the remaining available Limits of Liability applicable to this **Coverage Section**, (including by virtue of the depletion of the Policy Aggregate Limit of Liability), then the **Insurer** shall:

- A. first pay such **Loss** for which coverage is provided under Coverage A of this **Coverage Section**;
- B. then pay such **Loss** for which coverage is provided under Coverage B of this **Coverage Section**; and
- C. then pay such other **Loss** for which coverage is provided under this policy.

Upon the written request of the **Named Insured**, the **Insurer** shall either pay or withhold payment for **Loss** otherwise payable under Coverages B, C, or D. In the event that the **Insurer** withholds payment as requested by the **Named Insured**, then the **Insurer** shall at any time in the future, at the request of the **Named Insured**, release such **Loss** payment to a **Company**, or make such **Loss** payment directly to the **Individual Insured** in the event of any **Claim** under Coverage A of this **Coverage Section**. The **Insurer's** liability with respect to any payments of **Loss** withheld shall not be increased, and shall not include any interest, as a result of such withholding.

The **Financial Insolvency** of any **Company** or any **Individual Insured** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this **Coverage Section** pursuant to this Section X.

Private Company Management Liability Coverage Section Declarations

1. **NAMED INSURED:**

2. **POLICY PERIOD:** Inception:

Expiration:

The **Policy Period** incepts and expires as of 12:01 A.M. at the
Named Insured Address.

3. (a) **COVERAGE SECTION LIMIT OF LIABILITY:** \$
(b) **Derivative Demand** Investigation Sub-Limit of Liability: \$

4. **RETENTIONS:**

(a) Each **Claim** under Coverage A: \$
(b) Each **Claim** under Coverage B: \$
(c) Each **Claim** under Coverage C: \$
(b) Each **Derivative Demand** under Coverage D: \$

5. **CONTINUITY DATE:**

Private Company Management Liability Coverage Section

In consideration of the premium charged, in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this policy, and subject to all terms and conditions, the **Insurer** agrees as follows:

I. Insuring Agreements

Coverage A: Individual Insurance Coverage

The **Insurer** shall pay **Loss** of an **Individual Insured** arising from a **Claim** first made against such **Individual Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for any **Wrongful Act** of such **Individual Insured**, except when and to the extent that a **Company** has indemnified the **Individual Insured** for such **Loss**.

Coverage B: Company Reimbursement Coverage

The **Insurer** shall pay **Loss** of a **Company** arising from a **Claim** first made against an **Individual Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for any **Wrongful Act** of such **Individual Insured**, but only when and to the extent that such **Company** has indemnified such **Individual Insured** for such **Loss**.

Coverage C: Company Coverage

The **Insurer** shall pay **Loss** of a **Company** arising from a **Claim** first made against a **Company** during the **Policy Period** or the Extended Reporting Period if applicable for any **Wrongful Act** of a **Company**.

Coverage D: Derivative Demand Investigation Costs Coverage

The **Insurer** shall pay **Investigation Costs** up to the amount of the **Derivative Demand** Investigation Sub-Limit of Liability set forth in Item 3(b) of the Directors & Officers and Corporate Securities Liability **Coverage Section** Declarations incurred by a **Company** solely in response to a **Derivative Demand** first made and reported to the **Insurer** during the **Policy Period**. Payment of any **Investigation Costs** under this **Coverage Section** shall not waive any of the **Insurer's** rights under this policy or at law.

II. Definitions

In addition to the Definitions in the General Terms and Conditions, the following terms whenever set forth in boldface type in this **Coverage Section**, whether in singular or in plural, shall have the meanings indicated.

A. **Claim** means

1. a written demand, other than a **Derivative Demand**, for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute

- of limitations and including any demand for mediation, arbitration or any other alternative dispute resolution process);
2. a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, nonmonetary or injunctive relief which is commenced by:
 - (i) service of a complaint or similar pleading;
 - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges;
 3. a civil, criminal, administrative or regulatory investigation of an **Individual Insured**:
 - (i) once such **Individual Insured** is identified in writing by such investigating authority or enforcement body as a person against whom a proceeding described in subparagraph 2 of this Definition may be commenced; or
 - (ii) in the case of an investigation by the Securities and Exchange Commission (“**SEC**”) or a similar state or foreign government authority, after:
 - (a) the service of a subpoena upon such **Individual Insured**; or
 - (b) the **Individual Insured** is identified in a written “Wells” or other notice from the **SEC** or a similar state or foreign government authority that describes actual or alleged violations of laws by such **Individual Insured**;
 4. a formal request for the extradition of an **Individual Insured** in any country by another country for trial or to answer a criminal accusation.
- B. **Defense Costs** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, but excluding compensation of any **Individual Insured**. **Defense Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.
- C. **Derivative Demand** means a written demand by one or more security holders of a **Company**, without the assistance, participation or solicitation of any **Executive**, upon the board of directors (or equivalent management body) of such **Company** requesting that it file on behalf of the **Company** a civil proceeding in a court of law against any **Executive** for a **Wrongful Act**.
- D. **Employee** means any past, present or future employee of a **Company**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including
1. any part-time, seasonal and temporary employee,
 2. volunteer, individual who is contracted to perform work for a **Company**, or independent contractor for a **Company** in his or her capacity as such, or
 3. any individual who is leased to a **Company**,
- but only if such **Company** provides indemnification to such employees, volunteers or individuals in the same manner as is provided to such **Company’s** own employees; provided, however, a **Company** may request that no coverage be provided under this **Coverage Section** for an independent contractor or leased employee named in a specific **Claim**. Such request must be made in writing and within 90 days of the **Claim** being reported to the **Insurer**. If no such request is made, this **Coverage Section** shall apply as if the **Company** determined that such independent contractor or leased employee shall receive coverage.

E. **Employment Practices Violation** means the following actual or alleged acts whether committed directly or indirectly, intentionally or unintentionally:

1. wrongful, including constructive termination of employment (actual or constructive), dismissal or discharge;
2. breach of an implied contract of employment;
3. harassment, sexual harassment or creation of a hostile work environment;
4. discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability);
5. **Retaliation**;
6. employment-related misrepresentations to an **Employee** of a **Company** or applicant for employment with a **Company** or an **Outside Entity**;
7. employment-related libel, slander, humiliation, defamation or invasion of privacy;
8. wrongful failure to employ or promote;
9. wrongful deprivation of a career opportunity with a **Company**, wrongful discipline, wrongful demotion or negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an **Employee** reference;
10. failure to grant tenure; or
11. with respect to 1 through 10 above, negligent hiring, retention, training, supervision, infliction of emotional distress or mental anguish, failure to provide or enforce adequate or consistent organizational policies and procedures, or violation of an individual's civil rights;

but only if the actual or alleged **Employment Practices Violation** is brought by an **Employee** or an **Outside Entity Employee**, or by an applicant for employment with a **Company** or an **Outside Entity**.

F. **Executive** means

1. any natural person who was, now is or shall become a duly elected or appointed director, officer, trustee, governor, general partner, managing general partner, venture partner, administrative general partner, principal, management committee member of a duly constituted committee, or member of the Board of Managers of a **Company**;
2. any past, present or future person in a duly elected or appointed position in a **Company** which is organized and operated in a jurisdiction other than the United States of America or any of its territories or possessions that is equivalent to an executive position listed in paragraph 1. of this Definition; or
3. any past, present or future General Counsel, Chief Compliance Officer, or Risk Manager (or equivalent position) of the **Named Insured**.

G. **Individual Insured** means any

1. **Executive**;
2. **Employee**; or
3. **Outside Entity Executive**

H. **Insured** means any

1. **Company**; or
2. **Individual Insured**.

- I. **Investigation Costs** means the reasonable and necessary costs, charges, fees and expenses consented to by the **Insurer** (including, but not limited to, attorney's fees and expert's fees but not including any settlement, judgment or damages and not including any compensation or fees of any **Individual Insured**) incurred by the **Company** or its board of directors (or any equivalent management body), or any committee of the board of directors (or any equivalent management body), solely in connection with the investigation or evaluation of a **Derivative Demand**
- J. **Loss** means
1. the amount that any Insured becomes legally obligated to pay in connection with any covered **Claim**, including, but not limited to:
 - (i) judgments (including pre-judgment and post-judgment interest on any covered portion thereof) and settlements; and
 - (ii) damages, including punitive or exemplary damages and the multiple portion of multiplied damages relating to punitive or exemplary damages. The enforceability of this subparagraph (ii) shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages;
 2. **Defense Costs**;
 3. with respect to Coverage D of this **Coverage Section**, **Investigation Costs**.
- Loss** shall not include, other than **Defense Costs**:
1. any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**;
 2. matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
 3. civil or criminal fines or penalties;
 4. taxes or tax penalties (whether imposed by federal, state, local or other governmental authority);
 5. the costs and expenses of complying with any injunctive relief or other form of nonmonetary relief;
 6. compensation, salary, wages, fees, benefits, overhead, charges or expenses of any **Insured**;
- K. **Outside Entity** means any not-for-profit organization, other than a **Subsidiary**.
- L. **Outside Entity Executive** means any **Executive** of a **Company** serving in the capacity as director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only if such service is at the specific request or direction of a **Company**. In the event of a disagreement between a **Company** and an individual as to whether such individual was acting at the specific request or direction of such **Company**, this **Coverage Section** shall abide by the determination of the **Named Insured** on this issue and such determination shall be made by written notice to the **Insurer** within 90 days after the **Claim** first is reported to the **Insurer** pursuant to the terms of the policy. In the event no determination is made within such period, this **Coverage Section** shall apply as if the **Named Insured** determined that such **Executive** was not acting at such **Company's** specific request or direction.
- M. **Pollutants** means any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and Waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
- N. **Subsidiary** means

1. any entity in which the **Company** has or had **Management Control** on or before the inception date of the policy either directly or indirectly through one or more other **Subsidiaries**;
2. any entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries**; and whose assets do not exceed 35% of the assets of the **Company**, prior to the **Company** acquiring **Management Control** of the **Subsidiary**; or
3. any entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries** and whose assets exceed 35% of the assets of the **Company**, prior to the **Company** acquiring **Management Control** of the **Subsidiary** but only for a period of 90 days subsequent to the **Company** acquiring **Management Control** of the **Subsidiary**.

O. **Wrongful Act** means

1. any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act, including but not limited to an **Employment Practices Violation**, by an **Individual Insured** in his or her capacity as such, or any matter claimed against such **Individual Insured** solely by reason of his or her status as an **Executive, Employee, or Outside Entity Executive**; or
2. any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by a **Company**.

III. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A. alleging, arising out of, based upon or attributable to:
1. gaining of any profit, remuneration or advantage to which the **Insured** was not legally entitled, if a final, non-appealable adjudication in any underlying proceeding establishes the gaining of such profit, remuneration or advantage; or
 2. committing of any deliberate criminal or deliberate fraudulent act, or any willful violation of any statute, rule or law, if a final, non-appealable adjudication in any underlying proceeding establishes that such deliberate criminal or deliberate fraudulent act, or willful violation of statute, rule or law was committed.

For purposes of determining the applicability of this Exclusion, (i) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any **Individual Insured**; and (ii) only facts pertaining to and knowledge possessed by any past, present or future chief executive officer or chief financial officer;

- B. alleging, arising out of, based upon or attributable to the circumstances alleged or the same **Wrongful Act** or **Related Wrongful Act** alleged or contained in any claim or demand which has been reported, or to any circumstances, **Wrongful Act** or **Related Wrongful Act** of which notice has been given, under any prior insurer's policy or policy of which this **Coverage Section** is a renewal or replacement or which it may succeed in time;
- C. alleging, arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against, any **Insured** on or prior to the Continuity Date set forth in Item 5 of the Private

Company Management Liability **Coverage Section** Declarations, or the alleging of any **Wrongful Act** which is the same as or a **Related Wrongful Act** to that alleged in such pending or prior demand, suit or proceeding or in the underlying demand, order, decree or judgment;

- D. alleging, arising out of, based upon or attributable to any **Wrongful Act** committed or allegedly committed by an **Individual Insured** in his or her capacity as an **Outside Entity Executive** prior to the Continuity Date set forth in Item 5 of the Private Company Management Liability **Coverage Section** Declarations if any **Insured**, as of such **Continuity Date**, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Coverage Section**;
- E. alleging, arising out of, based upon or attributable to any actual or alleged act, error or omission of an **Individual Insured** serving in any capacity other than as an **Executive** or **Employee** of a **Company** or as an **Outside Entity Executive** of an **Outside Entity**;
- F. which is brought by or on behalf of any **Insured** in any capacity, or by any entity that owns more than 50% of the outstanding securities of the **Named Insured**.

This Exclusion shall not apply to:

1. any **Claim** brought or maintained derivatively on behalf of a **Company** by one or more securityholders of such **Company**; provided such **Claim** is brought and maintained without any active assistance or participation of, or solicitation by any **Individual Insured**, other than assistance, for which 18 U.S.C. 1514A(a) (the Sarbanes-Oxley Act of 2002), or any similar “whistleblower” protection provision of any applicable federal, state, local or foreign securities law, affords protection to such **Individual Insured**;
 2. any employment **Claim** brought or maintained by or on behalf of an **Individual Insured**;
 3. any **Claim** brought or maintained by an **Individual Insured** for contribution or indemnity, if such **Claim** directly results from another **Claim** covered under this **Coverage Section**;
 4. any **Claim** brought or maintained against an **Individual Insured** by a bankruptcy or insolvency trustee, examiner, receiver, any assignee of such trustee, examiner or receiver, or any creditors’ committee, that has been appointed to take control of, supervise, manage or liquidate the **Named Insured**;
 5. any **Claim** brought or maintained by an **Individual Insured** if such **Individual Insured** has not served in the capacity of an **Individual Insured** within any of the three (3) years immediately preceding the date the **Claim** was made, and such **Claim** is brought and maintained totally independent of and without the solicitation, assistance, active participation, or intervention of any other **Insured**; or
 6. any **Claim** brought and maintained outside the United States of America or any of its territories or possessions, Canada or any other common law country (including any territories thereof);
- G. alleging, arising out of, based upon or attributable to any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any state blue sky securities law, or any other federal, state or local securities law, including any amendments thereto, or any rule or regulation promulgated thereunder or any similar common law imposing liability in connection with the offering, sale or purchase of securities of a **Company** or an **Outside Entity**. This Exclusion will not apply to:

1. any **Claim** alleging, arising out of, based upon or attributable to any offer, purchase or sale of securities, whether debt or equity, in a transaction or a series of transactions that are exempt from registration under the Securities Act of 1933 and prior to any public offering of securities; or
 2. any **Claim** made by any security holder of a **Company** for the failure of such **Company** to undertake or complete a public offering or sale of securities of such **Company**;
- H. alleging, arising out of, based upon or attributable to the purchase by a **Company** of securities of an entity whose equity securities are traded on any U.S. public stock exchange or has any debt instruments that are traded publicly, which results in such entity becoming a **Subsidiary** of a **Company**;
- I. for bodily injury, personal injury, emotional distress, mental anguish, sickness, disease or death of any person, or damage to, loss of use or destruction of any data or tangible property;
- J. for any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**. Other than for expenses (including, but not limited to, legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**, this Exclusion shall not apply to a **Claim** under Coverage A of this **Coverage Section**;
- K. for any actual or alleged violations of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any workers' compensation, unemployment compensation, unemployment insurance, retirement benefits, social security benefits, disability benefits, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto, or any similar federal, state, local or foreign statutory law or common law;
- L. alleging, arising out of, based upon or attributable to any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty committed, attempted or allegedly committed or attempted in connection with the rendering of, or actual or alleged failure to render, any professional services for others by any person or entity otherwise entitled to coverage under this **Coverage Section**;
- M. with respect to Coverage C of this **Coverage Section** only:
1. alleging, arising out of, based upon or attributable to invasion of privacy, plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret, service mark, trade name or any other intellectual property rights;
 2. for any actual or alleged violation of any law, whether statutory, regulatory or common law, as respects the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships;
 3. alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the **Company** or any other **Insured** under any express

- contract or agreement. This Exclusion shall not apply to liability which would have attached in the absence of such express contract or agreement;
4. alleging, arising out of, based upon or attributable to any product malfunction or failure of any product to perform as a result of any defect, deficiency, inadequacy or dangerous condition in the product or in the design or manufacture of the product;
 5. for injury resulting from libel, slander, oral or written publication of defamatory or disparaging material, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium; or
 6. alleging, arising out of, based upon or attributable to:
 - (i) the refusal, failure or inability of any **Insured** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered;
 - (ii) improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**; or
 - (iii) failure to provide or enforce legally required meal or rest break periods;
 7. alleging, arising out of, based upon, or attributable to any **Employment Practices Violation**;

N. The **Insurer** shall not be liable to make any payment for any **Investigation Costs** in connection with any **Derivative Demand** under Coverage D:

1. alleging, arising out of, based upon or attributable to any fact, circumstance, situation, transaction, event or **Wrongful Act** which has been reported under any policy of which this **Coverage Section** is a renewal or replacement or which it may succeed in time;
2. alleging, arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against, any **Insured** on or prior to the Continuity Date set forth in Item 5 of the Private Company Management Liability **Coverage Section** Declarations, or involving any **Derivative Demand** which is the same or related to that at issue in any pending or prior demand, suit, proceeding or in the underlying demand, order, decree or judgment.

IV. Limit of Liability

The following provisions shall apply in addition to the provisions of Section IV. Limit of Liability of the General Terms and Conditions:

- A. Subject to the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations, the **Coverage Section** Limit of Liability set forth in Item 3(a) of the Private Company Management Liability **Coverage Section** Declarations shall be the maximum aggregate limit of the **Insurer's** liability for all **Loss** under this **Coverage Section**. Upon exhaustion of the Limit of Liability set forth in Item 3(a) of the Private Company Management Liability **Coverage Section** Declarations, or the Policy Aggregate Limit of Liability in Item 3 of the General Declarations, the **Insurer's** obligations under this **Coverage Section** shall be deemed completely fulfilled and extinguished.
- B. The maximum limit of the **Insurer's** liability for all **Investigation Costs** incurred in response to **Derivative Demands** made during the **Policy Period**, in the aggregate, shall be the **Derivative Demand Investigation** Sub-Limit of Liability set forth in Item 3(b) of this Private Company Management Liability **Coverage Section** Declarations. The **Derivative Demand Investigation** Sub-Limit of

Liability shall be the maximum limit of the **Insurer** under this **Coverage Section** for all **Investigation Costs** regardless of the number of **Derivative Demands** made during the **Policy Period** or the number of **Executives** subject to such **Derivative Demands** and shall be part of, and not in addition to, the **Coverage Section** Limit of Liability set forth in Item 3(a) of the Private Company Management Liability **Coverage Section** Declarations which is also part of and not in addition to the Policy Aggregate Policy Limit of Liability set forth in Item 3 of the General Declarations.

V. Retentions

The following provisions shall apply in addition to the provisions of Section V. Retentions of the General Terms and Conditions:

- A. The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention set forth in Item 4 of the Private Company Management Liability **Coverage Section** Declarations. The Retention shall be borne by the **Insureds** and shall remain uninsured.
- B. A single Retention shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Acts**.
- C. The Retention set forth in Item 4(a) of the Private Company Management Liability **Coverage Section** Declarations shall apply to each **Claim** under Coverage A of this **Coverage Section**. The Retention set forth in Item 4(b) of the Private Company Management Liability **Coverage Section** Declarations shall apply to each **Claim** under Coverage B of this **Coverage Section**. The Retention set forth in Item 4(c) of the Private Company Management Liability **Coverage Section** Declarations shall apply to each **Claim** under Coverage C of this **Coverage Section**. The Retention set forth in Item 4(d) of the Private Company Management Liability **Coverage Section** Declarations shall apply to each **Derivative Demand** under Coverage D of this **Coverage Section**.
- D. The Retention applicable to Coverage B shall apply to **Indemnifiable Loss**, whether or not actual indemnification is made, unless such indemnification is not made by a **Company** solely by reason of its **Financial Insolvency**. A **Company's** certificate of incorporation, charter or other organization documents, including by-laws and resolutions, shall be deemed to require indemnification and advancement to an **Individual Insured** to the fullest extent permitted by law.
- E. In the event a **Company** is unable to pay the applicable Retention due to **Financial Insolvency**, then the **Insurer** shall advance payment for **Loss** within the applicable Retention. The **Insurer** shall be entitled to recover the amount of **Loss** advanced within the Retention from such **Company** pursuant to Section VI.B. of this **Coverage Section** and Section X. Subrogation of the General Terms and Conditions.

VI. Defense Costs, Defense Counsel, Settlements & Judgments

A. Defense

The **Insurer** does not assume any duty to defend a **Claim**. The **Insureds** shall defend and contest any **Claim** made against them. An **Insured** shall not retain defense counsel or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. An **Insured** may select a defense

counsel different from that selected by other **Insureds** if such selection is required due to an actual conflict of interest and only with the express prior written consent of the **Insurer**.

B. Advancement

The **Insurer** shall advance **Defense Costs** in excess of the applicable Retention on behalf of the **Insured** prior to final disposition of the **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured**, severally according to their respective interests, in the event and to the extent that any such **Insured** shall not be entitled under the Terms and Conditions of this **Coverage Section** to payment of such **Loss**.

C. Cooperation

The **Insurer** shall have the right to associate fully and effectively with each and every **Insured** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Insured** agrees to provide such information as the **Insurer** may reasonably require and to give the **Insurer** full cooperation and take such actions which, in such **Insurer's** judgment, are deemed necessary and practicable to prevent or limit **Loss** arising from any **Wrongful Act**.

D. Prior Written Consent

The **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** or **Investigation Costs** without the prior written consent of the **Insurer**. If the **Insured** admits or assumes any liability in connection with any **Claim** without the consent of the **Insurer**, then the **Insurer** shall not have any obligation to pay **Loss** with respect to such **Claim**. Only those settlements, stipulated judgments, **Defense Costs** and **Investigation Costs** which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this **Coverage Section**. The **Insurer** shall not unreasonably withhold any consent required under this **Coverage Section**, provided that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Claim** (or any portion thereof) is not covered under the terms of this **Coverage Section**. In addition, the **Insured** shall not take any action which prejudices the **Insurer's** rights under this **Coverage Section**.

VII. Other Insurance

Such insurance as is provided by this **Coverage Section** shall apply only as excess over any other valid and collectible insurance, unless such other insurance is expressly written to be excess over any applicable Limit of Liability for this policy or any **Coverage Section**. This policy specifically shall be excess of any other policy pursuant to which any other **Insurer** has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**. For any **Claim** involving an **Outside Entity Executive**, this policy shall be specifically excess of any indemnification by the **Outside Entity** and any insurance coverage afforded to any such **Outside Entity Executive** or **Outside Entity**.

VIII. Allocation

If both **Loss** covered under this **Coverage Section** and loss not covered under this **Coverage Section** are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters and/or includes both covered and non-covered parties, then amounts incurred by the **Insured** on account of such **Claim** shall be allocated between covered **Loss** and non-covered loss based on the relative legal liability and financial exposure of the **Insureds** to covered and non-covered matters and/or based on the relative legal and financial exposure of the covered and non-covered parties. The **Insureds** and **Insurer** agree to use their best efforts to determine a fair and proper allocation.

If the **Insureds** and the **Insurer** cannot agree on an allocation of covered **Loss** and non-covered loss:

- A. the **Insurer** shall pay the amount of **Loss** that the **Insurer** and **Insureds** agree is not in dispute until a different allocation is negotiated, arbitrated, or judicially determined;
- B. no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
- C. the **Insurer**, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two arbitrators.

IX. Coverage under Coverage D

It is understood and agreed that the **Company** shall be entitled to payment under Coverage D of this **Coverage Section** for **Investigation Costs** not greater than 90 days after the **Company** has made its final decision not to bring a civil proceeding in a court of law against any of its **Executives**, and such decision has been communicated to the security holders who made the demand upon the **Company**.

Nothing in this **Coverage Section**, including Coverage D, shall be construed to afford coverage for any **Claim** brought by the **Company** against one or more of its own **Executives**, other than **Investigation Costs** incurred in a covered **Derivative Demand** or as otherwise provided under Section III.F. of this **Coverage Section**.

X. Order of Payments

In the event of **Loss** arising from any **Claim** for which payment is due under the provisions of this **Coverage Section** but which **Loss**, in the aggregate, exceeds the remaining available Limits of Liability applicable to this **Coverage Section**, (including by virtue of the depletion of the Policy Aggregate Limit of Liability), then the **Insurer** shall:

- A. first pay such **Loss** for which coverage is provided under Coverage A of this **Coverage Section**;
- B. then pay such **Loss** for which coverage is provided under Coverage B of this **Coverage Section**; and
- C. then pay such other **Loss** for which coverage is provided under this policy.

Upon the written request of the **Named Insured**, the **Insurer** shall either pay or withhold payment for **Loss** otherwise payable under Coverages B, C, or D. In the event that the **Insurer** withholds payment as requested by the **Named Insured**, then the **Insurer** shall at any time in the future, at the request of the **Named Insured**, release such **Loss** payment to a **Company**, or make such **Loss** payment directly to the

Individual Insured in the event of any **Claim** under Coverage A of this **Coverage Section**. The **Insurer's** liability with respect to any payments of **Loss** withheld shall not be increased, and shall not include any interest, as a result of such withholding.

The **Financial Insolvency** of any **Company** or any **Individual Insured** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this **Coverage Section** pursuant to this Section X.

Investment Adviser Professional Liability Coverage Section Declarations

1. **NAMED INSURED:**

2. **POLICY PERIOD:** Inception:
Expiration:
The **Policy Period** incepts and expires as of 12:01 A.M. at the
Named Insured Address.

3. **COVERAGE SECTION LIMIT OF LIABILITY:** \$

4. **RETENTION:**
Each **Claim:** \$

5. **CONTINUITY DATE:**

Investment Adviser Professional Liability Coverage Section

In consideration of the premium charged, in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this policy, and subject to all terms and conditions, the **Insurer** agrees as follows:

I. Insuring Agreements

Coverage A: Separate Account and Sub-Advisory Liability Coverage

The **Insurer** shall pay **Loss** of an **Investment Adviser** arising from a **Claim** first made against such **Investment Adviser** during the **Policy Period** or the Extended Reporting Period, if applicable, for any **Wrongful Act** of such **Investment Adviser** or of any entity or natural person for whose acts the **Investment Adviser** becomes legally liable, in the performance of or failure to perform **Investment Adviser Services** for or on behalf of any client other than a pooled investment vehicle (except in the capacity as a sub-adviser).

Coverage B: Fund Adviser Liability Coverage

The **Insurer** shall pay **Loss** of an **Investment Adviser** arising from a **Claim** first made against such **Investment Adviser** during the **Policy Period** or the Extended Reporting Period, if applicable, for any **Wrongful Act** of such **Investment Adviser** or of any entity or natural person for whose acts the **Investment Adviser** becomes legally liable, in the performance of or failure to perform **Investment Adviser Services** for or on behalf of an **Investment Fund**.

Coverage C: Fund Service Provider Coverage

The **Insurer** shall pay **Loss** of a **Fund Service Provider** arising from a **Claim** first made against such **Fund Service Provider** during the **Policy Period** or the Extended Reporting Period if applicable for any **Wrongful Act** of such **Fund Service Provider**, in the performance of or failure to perform **Fund Services** for or on behalf of an **Investment Fund**.

II. Definitions

In addition to the Definitions in the General Terms and Conditions, the following terms whenever set forth in boldface type in this **Coverage Section**, whether in singular or in plural, shall have the meanings indicated.

- A. **Administrator** means any **Company** that has a contract with an **Investment Fund** to provide administrative functions to such **Investment Fund**.
- B. **Claim** means
 - 1. a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations and including any demand for mediation, arbitration or any other alternative dispute resolution process);

2. a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, nonmonetary or injunctive relief which is commenced by:
 - (i) service of a complaint or similar pleading;
 - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges;
 3. a civil, criminal, administrative or regulatory investigation of an **Insured**:
 - (i) once such **Insured** is identified in writing by such investigating authority or enforcement body as a person or entity against whom a proceeding described in subparagraph 2 of this Definition may be commenced; or
 - (ii) in the case of an investigation by the Securities and Exchange Commission (“**SEC**”) or a similar state or foreign government authority, after:
 - (a) the service of a subpoena upon such **Insured**; or
 - (b) the **Insured** is identified in a written “Wells” or other notice from the **SEC** or a similar state or foreign government authority that describes actual or alleged violations of laws by such **Insured**;
- C. **Defense Costs** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, but excluding compensation of any **Individual Insured**. **Defense Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.
- D. **Distributor** means any **Company** that has a contract with an **Investment Fund** to serve as the principal underwriter to an **Investment Fund**, whether acting as principal or agent of the **Investment Fund** or as an intermediary in connection with the distribution or sale of shares of the **Investment Fund**.
- E. **Employee** means any past, present or future employee of a **Company**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including
1. any part-time, seasonal and temporary employee,
 2. volunteer, individual who is contracted to perform work for a **Company**, or independent contractor for a **Company** in his or her capacity as such, or
 3. any individual who is leased to a **Company**,
- but only if such **Company** provides indemnification to such employees, volunteers or individuals in the same manner as is provided to such **Company’s** own employees; provided, however, a **Company** may request that no coverage be provided under this **Coverage Section** for an independent contractor or leased employee named in a specific **Claim**. Such request must be made in writing and within 90 days of the **Claim** being reported to the **Insurer**. If no such request is made, this **Coverage Section** shall apply as if the **Company** determined that such independent contractor or leased employee shall receive coverage.
- F. **ERISA** means the Employee Retirement Income Security Act of 1974, the Pension Protection Act of 2006, both as amended, and any similar common or statutory law anywhere in the world, and any rules or regulations promulgated under any such Acts or laws.
- G. **Executive** means

1. any natural person who was, now is or shall become a past, present or future duly elected or appointed director, officer, trustee, governor, general partner, managing general partner, venture partner, administrative general partner, principal, management committee member of a duly constituted committee or member of the Board of Managers of a **Company**;
2. any past, present or future person in a duly elected or appointed position in a **Company** which is organized and operated in a jurisdiction other than the United States of America or any of its territories or possessions that is equivalent to an executive position listed in paragraph 1. of this Definition; or
3. any past, present or future General Counsel, Chief Compliance Officer or Risk Manager (or equivalent position) of the **Named Insured**.

H. **Fund Service Provider** means:

1. any **Company** that is the **Administrator, Distributor, or Transfer Agent** of an **Investment Fund**; or
2. any **Individual Insured** of any **Company** identified in (H)(1) above, but solely in his or her capacity as an **Executive** or **Employee** of such **Company**.

I. **Fund Services** means those services performed or required to be performed by a **Fund Service Provider** solely in its capacity as an **Administrator, Distributor, or Transfer Agent** for or on behalf of an **Investment Fund** pursuant to a written contract with such **Investment Fund**.

J. **Individual Insured** means any

1. **Executive**;
2. **Employee**; or

K. **Insured** means any

1. **Investment Advisor**; or
2. **Fund Service Provider**.

L. **Investment Adviser** means:

1. any **Company** that engages in the business of **Investment Adviser Services**; and
2. any **Individual Insured** , but solely in his or her capacity as an **Executive** or **Employee** of any **Company** identified in (L)(1) above.

M. **Investment Adviser Services** means:

1. financial, economic, or investment advice regarding investments in securities;
2. investment management, administrative services, portfolio management and asset allocation services performed;
3. the selection and oversight of investment advisers or outside service providers; and
4. any of the activities or services identified in (M)(1), (M)(2), or (M)(3) above, while performed in the capacity of a fiduciary pursuant to **ERISA**,

for or on behalf of a client pursuant to a written contract between such client and an **Investment Adviser** for consideration; and

5. the publication of written material, whether in tangible or electronic format, in connection with any of the activities or services identified in (M)(1), (M)(2), (M)(3) or (M)(4) above.

N. Investment Fund means:

1. any investment company registered under the Investment Company Act of 1940; or
2. any pooled investment vehicle that is listed in the Schedule of Investment Funds Endorsement attached to this Policy.

An **Investment Fund** is not an **Insured** under this **Coverage Section**.

O. Loss means

1. the amount that any Insured becomes legally obligated to pay in connection with any covered **Claim**, including, but not limited to:
 - (i) judgments (including pre-judgment and post-judgment interest on any covered portion thereof) and settlements; and
 - (ii) damages, including punitive or exemplary damages and the multiple portion of multiplied damages relating to punitive or exemplary damages. The enforceability of this subparagraph (ii) shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages;
2. **Defense Costs**;

Loss shall not include, other than **Defense Costs**:

1. any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**;
2. matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
3. civil or criminal fines or penalties;
4. taxes or tax penalties (whether imposed by federal, state, local or other governmental authority);
5. the costs and expenses of complying with any injunctive relief or other form of nonmonetary relief;
6. compensation, salary, wages, fees, benefits, overhead, charges or expenses of any **Insured**;
7. that portion of **Loss** that represents the return of fees, charges, commissions or other compensation paid to an **Insured**.

P. Subsidiary means

1. any entity in which the **Company** has or had **Management Control** on or before the inception date of the policy either directly or indirectly through one or more other **Subsidiaries**;
2. any entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries**; and whose assets do not exceed 35% of the assets of the **Company**, prior to the **Company** acquiring **Management Control** of the **Subsidiary**; or
3. any entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries** and whose assets exceed 35% of the assets of the **Company**, prior to the **Company** acquiring **Management Control** of the **Subsidiary** but

only for a period of 90 days subsequent to the **Company** acquiring **Management Control** of the **Subsidiary**.

Q. **Transfer Agent** means any **Company** that records the original issuance, redemption, or transfer of interests in the capital of an **Investment Fund**.

R. **Wrongful Act** means

1. for purposes of Insuring Clauses (A) and (B):

- (i) any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by an **Investment Adviser** or by any entity or natural person for whose acts the **Investment Adviser** becomes legally liable; or
- (ii) any actual or alleged violation of the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Act of 1933, the Securities Exchange Act of 1934, **ERISA**, or any foreign equivalent of any of the preceding statutes, by an **Investment Adviser** or by any entity or natural person for whose acts the **Investment Adviser** becomes legally liable.

but only in connection with the **Investment Adviser's** performing or failure to perform **Investment Adviser Services**; and

2. for purposes of Insuring Clause (C):

- (i) any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by a **Fund Service Provider**; or
- (ii) any actual or alleged violation of the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Act of 1933, the Securities Exchange Act of 1934, **ERISA**, or any foreign equivalent of any of the preceding statutes, by a **Fund Service Provider**.

but only in connection with such **Fund Service Provider's** performing or failure to perform **Fund Services**.

III. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

A. alleging, arising out of, based upon or attributable to:

1. gaining of any profit, remuneration or advantage to which the **Insured** was not legally entitled, if a final, non-appealable adjudication in any underlying proceeding establishes the gaining of such profit, remuneration or advantage; or
2. committing of any deliberate criminal or deliberate fraudulent act, or any willful violation of any statute, rule or law, if a final, non-appealable adjudication in any underlying proceeding establishes that such deliberate criminal or deliberate fraudulent act, or willful violation of statute, rule or law was committed.

For purposes of determining the applicability of this Exclusion, (i) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any **Individual Insured**; and (ii) only facts pertaining to and knowledge possessed

by any past, present or future chief executive officer or chief financial officer shall be imputed to such **Company**;

- B. alleging, arising out of, based upon or attributable to the circumstances alleged or the same **Wrongful Act** or **Related Wrongful Act** alleged or contained in any claim or demand which has been reported, or to any circumstances, **Wrongful Act** or **Related Wrongful Act** of which notice has been given, under any prior insurer's policy or policy of which this **Coverage Section** is a renewal or replacement or which it may succeed in time;
- C. alleging, arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against, any **Insured** on or prior to the Continuity Date set forth in Item 5 of the Investment Adviser Professional Liability **Coverage Section** Declarations, or the alleging of any **Wrongful Act** which is the same as or a **Related Wrongful Act** to that alleged in such pending or prior demand, suit or proceeding or in the underlying demand, order, decree or judgment;
- D. alleging, arising out of, based upon or attributable to any actual or alleged act, error or omission of an **Individual Insured** serving in any capacity other than as an **Executive** or **Employee** of a **Company** that is an **Investment Adviser** or **Fund Service Provider**;
- E. which is brought by or on behalf of any **Insured** in any capacity, or by any entity that owns more than 50% of the outstanding securities of the **Named Insured**.
This Exclusion shall not apply to:
 - 1. any **Claim** by an **Individual Insured** where such person was provided with or entitled to be provided with **Investment Adviser Services** and is bringing such **Claim** solely in his or her capacity as a client of the **Investment Adviser** and without the solicitation, assistance or participation of any other **Insured**;
 - 2. any **Claim** by an **Individual Insured** for contribution or indemnity, if such **Claim** directly results from another **Claim** covered under this **Coverage Section**;
 - 3. any **Claim** by a bankruptcy or insolvency trustee, examiner, receiver, any assignee of such trustee, examiner or receiver, or any creditors' committee appointed to take control of, supervise, manage or liquidate the **Named Insured**; or
 - 4. any **Claim** by an **Individual Insured** if such **Individual Insured** has not served in the capacity of an **Individual Insured** within any of the three (3) years immediately preceding the date the **Claim** was made, and such **Claim** is brought and maintained without the solicitation, assistance, participation, or intervention of any other **Insured**;
- F. for bodily injury, personal injury, emotional distress, mental anguish, sickness, disease or death of any person, or damage to, loss of use or destruction of any data or tangible property. This Exclusion shall not apply to:
 - 1. **Loss** on account of any **Claim** for emotional distress or mental anguish arising solely from an **Insured's** performing or failure to perform **Investment Adviser Services** or **Fund Services**; or
 - 2. **Loss** on account of any **Claim** arising from damage to, destruction of, loss of, or loss of use of, client records in an **Insured's** possession;

- G. for any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**. Other than for expenses (including, but not limited to, legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**, this Exclusion shall not apply to **Loss** on account of any **Claim** brought by a client of an **Investment Adviser** in connection with **Investment Adviser Services**, if such **Loss** is allegedly as a result of any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;
- H. for any actual or alleged violations of any of the responsibilities, obligations or duties imposed on fiduciaries by **ERISA** as respects any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to any **Insured**;
- I. for an **Insured's** contractual liability under any contract or agreement. This Exclusion shall not apply to:
1. **Loss** on account of any **Claim** brought by or on behalf of a client of the **Insured** in the client's capacity as such; or
 2. liability which would have attached in the absence of such express contract or agreement;
- J. for injury resulting from libel, slander, oral or written publication of defamatory or disparaging material, wrongful termination of employment, sexual harassment, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium; provided this Exclusion shall not apply to **Loss** on account of any **Claim** brought by a client for libel, slander, or oral or written publication of defamatory or disparaging material arising solely from an **Insured's** performing or failure to perform **Investment Adviser Services** or **Fund Services**;
- K. for the inability of any bank or banking firm, custodian, or securities or commodities broker or dealer, to make any payment, or the inability of any such entity or person to settle or effect any transaction of any kind; provided this Exclusion shall not apply to **Defense Costs**;
- L. based upon, arising from, or in consequence of performing or the failure to perform of any investment banking services, including but not limited to any advice in connection with corporate mergers, acquisitions, restructurings, divestitures, issuance of securities, syndication or similar activities; provided this Exclusion shall not apply to **Loss** on account of any **Claim** brought by a client, arising from the performance of **Investment Adviser Services** or **Fund Services** by an **Insured** for such client, as long as neither the **Insured** nor the client is a party to or participant in the investment banking transaction;
- M. based upon, arising from, or in consequence of an **Insured's** performing or failure to perform property management services, real estate appraisal services, or real estate development services;
- N. based upon, arising from or in consequence of any **Insured** acting as a securities or commodities broker or dealer, or securities underwriter; provided this Exclusion shall not apply to **Loss** on account of any **Claim** against a **Fund Service Provider**

acting in its capacity as a **Distributor**, other than with respect to such **Distributor's** distributions or sales to the general public;

IV. Limit of Liability

The following provisions shall apply in addition to the provisions of Section IV. Limit of Liability of the General Terms and Conditions:

Subject to the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations, the Limit of Liability set forth in Item 3 of the Investment Adviser Professional Liability **Coverage Section** Declarations shall be the maximum aggregate limit of the **Insurer's** liability for all **Loss** under this **Coverage Section**. Upon exhaustion of the Limit of Liability set forth in Item 3 of the Investment Adviser Professional Liability **Coverage Section** Declarations, or the Policy Aggregate Limit of Liability in Item 3 of the General Declarations, the **Insurer's** obligations under this **Coverage Section** shall be deemed completely fulfilled and extinguished.

V. Retentions

The following provisions shall apply in addition to the provisions of Section V. Retentions of the General Terms and Conditions:

- A. The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention set forth in Item 4 of the Investment Adviser Professional Liability **Coverage Section** Declarations. The Retention shall be borne by the **Insureds** and shall remain uninsured.
- B. A single Retention shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Actor Related Wrongful Acts**.
- C. The Retention set forth in Item 4 of the Investment Adviser Professional Liability **Coverage Section** Declarations shall apply to each **Claim** under this **Coverage Section**.

VI. Defense Costs, Defense Counsel, Settlements & Judgments

A. Defense

The **Insurer** does not assume any duty to defend a **Claim**. The **Insureds** shall defend and contest any **Claim** made against them. An **Insured** shall not retain defense counsel or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. An **Insured** may select a defense counsel different from that selected by other **Insureds** if such selection is required due to an actual conflict of interest and only with the express prior written consent of the **Insurer**.

B. Advancement

The **Insurer** shall advance **Defense Costs** in excess of the applicable Retention on behalf of the **Insured** prior to final disposition of the **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured**, severally according to their respective interests, in the event and to the extent that any such **Insured** shall not be entitled under the Terms and Conditions of this **Coverage Section** to payment of such **Loss**.

C. Cooperation

The **Insurer** shall have the right to associate fully and effectively with each and every **Insured** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Insured** agrees to provide such information as the **Insurer** may reasonably require and to give the **Insurer** full cooperation and take such actions which, in such **Insurer's** judgment, are deemed necessary and practicable to prevent or limit **Loss** arising from any **Wrongful Act**.

D. Prior Written Consent

The **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the **Insurer**. If the **Insured** admits or assumes any liability in connection with any **Claim** without the consent of the **Insurer**, then the **Insurer** shall not have any obligation to pay **Loss** with respect to such **Claim**. Only those settlements, stipulated judgments, or **Defense Costs** which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this **Coverage Section**. The **Insurer** shall not unreasonably withhold any consent required under this **Coverage Section**, provided that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Claim** (or any portion thereof) is not covered under the terms of this **Coverage Section**. In addition, the **Insured** shall not take any action which prejudices the **Insurer's** rights under this **Coverage Section**.

VII. Other Insurance

Such insurance as is provided by this **Coverage Section** shall apply only as excess over any other valid and collectible insurance, unless such other insurance is expressly written to be excess over any applicable Limit of Liability for this policy or any **Coverage Section**. This policy specifically shall be excess of any other policy pursuant to which any other **Insurer** has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**.

VIII. Allocation

If both **Loss** covered under this **Coverage Section** and loss not covered under this **Coverage Section** are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters and/or includes both covered and non-covered parties, then amounts incurred by the **Insured** on account of such **Claim** shall be allocated between covered **Loss** and non-covered loss based on the relative legal liability and financial exposure of the **Insureds** to covered and non-covered matters and/or based on the relative legal and financial exposure of the covered and non-covered parties. The **Insureds** and **Insurer** agree to use their best efforts to determine a fair and proper allocation.

If the **Insureds** and the **Insurer** cannot agree on an allocation of covered **Loss** and non-covered loss:

- A. the **Insurer** shall pay the amount of **Loss** that the **Insurer** and **Insureds** agree is not in dispute until a different allocation is negotiated, arbitrated, or judicially determined;
- B. no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and

- C. the **Insurer**, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two arbitrators.

X. Order of Payments

In the event of **Loss** arising from any **Claim** for which payment is due under the provisions of this **Coverage Section** but which **Loss**, in the aggregate, exceeds the remaining available Limits of Liability applicable to this **Coverage Section**, (including by virtue of the depletion of the Policy Aggregate Limit of Liability), then the **Insurer** shall:

- A. first pay such **Non-Indemnifiable Loss** for which coverage is provided under this **Coverage Section**; and
- B. then pay such other **Loss** for which coverage is provided under this **Coverage Section**.

Upon the written request of the **Named Insured**, the **Insurer** shall either pay or withhold payment for **Indemnifiable Loss** otherwise payable under this **Coverage Section**. In the event that the **Insurer** withholds payment as requested by the **Named Insured**, then the **Insurer** shall at any time in the future, at the request of the **Named Insured**, release such **Loss** payment to a **Company**, or make such **Loss** payment directly to the **Individual Insured**. The **Insurer's** liability with respect to any payments of **Loss** withheld shall not be increased, and shall not include any interest, as a result of such withholding.

The **Financial Insolvency** of any **Company** or any **Individual Insured** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this **Coverage Section** pursuant to this Section X.

Investment Fund Coverage Section Declarations

1. NAMED INSURED:

2. POLICY PERIOD: Inception:

Expiration:

The **Policy Period** incepts and expires as of 12:01 A.M. at the **Named Insured** Address.

3. (a) **COVERAGE SECTION LIMIT OF LIABILITY:** \$
(b) **Derivative Demand** Investigation Sub-Limit of Liability: \$0

4. RETENTIONS:

- (a) Each **Claim** under Coverage A: \$
(b) Each **Claim** under Coverage B: \$
(c) Each **Claim** under Coverage C: \$
(d) Each **Derivative Demand** under Coverage D: \$0

5. CONTINUITY DATE:

Investment Fund Coverage Section

In consideration of the premium charged, in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this policy, and subject to all terms and conditions, the **Insurer** agrees as follows:

I. Insuring Agreements

Coverage A: Fund Organization and Individual Insured Liability Coverage

The **Insurer** shall pay **Loss** of a **Fund Organization** or **Individual Insured** arising from a **Claim** first made against such **Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for any **Wrongful Act** of such **Insured** or of any natural person or entity for whose acts the **Insured** becomes legally liable.

Coverage B: Fund Manager and Individual Insured Professional Liability Coverage

The **Insurer** shall pay **Loss** of a **Fund Manager** or **Individual Insured** arising from a **Claim** first made against such **Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for any **Wrongful Act** of such **Insured** or of any natural person or entity for whose acts the **Insured** becomes legally liable, in the performance of or failure to perform **Fund Management Services**.

Coverage C: Outside Directorship Liability Coverage

The **Insurer** shall pay **Loss** of an **Individual Insured** arising from a **Claim** first made against such **Individual Insured** during the **Policy Period** or the Extended Reporting Period if applicable for any **Wrongful Act** by such **Individual Insured** while acting in an **Outside Capacity**; provided that coverage under this Coverage (C) shall be specifically excess of any indemnity (other than the indemnity provided by the **Fund Organization**) and insurance available to such **Individual Insured** by reason of serving in an **Outside Capacity**, including any indemnity or insurance available from or provided by the **Outside Entity**.

Coverage D: Derivative Demand Investigation Costs Coverage

The **Insurer** shall pay **Investigation Costs** up to the amount of the **Derivative Demand** Investigation Sub-Limit of Liability set forth in Item 3(b) of the Investment Fund **Coverage Section** Declarations incurred by a **Fund Organization** solely in response to a **Derivative Demand** first made and reported to the **Insurer** during the **Policy Period**. Payment of any **Investigation Costs** under this **Coverage Section** shall not waive any of the **Insurer's** rights under this policy or at law.

II. Definitions

In addition to the Definitions in the General Terms and Conditions, the following terms whenever set forth in boldface type in this **Coverage Section**, whether in singular or in plural, shall have the meanings indicated.

- A. **Advisory Board Member** means any natural person who was, now is or shall become a member of any board or committee, other than a Board of Directors or Board of Managers, formed pursuant to a partnership agreement, operating agreement or equivalent document or resolution of an **Investment Fund**.
- B. **Claim** means
1. a written demand, other than a **Derivative Demand**, for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations and including any demand for mediation, arbitration or any other alternative dispute resolution process);
 2. a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, nonmonetary or injunctive relief which is commenced by:
 - (i) service of a complaint or similar pleading;
 - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges;
 3. a civil, criminal, administrative or regulatory investigation of an **Individual Insured**:
 - (iii) once such **Individual Insured** is identified in writing by such investigating authority or enforcement body as a person against whom a proceeding described in subparagraph 2 of this Definition may be commenced; or
 - (iv) in the case of an investigation by the Securities and Exchange Commission (“**SEC**”) or a similar state or foreign government authority, after:
 - i. the service of a subpoena upon such **Individual Insured**; or
 - ii. the **Individual Insured** is identified in a written “Wells” or other notice from the **SEC** or a similar state or foreign government authority that describes actual or alleged violations of laws by such **Individual Insured**;
 4. a formal request for the extradition of an **Individual Insured** in any country by another country for trial or to answer a criminal accusation.
- C. **Controlling Shareholder** shall have the same meaning as the applicable definition or phrase under Section 15 of the Securities Act of 1933, or Section 20(a) of the Securities Exchange Act of 1934, as amended.
- D. **Defense Costs** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, but excluding compensation of any **Individual Insured**. **Defense Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.
- E. **Derivative Demand** means a written demand by one or more security holders of a **Fund Organization**, without the assistance, participation or solicitation of any **Executive**, upon the board of directors (or equivalent management body) of such **Fund Organization** requesting that it file on behalf of the **Fund Organization** a civil proceeding in a court of law against any **Executive** for a **Wrongful Act**.

- F. **Employee** means any past, present or future employee of a **Fund Organization** or **Fund Manager**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including
1. any part-time, seasonal and temporary employee,
 2. volunteer, individual who is contracted to perform work for a **Fund Organization** or **Fund Manager**, or independent contractor for a **Fund Organization** or **Fund Manager** in his or her capacity as such, or
 3. any individual who is leased to a **Fund Organization** or **Fund Manager**, but only if such **Fund Organization** or **Fund Manager** provides indemnification to such employees, volunteers or individuals in the same manner as is provided to such **Fund Organization** or **Fund Manager's** own employees; provided, however, a **Fund Organization** or **Fund Manager** may request that no coverage be provided under this **Coverage Section** for an independent contractor or leased employee named in a specific **Claim**. Such request must be made in writing and within 90 days of the **Claim** being reported to the **Insurer**. If no such request is made, this **Coverage Section** shall apply as if the **Fund Organization** or **Fund Manager** determined that such independent contractor or leased employee shall receive coverage.
- G. **Executive** means
1. any natural person who was, now is or shall become a duly elected or appointed director, officer, trustee, governor, general partner, managing general partner, venture partner, administrative general partner, principal, management committee member of a duly constituted committee, or member of the Board of Managers of a **Fund Organization** or **Fund Manager**;
 2. any past, present or future person in a duly elected or appointed position in a **Fund Organization** or **Fund Manager** which is organized and operated in a jurisdiction other than the United States of America or any of its territories or possessions that is equivalent to an executive position listed in paragraph 1. of this Definition; or
 3. any past, present or future General Counsel, Chief Compliance Officer, or Risk Manager (or equivalent position) of the **Named Insured**.
- H. **Fund Management Services** means:
1. the formation, capitalization, operation, management, administration, marketing and solicitation of an **Investment Fund**;
 2. financial, economic, or investment advice regarding investments in securities for or on behalf of an **Investment Fund** or to a **Portfolio Company**;
 3. investment management, portfolio management and asset allocation services performed for or on behalf of an **Investment Fund**;
 4. the review, analysis, selection, and monitoring of other funds for investment by an **Investment Fund**;
 5. the selection and oversight of outside service providers and unaffiliated investment advisers for or on behalf of an **Investment Fund**; or
 6. the investment in, or the formation, capitalization or disposition of, a **Portfolio Company**, including but not limited to acts performed in the capacity as a **Controlling Shareholder** of a **Portfolio Company**.
- I. **Fund Manager** means any **Company** authorized in the partnership, membership, or operating agreement of, or authorized pursuant to a contract with an **Investment Fund** to provide professional services to or on behalf of an **Investment Fund**.
- J. **Fund Organization** means any:
1. **Investment Fund**;
 2. **Investment Holding Company**;

3. entity which is a general partner, managing general partner, administrative general partner or managing member of an **Investment Fund** or an **Investment Holding Company**; or
 4. entity which is a general partner, managing general partner, administrative general partner or managing member of an entity described in (J)(3) above.
- K. **Independent Director** means any natural person director, trustee, or equivalent position of an **Investment Fund** who:
1. is not, and has never been, employed by any **Investment Fund** or **Fund Manager**;
 2. is not and has never been the spouse or **Domestic Partner** of any natural person who is, or has ever been, employed by any **Investment Fund** or **Fund Manager**; and
 3. does not own more than 5% of any **Investment Fund** or **Fund Manager**.
- L. **Individual Insured** means any
1. solely with respect to Coverage (A):
 - (a) any **Executive** of a **Fund Organization** or **Employee** of a **Fund Organization**, solely in his or her capacity as such; or
 - (b) any **Advisory Board Member**, solely in his or her capacity as such and solely with respect to **Loss** for which the **Fund Organization** grants indemnification to such **Advisory Board Member**;
 2. solely with respect to Coverage (B): any **Executive** of a **Fund Manager** or **Employee** of **Fund Manager**, solely in his or her capacity as such; and
 3. solely with respect to Coverage (C): any **Executive** of a **Fund Organization** or any **Executive** of **Fund Manager**, solely in his or her **Outside Capacity**.
- M. **Insured** means any
1. **Fund Organization**;
 2. **Fund Manager**; or
 3. **Individual Insured**.
- N. **Investigation Costs** means the reasonable and necessary costs, charges, fees and expenses consented to by the **Insurer** (including, but not limited to, attorney's fees and expert's fees but not including any settlement, judgment or damages and not including any compensation or fees of any **Individual Insured**) incurred by the **Fund Organization** or its board of directors (or any equivalent management body), or any committee of the board of directors (or any equivalent management body), solely in connection with the investigation or evaluation of a **Derivative Demand**
- O. **Investment Fund** means:
1. any pooled investment vehicle that is listed in the Schedule of Investment Funds endorsed to this Coverage Section;
 2. any New Fund, but solely pursuant to the terms set forth below in Section IV.
NEWLY CREATED FUNDS
- P. **Investment Holding Company** means any entity:
1. which is created before or during the **Policy Period**, and whose sole purpose and activity is acquiring or holding debt, equity securities or debentures, for or on behalf of an **Investment Fund**; and

2. in which one or more **Investment Funds** or **Investment Holding Companies**, separately or in combination, previously owned or controlled or currently own or control greater than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors or to select the general partner or managing member of such **Investment Holding Company**.

Q. **Loss** means:

1. the amount that any Insured becomes legally obligated to pay in connection with any covered **Claim**, including, but not limited to:
 - (a) judgments (including pre-judgment and post-judgment interest on any covered portion thereof) and settlements; and
 - (b) damages, including punitive or exemplary damages and the multiple portion of multiplied damages relating to punitive or exemplary damages. The enforceability of this subparagraph (b) shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages;
2. **Defense Costs**;
3. with respect to Coverage D of this **Coverage Section**, **Investigation Costs**.

Loss shall not include, other than **Defense Costs**:

1. any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**;
2. matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
3. civil or criminal fines or penalties;
4. taxes or tax penalties (whether imposed by federal, state, local or other governmental authority);
5. the costs and expenses of complying with any injunctive relief or other form of nonmonetary relief;
6. compensation, salary, wages, fees, benefits, overhead, charges or expenses of any **Insured**;

- R. **Outside Capacity** means service by an **Individual Insured** as a director, trustee, or equivalent position with an **Outside Entity** at or prior to the Inception Date of this Policy, or during the Policy Period, if service by such **Individual Insured** is, or was, at the specific request or direction of a **Fund Organization** or **Fund Manager**;

S. **Outside Entity** means:

1. any not-for-profit organization, other than a **Subsidiary**.
2. any **Portfolio Company** which is not registered or approved, upon notice of issuance, on a national securities exchange, or not authorized or approved for authorization, upon notice of issuance, for quotation in the NASDAQ system; or
3. any **Portfolio Company** scheduled as an **Outside Entity** by endorsement to this Coverage Section.

- T. **Outside Entity Executive** means any **Executive** of a **Fund Organization** serving in the capacity as director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only if such service is at the specific request or direction of a **Fund Organization** or **Fund Manager**. In the event of a disagreement between a **Fund Organization** or **Fund Manager** and an individual as to whether such individual was acting at the specific request or direction of such **Fund Organization** or **Fund Manager**, this **Coverage Section** shall abide by the determination of the **Named Insured** on this issue and such determination shall be made by written notice to the **Insurer** within 90 days after the **Claim** first is reported

to the **Insurer** pursuant to the terms of the policy. In the event no determination is made within such period, this **Coverage Section** shall apply as if the **Named Insured** determined that such **Executive** was not acting at such **Fund Organization** or **Fund Manager's** specific request or direction.

U. **Pollutants** means any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and Waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.

V. **Portfolio Company** means any entity, other than an **Investment Holding Company**, in which one or more **Investment Funds** or **Investment Holding Companies**, separately or in combination, previously owned or controlled, currently own or control, or propose to own or control, outstanding debt, equity securities, or debentures.

W. **Subsidiary** means

1. any entity in which the **Company** has or had **Management Control** on or before the inception date of the policy either directly or indirectly through one or more other **Subsidiaries**;
2. any entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries**; and whose assets do not exceed 35% of the assets of the **Company**, prior to the **Company** acquiring **Management Control** of the **Subsidiary**; or
3. any entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries** and whose assets exceed 35% of the assets of the **Company**, prior to the **Company** acquiring **Management Control** of the **Subsidiary** but only for a period of 90 days subsequent to the **Company** acquiring **Management Control** of the **Subsidiary**.

X. **Wrongful Act** means

1. for purposes of Insuring Clause (A):
 - (a) any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by a **Fund Organization** or **Individual Insured** in their respective capacities as such (including but not limited to the performance of **Fund Management Services**), including any actual or alleged violation of the Investment Advisers Act of 1940, the Securities Act of 1933, the Securities Exchange Act of 1934, **ERISA**, or any foreign equivalent of any of the preceding statutes;
 - (b) any matter claimed against an **Individual Insured** solely by reason of serving in his or her capacity as such;
 - (c) any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by a **Fund Organization** in its capacity as a general partner, managing general partner, administrative general partner or managing member of another **Fund Organization**.
 - (d) any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by any natural person or entity for whom the **Fund Organization** becomes legally liable, but solely with respect to such natural person's or entity's performance or failure to perform services for or on behalf of an **Investment Fund**.

2. for purposes of Insuring Clause (B):
 - (a) any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by a **Fund Manager** or by an **Executive** or **Employee** of a **Fund Manager** in the performance of **Fund Management Services**, including any actual or alleged violation of the Investment Advisers Act of 1940, the Securities Act of 1933, the Securities Exchange Act of 1934, **ERISA**, or any foreign equivalent of any of the preceding statutes; or
 - (b) any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by any natural person or entity for whom the **Fund Manager** becomes legally liable, but solely with respect to such natural person's or entity's performance or failure to perform services for or on behalf of an **Investment Fund**.
3. for purposes of Insuring Clause (C): any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by an **Individual Insured** in his or her **Outside Capacity**.

III. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A. alleging, arising out of, based upon or attributable to:
 1. gaining of any profit, remuneration or advantage to which the **Insured** was not legally entitled, if a final, non-appealable adjudication in any underlying proceeding establishes the gaining of such profit, remuneration or advantage; or
 2. committing of any deliberate criminal or deliberate fraudulent act, or any willful violation of any statute, rule or law, if a final, non-appealable adjudication in any underlying proceeding establishes that such deliberate criminal or deliberate fraudulent act, or willful violation of statute, rule or law was committed.

For purposes of determining the applicability of this Exclusion, (i) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any **Individual Insured**; and (ii) only facts pertaining to and knowledge possessed by an **Executive** of a **Fund Organization** or of a **Fund Manager** or the signatory of the **Application** shall be imputed to such **Fund Organization** or **Fund Manager**;

- B. alleging, arising out of, based upon or attributable to the circumstances alleged or the same **Wrongful Act** or **Related Wrongful Act** alleged or contained in any claim or demand which has been reported, or to any circumstances, **Wrongful Act** or **Related Wrongful Act** of which notice has been given, under any prior insurer's policy or policy of which this **Coverage Section** is a renewal or replacement or which it may succeed in time;
- C. alleging, arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against, any **Insured** on or prior to the Continuity Date set forth in Item 5 of the Investment Fund **Coverage Section** Declarations, or the alleging of any **Wrongful Act** which is the same as or a **Related Wrongful Act** to that alleged in such pending or prior demand, suit or proceeding or in the underlying demand, order, decree or judgment;

- D. alleging, arising out of, based upon or attributable to any **Wrongful Act** committed or allegedly committed by an **Individual Insured** in his or her capacity as an **Outside Entity Executive** prior to the Continuity Date set forth in Item 5 of the Investment Fund **Coverage Section** Declarations if any **Insured**, as of such **Continuity Date**, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Coverage Section**;
- E. alleging, arising out of, based upon or attributable to any actual or alleged act, error or omission of an **Individual Insured** serving in any capacity other than as an **Executive** or **Employee** of a **Fund Manager** or **Fund Organization** or as an **Outside Entity Executive** of an **Outside Entity**;
- F. brought or maintained by or on behalf of any **Insured** in any capacity, or by any entity that owns more than 50% of the outstanding securities of the **Named Organization**; provided this Exclusion III.(C) shall not apply to:
1. any **Claim** brought or maintained derivatively on behalf of an **Investment Fund** by one or more securityholders, limited partners or members of such **Investment Fund**; provided such **Claim** is brought and maintained without any assistance or participation of, or solicitation by any **Individual Insured**, other than assistance, participation or solicitation for which 18 U.S.C. 1514A(a) (the Sarbanes-Oxley Act of 2002), or any similar “whistleblower” protection provision of an applicable federal, state, local or foreign securities law, affords protection to such **Individual Insured**;
 2. any **Claim** brought or maintained by an **Individual Insured** for contribution or indemnity, if such **Claim** directly results from another **Claim** covered under this **Coverage Section**;
 3. any **Claim** brought or maintained by a bankruptcy or insolvency trustee, examiner, receiver, any assignee of such trustee, examiner or receiver, or any creditors’ committee appointed to take control of, supervise, manage or liquidate an **Investment Fund** or **Fund Manager**;
 4. any **Claim** brought or maintained by an **Individual Insured** if such **Individual Insured** has not served in the capacity of an **Individual Insured** within any of the three (3) years immediately preceding the date the **Claim** was made, and such **Claim** is brought and maintained without any assistance, participation, or intervention of or solicitation by any other **Insured**;
 5. any **Claim** brought or maintained by an **Insured** where the failure to make such **Claim** would result in legal liability of such **Insured**;
 6. any **Claim** brought and maintained outside the United States of America or any of its territories or possessions, Canada or any other common law country (including any territories thereof);
- G. for bodily injury, personal injury, emotional distress, mental anguish, sickness, disease or death of any person, or damage to, loss of use or destruction of any data or tangible property. This Exclusion shall not apply to:
1. **Loss** on account of any **Claim** for emotional distress or mental anguish arising solely from **Fund Management Services**; or
 2. brought by an employee of an **Outside Entity** against an **Individual Insured** serving in an **Outside Capacity**;
 3. **Loss** on account of any **Claim** arising from damage to, destruction of, loss of, or loss of use of, client or investor records in an **Insured’s** possession;
- H. for any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**. Other than for expenses (including,

but not limited to, legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**, this Exclusion shall not apply to **Loss** on account of any **Claim** brought by an investor in an **Investment Fund** based upon, arising from or in consequence of the diminution in value of any securities owned by such **Investment Fund** if such diminution in value is allegedly as a result of any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;

- I. for any actual or alleged violations of any of the responsibilities, obligations or duties imposed on fiduciaries by **ERISA** as respects any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to any **Insured**;
- J. alleging, arising out of, based upon, or attributable to the employment of any individual or any wrongful employment practice, including, but not limited to, wrongful dismissal, discharge or termination, discrimination, harassment, retaliation or other employment related claim;
- K. alleging, arising out of, based upon or attributable to:
 - 1. payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time domestic or foreign governmental or armed services officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated;
 - 2. payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time officials, directors, agents, partners, representatives, members, principal security holders, owners or employees, or affiliates (as defined in the Securities Exchange Act of 1934, including any of their officers, directors, agents, owners, partners, representatives, principal security holders or employees) or any customers of a **Company** or any members of their family or any entity with which they are affiliated; or
 - 3. political contributions, whether domestic or foreign;
- L. alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the **Company** or any other **Insured** under any express contract or agreement. This Exclusion shall not apply to:
 - 1. **Loss** on account of a **Claim** arising out of the performance or failure to perform **Fund Management Services**;
 - 2. **Loss** on account of a **Claim** alleging a breach of any organizational or management advisory documents of an **Investment Fund**, including but not limited to a limited partnership agreement, operating agreement, advisory agreement, management agreement, or subscription agreement; or
 - 3. liability which would have attached in the absence of such express contract or agreement;
- M. for injury resulting from libel, slander, oral or written publication of defamatory or disparaging material, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium; provided this Exclusion shall not apply to **Loss** on account of any **Claim** brought by a client for libel, slander, or oral or written publication of defamatory or disparaging material arising solely from an **Insured's** performing or failure to perform **Fund Management Services**;

- N. for the inability of any bank or banking firm, custodian, or broker or dealer in securities or commodities, to make any payment, or the inability of any such entity or person to settle or effect any transaction of any kind; provided this Exclusion shall not apply to **Defense Costs**;
- O. based upon, arising from, or in consequence of the performing or failure to perform any investment banking services, including but not limited to any advice in connection with corporate mergers, acquisitions, restructurings, divestitures, issuance of securities, syndication or similar activities; provided this Exclusion shall not apply to **Loss** on account of any **Claim** by an investor in an **Investment Fund** arising from the performance of **Fund Management Services** by a **Fund Manager** as long as neither an **Insured** nor the investor is a party to or participant in the investment banking transaction;
- P. based upon, arising from, or in consequence of any **Insured's** or any **Organization's** performing or failure to perform property management services, real estate appraisal or valuation services, or real estate development services;
- Q. based upon, arising from or in consequence of any **Insured** acting as a securities or commodities broker or dealer, or securities underwriter; provided this Exclusion shall not apply to **Loss** on account of any **Claim** arising from the distribution of interests in an **Investment Fund**;
- R. The **Insurer** shall not be liable to make any payment for any **Investigation Costs** in connection with any **Derivative Demand** under Coverage D:
 - 1. alleging, arising out of, based upon or attributable to any fact, circumstance, situation, transaction, event or **Wrongful Act** which has been reported under any policy of which this **Coverage Section** is a renewal or replacement or which it may succeed in time;
 - 2. alleging, arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against, any **Insured** on or prior to the Continuity Date set forth in Item 5 of the Investment Fund Liability **Coverage Section** Declarations, or involving any **Derivative Demand** which is the same or related to that at issue in any pending or prior demand, suit, proceeding or in the underlying demand, order, decree or judgment;

IV. Newly Created Funds

If, during the **Policy Period**, a **Company** creates or begins raising funds for a new pooled investment vehicle:

- A. that engages in or will engage in substantially similar activities as any **Investment Fund**;
- B. that is not registered as an investment company under the Investment Company Act of 1940; and
- C. whose securities are not traded in any public market, whether on a registered securities exchange or regional or local exchange in the United States, a foreign securities exchange, the NASDAQ or any other interdealer quotation system,

(a "New Fund"), then as respects any such New Fund whose total committed capital or total asset size is:

- 1. equal to or less than 25% of the total consolidated assets of all **Investment Funds**, then such New Fund shall be deemed an **Investment Fund**, and the

- Company agrees to waive any additional premium, written notice, or any information due as respects such New Fund for the remainder of the **Policy Period**; or
2. greater than 25% of the total consolidated assets of all **Investment Funds**, then such New Fund shall be deemed an **Investment Fund** for a period of sixty (60) days from the date of commencement of raising funds for the New Fund or creation of the New Fund (the “Effective Date”), whichever is later. The **Named Insured** shall give written notice of such New Fund to the **Insurer** as soon as practicable, but in no event later than thirty (30) days after the Effective Date, together with such information as the **Insurer** may require, and shall pay any reasonable additional premium required by the **Insurer**. Coverage for such New Fund shall be subject to such additional or different terms, conditions and limitations of coverage as the **Insurer** in its sole and absolute discretion may require. If the **Named Insured** fails to give such notice within the time specified above, or fails to pay any additional premium required by the **Insurer**, then coverage for such New Fund and its **Individual Insured** shall terminate with respect to **Claims** first made more than sixty (60) days after the Effective Date.

V. Limit of Liability

The following provisions shall apply in addition to the provisions of Section IV. Limit of Liability of the General Terms and Conditions:

- A. Subject to the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations, the **Coverage Section** Limit of Liability set forth in Item 3(a) of the Investment Fund **Coverage Section** Declarations shall be the maximum aggregate limit of the **Insurer’s** liability for all **Loss** under this **Coverage Section**. Upon exhaustion of the Limit of Liability set forth in Item 3(a) of the Investment Fund **Coverage Section** Declarations, or the Policy Aggregate Limit of Liability in Item 3 of the General Declarations, the **Insurer’s** obligations under this **Coverage Section** shall be deemed completely fulfilled and extinguished.
- B. The maximum limit of the **Insurer’s** liability for all **Investigation Costs** incurred in response to **Derivative Demands** made during the **Policy Period**, in the aggregate, shall be the **Derivative Demand Investigation** Sub-Limit of Liability set forth in Item 3(b) of this Investment Fund **Coverage Section** Declarations. The **Derivative Demand Investigation** Sub-Limit of Liability shall be the maximum limit of the **Insurer** under this **Coverage Section** for all **Investigation Costs** regardless of the number of **Derivative Demands** made during the **Policy Period** or the number of **Executives** subject to such **Derivative Demands** and shall be part of, and not in addition to, the **Coverage Section** Limit of Liability set forth in Item 3(a) of the Investment Fund **Coverage Section** Declarations which is also part of and not in addition to the Policy Aggregate Policy Limit of Liability set forth in Item 3 of the General Declarations.

VI. Retentions

The following provisions shall apply in addition to the provisions of Section V. Retentions of the General Terms and Conditions:

- A. The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention set forth in Item 4 of the Investment Fund

Coverage Section Declarations. The Retention shall be borne by the **Insureds** and shall remain uninsured.

- B. A single Retention shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Acts**.
- C. The Retention set forth in Item 4(a) of the Investment Fund **Coverage Section** Declarations shall apply to each **Claim** under Coverage A of this **Coverage Section**. The Retention set forth in Item 4(b) of the Investment Fund **Coverage Section** Declarations shall apply to each **Claim** under Coverage B of this **Coverage Section**. The Retention set forth in Item 4(c) of the Investment Fund **Coverage Section** Declarations shall apply to each **Claim** under Coverage C of this **Coverage Section**. The Retention set forth in Item 4(d) of the Investment Fund **Coverage Section** Declarations shall apply to each **Derivative Demand** under Coverage D of this **Coverage Section**.
- D. The Retentions set forth in Item 4 of the Investment Fund **Coverage Section** Declarations shall apply only to **Indemnifiable Loss**, whether or not actual indemnification is made, unless such indemnification is not made by a **Company** or **Fund Organization** solely by reason of its **Financial Insolvency**. A **Company's** or **Fund Organization's** certificate of incorporation, charter or other organization documents, including by-laws and resolutions, shall be deemed to require indemnification and advancement to an **Individual Insured** to the fullest extent permitted by law.
- E. In the event a **Company** or **Fund Organization** is unable to pay the applicable Retention due to **Financial Insolvency**, then the **Insurer** shall advance payment for **Loss** within the applicable Retention. The **Insurer** shall be entitled to recover the amount of **Loss** advanced within the Retention from such **Company** pursuant to Section VII.B. of this **Coverage Section** and Section X. Subrogation of the General Terms and Conditions.

VII. Defense Costs, Defense Counsel, Settlements & Judgments

A. Defense

The **Insurer** does not assume any duty to defend a **Claim**. The **Insureds** shall defend and contest any **Claim** made against them. An **Insured** shall not retain defense counsel or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. An **Insured** may select a defense counsel different from that selected by other **Insureds** if such selection is required due to an actual conflict of interest and only with the express prior written consent of the **Insurer**.

B. Advancement

The **Insurer** shall advance **Defense Costs** in excess of the applicable Retention on behalf of the **Insured** prior to final disposition of the **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured**, severally according to their respective interests, in the event and to the extent that any such **Insured** shall not be entitled under the Terms and Conditions of this **Coverage Section** to payment of such **Loss**.

C. Cooperation

The **Insurer** shall have the right to associate fully and effectively with each and every **Insured** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Insured** agrees to provide such information as the **Insurer** may reasonably require and to give the **Insurer** full cooperation and take such actions which, in such **Insurer's** judgment, are deemed necessary and practicable to prevent or limit **Loss** arising from any **Wrongful Act**.

D. Prior Written Consent

The **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** or **Investigation Costs** without the prior written consent of the **Insurer**. If the **Insured** admits or assumes any liability in connection with any **Claim** without the consent of the **Insurer**, then the **Insurer** shall not have any obligation to pay **Loss** with respect to such **Claim**. Only those settlements, stipulated judgments, **Defense Costs** and **Investigation Costs** which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this **Coverage Section**. The **Insurer** shall not unreasonably withhold any consent required under this **Coverage Section**, provided that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Claim** (or any portion thereof) is not covered under the terms of this **Coverage Section**. In addition, the **Insured** shall not take any action which prejudices the **Insurer's** rights under this **Coverage Section**.

VIII. Other Insurance

Such insurance as is provided by this **Coverage Section** shall apply only as excess over any other valid and collectible insurance, unless such other insurance is expressly written to be excess over any applicable Limit of Liability for this policy or any **Coverage Section**. This policy specifically shall be excess of any other policy pursuant to which any other **Insurer** has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**. For any **Claim** involving an **Outside Entity Executive**, this policy shall be specifically excess of any indemnification by the **Outside Entity** and any insurance coverage afforded to any such **Outside Entity Executive** or **Outside Entity**.

IX. Allocation

If both **Loss** covered under this **Coverage Section** and loss not covered under this **Coverage Section** are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters and/or includes both covered and non-covered parties, then amounts incurred by the **Insured** on account of such **Claim** shall be allocated between covered **Loss** and non-covered loss based on the relative legal liability and financial exposure of the **Insureds** to covered and non-covered matters and/or based on the relative legal and financial exposure of the covered and non-covered parties. The **Insureds** and **Insurer** agree to use their best efforts to determine a fair and proper allocation.

If the **Insureds** and the **Insurer** cannot agree on an allocation of covered **Loss** and non-covered

loss:

- A. the **Insurer** shall pay the amount of **Loss** that the **Insurer** and **Insureds** agree is not in dispute until a different allocation is negotiated, arbitrated, or judicially determined;

- B. no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
- C. the **Insurer**, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two arbitrators.

X. Coverage under Coverage D

It is understood and agreed that the **Company** shall be entitled to payment under Coverage D of this **Coverage Section** for **Investigation Costs** not greater than 90 days after the **Company** has made its final decision not to bring a civil proceeding in a court of law against any of its **Executives**, and such decision has been communicated to the securityholders who made the demand upon the **Company**.

Nothing in this **Coverage Section**, including Coverage D, shall be construed to afford coverage for any **Claim** brought by the **Company** against one or more of its own **Executives**, other than **Investigation Costs** incurred in a covered **Derivative Demand** or as otherwise provided under Section III.F. of this **Coverage Section**.

XI. Order of Payments

In the event of **Loss** arising from any **Claim** for which payment is due under the provisions of this **Coverage Section** but which **Loss**, in the aggregate, exceeds the remaining available Limits of Liability applicable to this **Coverage Section**, (including by virtue of the depletion of the Policy Aggregate Limit of Liability), then the **Insurer** shall:

- A. first pay such **Non-Indemnifiable Loss** for which coverage is provided under this **Coverage Section**; and
- B. then pay such other **Loss** for which coverage is provided under this **Coverage Section**.

Upon the written request of the **Named Insured**, the **Insurer** shall either pay or withhold payment for **Indemnifiable Loss** otherwise payable under this **Coverage Section**. In the event that the **Insurer** withholds payment as requested by the **Named Insured**, then the **Insurer** shall at any time in the future, at the request of the **Named Insured**, release such **Loss** payment to a **Fund Organization** or **Fund Manager**, or make such **Loss** payment directly to the **Individual Insured**. The **Insurer's** liability with respect to any payments of **Loss** withheld shall not be increased, and shall not include any interest, as a result of such withholding.

The **Financial Insolvency** of any **Company**, any **Fund Organization**, any **Fund Manager**, or any **Individual Insured** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this **Coverage Section** pursuant to this Section XI.

Insurance Company Professional Liability Coverage Section Declarations

1. **NAMED INSURED:**

2. **POLICY PERIOD:** Inception:
Expiration:
The **Policy Period** incepts and expires as of 12:01 A.M. at the
Named Insured Address.

3. **COVERAGE SECTION LIMIT OF LIABILITY:** \$

4. **RETENTION:**
Each **Claim:** \$

5. **CONTINUITY DATE:**

Insurance Company Professional Liability Coverage Section

In consideration of the premium charged, in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this policy, and subject to all terms and conditions, the **Insurer** agrees as follows:

I. Insuring Agreement

The **Insurer** shall pay **Loss** of an **Insured** arising from a **Claim** first made against such **Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for any **Wrongful Act** of such **Insured** or of any entity or natural person for whose acts the **Insured** becomes legally liable, in the performance of or failure to perform **Professional Services**.

II. Definitions

In addition to the Definitions in the General Terms and Conditions, the following terms whenever set forth in boldface type in this **Coverage Section**, whether in singular or in plural, shall have the meanings indicated.

- I. **Claim** means
 1. a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations and including any demand for mediation, arbitration or any other alternative dispute resolution process);
 2. a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, nonmonetary or injunctive relief which is commenced by:
 - a. service of a complaint or similar pleading;
 - b. return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - c. receipt or filing of a notice of charges; or
 3. a civil, criminal, administrative or regulatory investigation of an **Insured** once such **Insured** is identified in writing by such investigating authority or enforcement body as a person or entity against whom a proceeding described in subparagraph 2 of this Definition may be commenced;
- II. **Defense Costs** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, but excluding compensation of any **Individual Insured**. **Defense Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.
- III. **Employee** means any past, present or future employee of a **Company**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including
 1. any part-time, seasonal and temporary employee,

2. volunteer, individual who is contracted to perform work for a **Company**, or independent contractor for a **Company** in his or her capacity as such, or
3. any individual who is leased to a **Company**, but only if such **Company** provides indemnification to such employees, volunteers or individuals in the same manner as is provided to such **Company's** own employees; provided, however, a **Company** may request that no coverage be provided under this **Coverage Section** for an independent contractor or leased employee named in a specific **Claim**. Such request must be made in writing and within 90 days of the **Claim** being reported to the **Insurer**. If no such request is made, this **Coverage Section** shall apply as if the **Company** determined that such independent contractor or leased employee shall receive coverage.

IV. **Executive** means

1. any natural person who was, now is or shall become a past, present or future duly elected or appointed director, officer, trustee, governor, general partner, managing general partner, venture partner, administrative general partner, principal, management committee member of a duly constituted committee, or member of the Board of Managers of a **Company**;
2. any past, present or future person in a duly elected or appointed position in a **Company** which is organized and operated in a jurisdiction other than the United States of America or any of its territories or possessions that is equivalent to an executive position listed in paragraph 1. of this Definition; or
3. any past, present or future General Counsel, Chief Compliance Officer or Risk Manager (or equivalent position) of the **Named Insured**.

V. **Individual Insured** means any

1. **Executive**;
2. **Employee**; or

VI. **Insured** means any

1. **Company**; or
2. **Individual Insured**.

VII. **Loss** means the amount that any Insured becomes legally obligated to pay in connection with any covered **Claim**, including, but not limited to:

1. judgments (including pre-judgment and post-judgment interest on any covered portion thereof) and settlements; and
2. damages, including punitive or exemplary damages and the multiple portion of multiplied damages relating to punitive or exemplary damages. The enforceability of this subparagraph (2) shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages;
3. **Defense Costs**;

Loss shall not include, other than **Defense Costs**:

1. any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**;
2. matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
3. civil or criminal fines or penalties;
4. any amounts which constitute premiums; fees and charges; return or refund of premiums; commissions or taxes; or loss arising out of any commingling of funds;
5. the costs and expenses of complying with any injunctive relief or other form of nonmonetary relief;

6. compensation, salary, wages, fees, benefits, overhead, charges or expenses of any **Insured**;
7. any amount for which the **Insured** is or is alleged to be liable under any insurance or reinsurance policy, contract, treaty, binder, slip, certificate, cover note, agreement, suretyship, endorsement, endowment or annuity;
8. any amount for which the **Insured** is or is alleged to be liable for the **Insured's** actual or alleged misrepresentations or omissions made in any oral or written representations, promises or guarantees regarding the past performance or future value of any investment or insurance product;

J. **Subsidiary** means

1. any entity in which the **Company** has or had **Management Control** on or before the inception date of the policy either directly or indirectly through one or more other **Subsidiaries**;
2. any entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries**; and whose assets do not exceed 35% of the assets of the **Company**, prior to the **Company** acquiring **Management Control** of the **Subsidiary**; or
3. any entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries** and whose assets exceed 35% of the assets of the **Company**, prior to the **Company** acquiring **Management Control** of the **Subsidiary** but only for a period of 90 days subsequent to the **Company** acquiring **Management Control** of the **Subsidiary**.

K. **Professional Services** means those services performed or required to be performed by an **Insured** for or on behalf of a policyholder or third party client of the **Company**:

1. for a fee, commission or other monetary consideration;
2. where a fee, commission or other monetary consideration would usually be received by the **Insured** but for business or other reasons is waived by the **Insured**; or
3. for other remuneration which inures to the benefit of such **Insured**.

L. **Wrongful Act** means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by an **Insured** or by any entity or natural person for whose acts the **Insured** becomes legally liable, which arises solely from the **Insureds** or any person for whose acts the **Insureds** are legally liable, performing **Professional Services** including alleged failure to perform **Professional Services**.

III. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

A. alleging, arising out of, based upon or attributable to:

1. gaining of any profit, remuneration or advantage to which the **Insured** was not legally entitled, if a final, non-appealable adjudication in any underlying proceeding establishes the gaining of such profit, remuneration or advantage;
2. committing of any deliberate criminal or deliberate fraudulent act, or any willful violation of any statute, rule or law, if a final, non-appealable adjudication in any underlying proceeding establishes that such deliberate criminal or deliberate

fraudulent act, or willful violation of statute, rule or law was committed. However, this exclusion A.2. shall not apply to a **Claim** by a policyholder arising out of the rendering or failure to render **Professional Services** in connection with the **Insureds'** handling or adjusting of any claim under any insurance policy issued in the ordinary course of the **Insureds'** business as an insurer.

For purposes of determining the applicability of this Exclusion, (i) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any **Individual Insured**; and (ii) only facts pertaining to and knowledge possessed by any past, present or future chairman, chief executive officer or chief financial officer (or equivalent positions) of a **Company** or the signatory of the **Application** shall be imputed to such **Company**;

- B. alleging, arising out of, based upon or attributable to the circumstances alleged or the same **Wrongful Act** or **Related Wrongful Act** alleged or contained in any claim or demand which has been reported, or to any circumstances, **Wrongful Act** or **Related Wrongful Act** of which notice has been given, under any prior insurer's policy or policy of which this **Coverage Section** is a renewal or replacement or which it may succeed in time;
- C. alleging, arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against, any **Insured** on or prior to the Continuity Date set forth in Item 5 of the Insurance Company Professional Liability **Coverage Section** Declarations, or the alleging of any **Wrongful Act** which is the same as or a **Related Wrongful Act** to that alleged in such pending or prior demand, suit or proceeding or in the underlying demand, order, decree or judgment;
- D. which is brought by or on behalf of a **Company** or any **Executive**; or which is brought by any security holder of the **Company**, whether directly or derivatively, unless such security holder's **Claim** is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation or intervention of any **Company**. This Exclusion shall not apply to:
 - 1. any **Claim** brought by an **Individual Insured** where such person was provided with or entitled to be provided with **Professional Services** and is bringing such **Claim** solely in his or her capacity as an insurance policyholder or third party client of the **Company** and without the solicitation, assistance or participation of any other **Insured**;
 - 2. any **Claim** brought by an **Executive** in the form of a crossclaim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** which is covered by this policy;
- E. for bodily injury, personal injury, emotional distress, mental anguish, sickness, disease or death of any person, or damage to, loss of use or destruction of any data or tangible property; provided, however, this Exclusion shall not apply to a **Claim** based solely on the **Insured's** failure to provide **Professional Services**.

- F. alleging, arising out of, based upon or attributable to any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; including, without limitation, any **Claim** by or on behalf of any policyholder or client of the **Company**, or other person or organization, based upon, arising out of, or attributable to the matters described in this exclusion. However, this exclusion shall not apply to a **Claim** by a policyholder arising out of the rendering or failure to render **Professional Services** in connection with the **Insureds'** handling or adjusting of any claim under any insurance policy issued in the ordinary course of the **Insureds'** business as an insurer.
- G. for any actual or alleged violations of any of the responsibilities, obligations or duties imposed on fiduciaries by **ERISA** as respects any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to any **Insured**;
- H. for injury resulting from discrimination, libel, slander, oral or written publication of defamatory or disparaging material, wrongful termination of employment, sexual harassment, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium;
- I. based upon, arising from, or in consequence of performing or the failure to perform of any investment banking services, including but not limited to any advice in connection with corporate mergers, acquisitions, restructurings, divestitures, issuance of securities, syndication or similar activities;
- J. based upon, arising from, or in consequence of:
1. the purchase, sale, participation, syndication, grant, or commitment to; or
 2. any act of restructure, termination, transfer, repossession or foreclosure on;
- any loan, lease or extension of credit or any failure to do the activities described in this Exclusion;
- K. for an **Insured's** contractual liability under any contract or agreement. This Exclusion shall not apply to:
1. liability which arises from the negligent performance of **Professional Services**;
or
 2. liability which would have attached in the absence of such express contract or agreement;
- L. based upon, arising from or in consequence of any **Insured** acting as a securities or commodities broker or dealer, or securities underwriter; or as a real estate broker or agent, escrow agent, property manager or title agent.
- M. brought or maintained by or on behalf of any security holder or policyholder of the **Company**, whether directly or derivatively, if such **Claim** is based upon, arising out of, or attributable to such person's ownership interest or investment in the **Company** or any securities issued by the **Company**; provided, however, this exclusion shall not apply to an investment in securities issued by a **Company** that is a registered investment company, as that term is defined in the Investment Company Act of 1940, as amended, which is managed by the **Company** or any affiliate thereof.

- N. alleging, based upon, arising out of or attributable to the provisions of: (i) medical, dental or related health care services; (ii) health care cost review; (iii) health care professional peer review; (iv) utilization review; or, (v) the administration and management of a health care plan.
- O. brought or maintained by or on behalf of or with the solicitation, assistance, participation or intervention of any reinsurer of the **Company**.
- P. alleging, based upon, arising out of or attributable to the unauthorized access to any electronic data processing system of the **Insureds**.
- Q. alleging, based upon, arising out of or attributable to the underwriting, rating, pricing, marketing or selling of any insurance policy or annuity, or any other insurance or investment product.
- R. brought or maintained by or on behalf of, or with the solicitation, assistance, participation or intervention of any pool, association or syndicate (including any officer, employee or director thereof) in which the **Insureds** are a participant, or any participant (including any officer, employee or director thereof) in any such pool, association or syndicate, involving the business or operations of such pool, association or syndicate.
- S. alleging, based upon, arising out of or attributable to: (i) the adequacy or inadequacy of any claim reserves of the **Company** or any entity to which the **Insureds** provide **Professional Services**; or, (ii) the bankruptcy, insolvency, receivership, liquidation or financial inability of any **Insureds** or any entity to which the **Insureds** provide **Professional Services** to pay claims or perform.
- T. alleging, based upon, arising out of or attributable to any express warranties, guarantees, or estimates of probable construction costs made in connection with **Professional Services**.
- U. alleging, based upon, arising out of or attributable to the providing of, or failure to provide, investment management or investment advisory services including, without limitation, investment research, investment consulting, portfolio management, fund administration, fund distribution, investment transactions or related investment services, regardless of whether such investment advisory services are performed by a registered investment advisor under the Investment Advisers Act of 1940, as amended.
- V. alleging, based upon, arising out of or attributable to any actual or alleged validity, invalidity, infringement, violation or misappropriation of any patent or **Trade Secret**. For purposes of this exclusion, **Trade Secret** means information, including a formula, pattern, compilation, program, device, method, technique or process, that derives independent economic value, actual or potential, from not being generally known to or readily ascertainable by other persons who can obtain value from its disclosure or use, so long as reasonable efforts have been made to maintain its secrecy.

IV. Limit of Liability

The following provisions shall apply in addition to the provisions of Section IV. Limit of Liability of the General Terms and Conditions:

- A. Subject to the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations, the **Coverage Section** Limit of Liability set forth in Item 3 of the Insurance Company Professional Liability **Coverage Section** Declarations shall be the maximum aggregate limit of the **Insurer's** liability for all **Loss** under this **Coverage Section**. Upon exhaustion of the Limit of Liability set forth in Item 3 of the Insurance Company Professional Liability **Coverage Section** Declarations, or the Policy Aggregate Limit of Liability in Item 3 of the General Declarations, the **Insurer's** obligations under this **Coverage Section** shall be deemed completely fulfilled and extinguished.

V. Retentions

The following provisions shall apply in addition to the provisions of Section V. Retentions of the General Terms and Conditions:

- A. The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention set forth in Item 4 of the Insurance Company Professional Liability **Coverage Section** Declarations. The Retention shall be borne by the **Insureds** and shall remain uninsured.
- B. A single Retention shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Acts**.
- C. The Retention set forth in Item 4 of the Insurance Company Professional Liability **Coverage Section** Declarations shall apply to each **Claim** under this **Coverage Section**.

VI. Defense Costs, Defense Counsel, Settlements & Judgments

A. Defense

The **Insurer** does not assume any duty to defend a **Claim**. The **Insureds** shall defend and contest any **Claim** made against them. An **Insured** shall not retain defense counsel or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. An **Insured** may select a defense counsel different from that selected by other **Insureds** if such selection is required due to an actual conflict of interest and only with the express prior written consent of the **Insurer**.

B. Advancement

The **Insurer** shall advance **Defense Costs** in excess of the applicable Retention on behalf of the **Insured** prior to final disposition of the **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured**, severally according to their respective interests, in the event and to the extent that any such **Insured** shall not be entitled under the Terms and Conditions of this **Coverage Section** to payment of such **Loss**.

C. Cooperation

The **Insurer** shall have the right to associate fully and effectively with each and every **Insured** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Insured** agrees to provide such information as the **Insurer** may reasonably require and to give the **Insurer** full cooperation and take such actions which, in such **Insurer's** judgment,

are deemed necessary and practicable to prevent or limit **Loss** arising from any **Wrongful Act**.

D. Prior Written Consent

The **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the **Insurer**. If the **Insured** admits or assumes any liability in connection with any **Claim** without the consent of the **Insurer**, then the **Insurer** shall not have any obligation to pay **Loss** with respect to such **Claim**. Only those settlements, stipulated judgments, or **Defense Costs** which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this **Coverage Section**. The **Insurer** shall not unreasonably withhold any consent required under this **Coverage Section**, provided that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Claim**(or any portion thereof) is not covered under the terms of this **Coverage Section**. In addition, the **Insured** shall not take any action which prejudices the **Insurer's** rights under this **Coverage Section**.

VII. Other Insurance

Such insurance as is provided by this **Coverage Section** shall apply only as excess over any other valid and collectible insurance, unless such other insurance is expressly written to be excess over any applicable Limit of Liability for this policy or any **Coverage Section**. This policy specifically shall be excess of any other policy pursuant to which any other **Insurer** has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**.

VIII. Allocation

If both **Loss** covered under this **Coverage Section** and loss not covered under this **Coverage Section** are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters and/or includes both covered and non-covered parties, then amounts incurred by the **Insured** on account of such **Claim** shall be allocated between covered **Loss** and non-covered loss based on the relative legal liability and financial exposure of the **Insureds** to covered and non-covered matters and/or based on the relative legal and financial exposure of the covered and non-covered parties. The **Insureds** and **Insurer** agree to use their best efforts to determine a fair and proper allocation.

If the **Insureds** and the **Insurer** cannot agree on an allocation of covered **Loss** and non-covered loss:

- A. the **Insurer** shall pay the amount of **Loss** that the **Insurer** and **Insureds** agree is not in dispute until a different allocation is negotiated, arbitrated, or judicially determined;
- B. no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
- C. the **Insurer**, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two arbitrators.

Bankers Professional Liability Coverage Section Declarations

1. **NAMED INSURED:**

2. **POLICY PERIOD:** Inception:

Expiration:

The **Policy Period** incepts and expires as of 12:01 A.M. at the
Named Insured Address.

3. **COVERAGE SECTION LIMIT OF LIABILITY:** \$

4. **RETENTION:**

Each **Claim:** \$

5. **CONTINUITY DATE:**

Bankers Professional Liability Coverage Section

In consideration of the premium charged, in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this policy, and subject to all terms and conditions, the **Insurer** agrees as follows:

I. Insuring Agreement

The **Insurer** shall pay **Loss** of an **Insured** arising from a **Claim** first made against such **Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for any **Wrongful Act** of such **Insured** or of any entity or natural person for whose acts the **Insured** becomes legally liable, in the performance of or failure to perform **Professional Services** for or on behalf of any **Customer**.

II. Definitions

In addition to the Definitions in the General Terms and Conditions, the following terms whenever set forth in boldface type in this **Coverage Section**, whether in singular or in plural, shall have the meanings indicated.

A. **Claim** means

1. a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations and including any demand for mediation, arbitration or any other alternative dispute resolution process);
2. a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, nonmonetary or injunctive relief which is commenced by:
 - a. service of a complaint or similar pleading;
 - b. return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - c. receipt or filing of a notice of charges;

B. **Customer** means any person or entity that:

1. has or had a written agreement with the **Company**;
2. submitted a written application to the **Company**; or
3. is a named beneficiary of any account held by the **Company's** Trust Department and who is entitled to receive **Professional Services** permitted by law or regulation.

C. **Defense Costs** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, but excluding compensation of any **Individual Insured**. **Defense Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.

D. **Employee** means any past, present or future employee of a **Company**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including

1. any part-time, seasonal and temporary employee,
 2. volunteer, individual who is contracted to perform work for a **Company**, or independent contractor for a **Company** in his or her capacity as such, or
 3. any individual who is leased to a **Company**,
- but only if such **Company** provides indemnification to such employees, volunteers or individuals in the same manner as is provided to such **Company's** own employees; provided, however, a **Company** may request that no coverage be provided under this **Coverage Section** for an independent contractor or leased employee named in a specific **Claim**. Such request must be made in writing and within 90 days of the **Claim** being reported to the **Insurer**. If no such request is made, this **Coverage Section** shall apply as if the **Company** determined that such independent contractor or leased employee shall receive coverage.

E. **Executive** means

1. any natural person who was, now is or shall become a past, present or future duly elected or appointed director, officer, trustee, governor, general partner, managing general partner, venture partner, administrative general partner, principal, management committee member of a duly constituted committee, or member of the Board of Managers of a **Company**;
2. any past, present or future person in a duly elected or appointed position in a **Company** which is organized and operated in a jurisdiction other than the United States of America or any of its territories or possessions that is equivalent to an executive position listed in paragraph 1. of this Definition; or
3. any past, present or future General Counsel, Chief Compliance Officer or Risk Manager (or equivalent position) of the **Named Insured**.

F. **Individual Insured** means any

1. **Executive**;
2. **Employee**; or

G. **Insured** means any

1. **Company**; or
2. **Individual Insured**.

H. **Loan Servicing** means the servicing of any loan, lease or extension of credit (whether consumer, commercial, mortgage banking or otherwise, but not including financing for investment banking, or leveraged or management buyouts). **Loan Servicing** includes the following servicing activities: record keeping, billing and disbursements of principal or interest, receipt or payment of insurance premiums and taxes, credit reporting or statements of creditworthiness, determination of the depreciation amount of property (but not projections of or an appraisal for residual or future value of property) or any similar administrative activity.

I. **Loss** means the amount that any Insured becomes legally obligated to pay in connection with any covered **Claim**, including, but not limited to:

1. judgments (including pre-judgment and post-judgment interest on any covered portion thereof) and settlements; and
2. damages, including punitive or exemplary damages and the multiplied portion of multiplied damages relating to punitive or exemplary damages. The enforceability of this subparagraph (ii) shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages;
3. **Defense Costs**;

Loss shall not include, other than **Defense Costs**:

1. any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**;
2. matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
3. civil or criminal fines or penalties;
4. taxes or tax penalties (whether imposed by federal, state, local or other governmental authority);
5. the costs and expenses of complying with any injunctive relief or other form of nonmonetary relief;
6. compensation, salary, wages, fees, benefits, overhead, charges or expenses of any **Insured**;
7. that portion of **Loss** that represents the return of fees, charges, commissions or other compensation paid to an **Insured**.
8. diminution in value or damages resulting from the diminution in value of money, securities, property or any other item of value unless caused by a **Wrongful Act** of an **Insured** in the execution or implementation of investment advice or investment decisions;
9. loss of the actual money, securities, property or other items of value in the custody or control of an **Insured**;
10. amounts otherwise reimbursable to an **Insured** by any trust, estate, plan or fund or any similar entity or the sponsor of any such trust, estate plan or fund or any similar entity; or
11. principal, interest or other monies whether paid, accrued or due as the result of any loan, lease or extension of credit;
12. any amount which constitutes disgorgement, including restitution.

K. **Subsidiary** means

1. any entity in which the **Company** has or had **Management Control** on or before the inception date of the policy either directly or indirectly through one or more other **Subsidiaries**;
2. any entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries**; and whose assets do not exceed 35% of the assets of the **Company**, prior to the **Company** acquiring **Management Control** of the **Subsidiary**; or
3. any entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries** and whose assets exceed 35% of the assets of the **Company**, prior to the **Company** acquiring **Management Control** of the **Subsidiary** but only for a period of 90 days subsequent to the **Company** acquiring **Management Control** of the **Subsidiary**.

L. **Professional Services** means those services, including **Loan Servicing**, performed or required to be performed by an **Insured** for or on behalf of a **Customer**:

1. for a fee, commission or other monetary consideration;
2. where a fee, commission or other monetary consideration would usually be received by the **Insured** but for business or other reasons is waived by the **Insured**; or
3. for other remuneration which inures to the benefit of such **Insured**.

M. **Wrongful Act** means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by an **Insured** or by any entity or natural person for whose acts the **Insured** becomes legally liable.

III. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A. alleging, arising out of, based upon or attributable to:
1. gaining of any profit, remuneration or advantage to which the **Insured** was not legally entitled, if a final, non-appealable adjudication in any underlying proceeding establishes the gaining of such profit, remuneration or advantage;
 2. committing of any deliberate criminal or deliberate fraudulent act, or any willful violation of any statute, rule or law, if a final, non-appealable adjudication in any underlying proceeding establishes that such deliberate criminal or deliberate fraudulent act, or willful violation of statute, rule or law was committed.

For purposes of determining the applicability of this Exclusion, (i) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any **Individual Insured**; and (ii) only facts pertaining to and knowledge possessed by any past, present or future chief executive officer, chief financial officer, or general counsel (or equivalent positions) of a **Company** or the signatory of the **Application** shall be imputed to such **Company**;

- B. alleging, arising out of, based upon or attributable to the circumstances alleged or the same **Wrongful Act** or **Related Wrongful Act** alleged or contained in any claim or demand which has been reported, or to any circumstances, **Wrongful Act** or **Related Wrongful Act** of which notice has been given, under any prior insurer's policy or policy of which this **Coverage Section** is a renewal or replacement or which it may succeed in time;
- C. alleging, arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against, any **Insured** on or prior to the Continuity Date set forth in Item 5 of the Bankers Professional Liability **Coverage Section** Declarations, or the alleging of any **Wrongful Act** which is the same as or a **Related Wrongful Act** to that alleged in such pending or prior demand, suit or proceeding or in the underlying demand, order, decree or judgment;
- D. alleging, arising out of, based upon or attributable to any actual or alleged act, error or omission of an **Individual Insured** serving in any capacity other than as an **Executive** or **Employee** of a **Company**;
- E. which is brought by or on behalf of a **Company** or any **Executive**; or which is brought by any security holder of the **Company**, whether directly or derivatively, unless such security holder's **Claim** is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation or intervention of any **Company**. This Exclusion shall not apply to:
1. any **Claim** brought by an **Individual Insured** where such person was provided with or entitled to be provided with **Professional Services** and is bringing such **Claim** solely in his or her capacity as a **Customer** and without the solicitation, assistance or participation of any other **Insured**;
 2. any **Claim** brought by an **Executive** in the form of a crossclaim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** which is covered by this policy;

- F. for bodily injury, personal injury, emotional distress, mental anguish, sickness, disease or death of any person, or damage to, loss of use or destruction of any data or tangible property.
- G. for any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**.
- H. for any actual or alleged violations of any of the responsibilities, obligations or duties imposed on fiduciaries by **ERISA** as respects any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to any **Insured**;
- I. for injury resulting from libel, slander, oral or written publication of defamatory or disparaging material, wrongful termination of employment, sexual harassment, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium;
- J. based upon, arising from, or in consequence of:
 - 1. the insolvency of any bank or banking firm, custodian, or securities or commodities broker or dealer, or any other person or entity, or the inability of any such entity or person to make any payment or settle or effect any transaction of any kind; provided this Exclusion shall not apply to **Wrongful Acts** solely in connection with an **Insured's** investment on behalf of the claimant in the stock of any of the foregoing entities; or
 - 2. **Financial Insolvency**;
- K. based upon, arising from, or in consequence of performing or the failure to perform any investment banking services, including but not limited to:
 - 1. the underwriting, placement, securitizing, syndicating, promoting, conversion, sale, purchase or market making (as defined in section 3(A)(38) of the Securities Exchange Act of 1934 as amended) of any security or instrument or other evidence of indebtedness, whether or nonregistered under the Securities Act of 1933, as amended;
 - 2. the rendering of advice or recommendations regarding any actual, potential, attempted or threatened merger, consolidation, or business combination, acquisition, sale, purchase, divestiture or distribution, tender or exchange offer, proxy contest or solicitation, leveraged or management buy-out, going private transaction, partnership, minority investment, joint or collaborative venture, dissolution, liquidation, rehabilitation, conservatorship, or insolvency proceeding, reorganization, restructuring, recapitalization, spin-off, primary or secondary private or public offering of debt or equity securities or other instruments or evidences of indebtedness, or sale of assets or operations of any enterprise or entity, or any effort to raise or furnish capital or financing for any enterprise or entity under any of the foregoing;
 - 3. the rendering of analysis, advice or fairness opinions or valuations regarding any enterprise or entity or any of the assets or liabilities of, or interests in, any entity not held by the **Insured** as trustee;
 - 4. any acquisition, sale, conversion or transfer of securities, assets or liabilities by the **Insured** for such **Insured's** own account or as an original purchaser in a

transaction under Regulation 144A under the Securities Act of 1933, as amended;

5. the forming, syndicating, operating, administering, advising or rolling up a limited partnership or real estate investment trust;
 6. any use by any **Insured** of, or aiding and abetting or any other participation by any **Insured** in the use of, non-public information in a manner prohibited by the laws of the United States of America including but not limited to the Insider Trading and Securities Fraud Enforcement Act of 1988 (as amended), section 10(b) of the Securities Exchange Act of 1934 (as amended) and Rule 10(b)(5) promulgated thereunder, or prohibited by the laws of any state, territory or subdivision thereof, or prohibited by the laws of any other jurisdiction, or any rules or regulations promulgated under any of the foregoing; and
 7. any disclosure or statement or omission in any disclosure, filing or **Loan Servicing** in connection with any investment banking activities, including any of the activities listed in this Exclusion 1 through 6;
- L. based upon, arising from, or in consequence of any fees or charges;
- M. based upon, arising from, or in consequence of:
1. the purchase, sale, participation, syndication, grant, or commitment to; or
 2. any act of restructure, termination, transfer, repossession or foreclosure on;
- any loan, lease or extension of credit or any failure to do the activities described in this Exclusion. However, this Exclusion shall not apply to **Loan Servicing**;
- N. based upon, arising from, or in consequence of any act arising out of the operation or control of any entity or property that the **Insured** acquired as security or collateral for; or the rendering of advice in connection with any loan, lease or extension of credit;
- O. based upon, arising from, or in consequence of any function or activity as a receiver, trustee in bankruptcy, conservator or assignee for the benefit of creditors;
- P. based upon, arising from, or in consequence of the rendering of or failing to render any information system or network technology service or advice, including the development, design or implementation of software or other systems;
- Q. based upon, arising from, or in consequence of mechanical or electronic failure, faulty construction, error in design, latent defect, wear or tear, gradual deterioration, electrical disturbance, media failure or breakdown or malfunction or error in programming involving any electronic or computer system;
- R. based upon, arising from or in consequence of any unauthorized instructions that are designed to modify, alter, impair, damage, destroy, delete, record, input or transmit information within any electronic or computer system;
- S. based upon, arising from, or in consequence of the notarization of any signature without the physical appearance at the time of notarization of the person who is or claims to be the person signing the instrument;
- T. based upon, arising from or in consequence of serving as a trustee under bond indenture;

- U. based upon, arising from, or in consequence of the liability of others assumed by any **Insured** under any written or oral contract or agreement; provided that this Exclusion shall not apply to the extent that an **Insured** would have been liable in the absence of such contract or agreement;
- V. based upon, arising from or in consequence of the rendering of or failure to render any of the following professional services: medical or health care services, accounting services, data processing services, architectural or construction management services, the practice of law or the rendering of legal services, or insurance agent or brokerage services;
- W. based upon, arising from, or in consequence of any oral or written representation, promise or guarantee regarding any rate of return or the fulfillment of any minimum performance standards;
- X. by, on behalf of, or at the behest of any natural person or concern (including but not limited to any shareholder, bondholder, or debenture holder), their estate, heirs, legal representatives or assigns, that has a legal or equitable interest in any stock, bond, debenture, or other form of security or ownership interest of the **Company**, when such **Claim** is based upon, arises out of, or pertains to any interest in such security or ownership interest; provided that this Exclusion shall not apply:
 1. to any **Claim** for a **Wrongful Act** in which an **Individual Insured** was provided with or was entitled to be provided with **Professional Services** and such **Claim** is brought solely in his or her capacity as a **Customer**, and
 2. such **Claim** is brought without the solicitation, assistance or participation of any other **Insured**.
- Y. based upon, arising from, or in consequence of an **Insured's** performing or failure to perform property management services, real estate appraisal services, or real estate development services;
- Z. based upon, arising from or in consequence of any **Insured** acting as a securities or commodities broker or dealer, or securities underwriter;

IV. Limit of Liability

The following provision shall apply in addition to the provisions of Section IV. Limit of Liability of the General Terms and Conditions:

Subject to the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations, the **Coverage Section** Limit of Liability set forth in Item 3 of the Bankers Professional Liability **Coverage Section** Declarations shall be the maximum aggregate limit of the **Insurer's** liability for all **Loss** under this **Coverage Section**. Upon exhaustion of the Limit of Liability set forth in Item 3 of the Bankers Professional Liability **Coverage Section** Declarations, or the Policy Aggregate Limit of Liability in Item 3 of the General Declarations, the **Insurer's** obligations under this **Coverage Section** shall be deemed completely fulfilled and extinguished.

V. Retentions

The following provisions shall apply in addition to the provisions of Section V. Retentions of the General Terms and Conditions:

- A. The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention set forth in Item 4 of the Bankers Professional Liability **Coverage Section** Declarations. The Retention shall be borne by the **Insureds** and shall remain uninsured.
- B. A single Retention shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Acts**.
- C. The Retention set forth in Item 4 of the Bankers Professional Liability **Coverage Section** Declarations shall apply to each **Claim** under this **Coverage Section**.

VI. Defense Costs, Defense Counsel, Settlements & Judgments

A. Defense

The **Insurer** does not assume any duty to defend a **Claim**. The **Insureds** shall defend and contest any **Claim** made against them. An **Insured** shall not retain defense counsel or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. An **Insured** may select a defense counsel different from that selected by other **Insureds** if such selection is required due to an actual conflict of interest and only with the express prior written consent of the **Insurer**.

B. Advancement

The **Insurer** shall advance **Defense Costs** in excess of the applicable Retention on behalf of the **Insured** prior to final disposition of the **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured**, severally according to their respective interests, in the event and to the extent that any such **Insured** shall not be entitled under the Terms and Conditions of this **Coverage Section** to payment of such **Loss**.

C. Cooperation

The **Insurer** shall have the right to associate fully and effectively with each and every **Insured** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Insured** agrees to provide such information as the **Insurer** may reasonably require and to give the **Insurer** full cooperation and take such actions which, in such **Insurer's** judgment, are deemed necessary and practicable to prevent or limit **Loss** arising from any **Wrongful Act**.

D. Prior Written Consent

The **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the **Insurer**. If the **Insured** admits or assumes any liability in connection with any **Claim** without the consent of the **Insurer**, then the **Insurer** shall not have any obligation to pay **Loss** with respect to such **Claim**. Only those settlements, stipulated judgments, or **Defense Costs** which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this **Coverage Section**. The **Insurer** shall not unreasonably withhold any consent required under this **Coverage Section**, provided that in all events the **Insurer** may withhold consent to

any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Claim** (or any portion thereof) is not covered under the terms of this **Coverage Section**. In addition, the **Insured** shall not take any action which prejudices the **Insurer's** rights under this **Coverage Section**.

VII. Other Insurance

Such insurance as is provided by this **Coverage Section** shall apply only as excess over any other valid and collectible insurance, unless such other insurance is expressly written to be excess over any applicable Limit of Liability for this policy or any **Coverage Section**. This policy specifically shall be excess of any other policy pursuant to which any other **Insurer** has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**.

VIII. Allocation

If both **Loss** covered under this **Coverage Section** and loss not covered under this **Coverage Section** are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters and/or includes both covered and non-covered parties, then amounts incurred by the **Insured** on account of such **Claim** shall be allocated between covered **Loss** and non-covered loss based on the relative legal liability and financial exposure of the **Insureds** to covered and non-covered matters and/or based on the relative legal and financial exposure of the covered and non-covered parties. The **Insureds** and **Insurer** agree to use their best efforts to determine a fair and proper allocation.

If the **Insureds** and the **Insurer** cannot agree on an allocation of covered **Loss** and non-covered loss:

- A. the **Insurer** shall pay the amount of **Loss** that the **Insurer** and **Insureds** agree is not in dispute until a different allocation is negotiated, arbitrated, or judicially determined;
- B. no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
- C. the **Insurer**, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two arbitrators.

Employment Practices Liability Coverage Section Declarations

1. **NAMED INSURED:**

2. **POLICY PERIOD:** Inception:
Expiration:

The **Policy Period** incepts and expires as of 12:01 A.M. at the **Named Insured** Address.

3. **COVERAGE SECTION LIMIT OF LIABILITY:** \$

4. **RETENTIONS:**

Each **Claim** for an **Employment Practices Violation:** \$

5. **CONTINUITY DATE:**

Employment Practices Liability Coverage Section

In consideration of the premium charged and in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this policy, and subject to all the terms and conditions of this policy, the **Insurer** agrees as follows:

I. Insuring Agreements

The **Insurer** shall pay **Loss** of an **Insured** arising from a **Claim** first made against such **Insured** during the **Policy Period** or Extended Reporting Period if applicable for any actual or alleged **Wrongful Act** of such **Insured**.

II. Definitions

In addition to the Definitions in the General Terms and Conditions, the following terms whenever set forth in boldface type in this **Coverage Section**, whether in singular or in plural, shall have the meanings indicated.

A. **Claim** means

1. a written demand for monetary, non-monetary or injunctive relief, (including any request to toll or waive any statute of limitations);
2. a civil, criminal, administrative or regulatory proceeding for monetary, non-monetary or injunctive relief which is commenced by:
 - (i) service of a complaint or similar pleading;
 - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges, including, but not limited to, an Equal Employment Opportunity Commission (“EEOC”) or Office of Federal Contract Compliance Program (“OFCCP”) (or similar federal, state or local agency) proceeding or investigation; or
3. an arbitration proceeding pursuant to an employment contract, policy or practice of a **Company** commenced by receipt of a demand for arbitration or similar document.

However, in no event shall the term “**Claim**” include any labor or grievance proceeding which is subject to a collective bargaining agreement.

- #### B. **Defense Costs** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, but excluding compensation of any **Individual Insured**. **Defense Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.

- #### C. **Employee** means any past, present or future employee of a **Company**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including

1. any part-time, seasonal and temporary employee,
2. volunteer, individual who is contracted to perform work for a **Company**, or independent contractor for a **Company** in his or her capacity as such, or
3. an individual who is leased to a **Company**, but only if such **Company** provides indemnification to such employees, volunteers or individuals in the same manner as is provided to such **Company's** own employees. A **Company** may request that no coverage be provided under this **Coverage Section** for an independent contractor or leased employee named in a specific **Claim**. Such request must be made in writing and within 90 days of the **Claim** being reported to the **Insurer**. If no such request is made, this **Coverage Section** shall apply as if such **Company** determined that such independent contractor or leased employee shall receive coverage.

D. **Employment Practices Violation** means the following actual or alleged acts whether committed directly or indirectly, intentionally or unintentionally:

1. wrongful, including constructive termination of employment (actual or constructive), dismissal or discharge;
2. breach of an implied contract of employment;
3. harassment, sexual harassment or creation of a hostile work environment;
4. discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability);
5. **Retaliation**;
6. employment-related misrepresentations to an **Employee** of a **Company** or applicant for employment with a **Company** or an **Outside Entity**;
7. employment-related libel, slander, humiliation, defamation or invasion of privacy;
8. wrongful failure to employ or promote;
9. wrongful deprivation of a career opportunity with a **Company**, wrongful discipline, wrongful demotion or negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an **Employee** reference;
10. failure to grant tenure; or
11. with respect to 1 through 10 above, negligent hiring, retention, training, supervision, infliction of emotional distress or mental anguish, failure to provide or enforce adequate or consistent organizational policies and procedures, or violation of an individual's civil rights;

but only if the actual or alleged **Employment Practices Violation** is brought by an **Employee** or an **Outside Entity Employee**, or by an applicant for employment with a **Company** or an **Outside Entity**.

E. **Executive** means:

1. any past, present or future duly elected or appointed director, officer, management committee member of a duly constituted committee, or member of the Board of Managers;
2. any past, present or future person in a duly elected or appointed position in an entity which is organized and operated in a jurisdiction other than the United States of America or any of its territories or possessions that is equivalent to an executive position listed in subparagraph 1. of this Definition; or
3. any past, present or future General Counsel and Risk Manager (or equivalent position) of the **Named Insured**.

F. **Individual Insured** means any:

1. **Executive**;
2. **Employee**; or
3. **Outside Entity Executive**.

G. **Insured** means any:

1. **Company**; or
2. **Individual Insured**.

H. **Loss** means

1. the amount that any **Insured** becomes legally obligated to pay in connection with any covered **Claim**, including, but not limited to:
 - (i) judgments (including pre-judgment and post-judgment interest on any covered portion thereof) and settlements;
 - (ii) damages, including punitive or exemplary damages and the multiple portion of multiplied damages relating to punitive or exemplary damages (including the multiple or liquidated damages awarded under the Age Discrimination in Employment Act and the Equal Pay Act). The enforceability of this subparagraph shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages;
 - (iii) salary, wages and bonus compensation, including back pay and front pay; and
 - (iv) a statutory award of attorneys' fees; and
2. **Defense Costs**;

Loss shall not include

1. any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**;
2. matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
3. employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation;
4. the costs and expenses of complying with any order of injunctive relief or other form of non-monetary relief, including any liability or costs incurred by any **Insured** to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy or seminar;
5. civil or criminal fines or penalties; or
6. taxes or tax penalties or interest thereon (whether imposed by federal, state, local or other governmental authority).

Defense Costs shall be provided for items specifically excluded from **Loss** pursuant to 1. through 6. above provided such **Defense Costs** result from a covered **Claim**.

I. **Outside Entity** means any not-for-profit organization, other than a **Subsidiary**;

J. **Outside Entity Executive** means:

1. any **Executive** of a **Company** serving in the capacity as director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only if such service is at the specific requestor direction of a **Company**; or
2. any other person listed as an **Outside Entity Executive** in an endorsement to this Employment Practices Liability **Coverage Section**.

It is understood and agreed that, in the event of a disagreement between a **Company** and an individual as to whether such individual was acting at the specific request or direction of such **Company**, the determination of the **Named Insured** shall control on this issue. The **Named Insured's** determination shall be made by written notice to the **Insurer** within 90 days after the **Claim** first is reported to the **Insurer** pursuant to the terms of this policy. In the event no determination is made within such period, this **Coverage Section** shall apply as if the **Named Insured** determined that such **Executive** was not acting at such **Company's** specific request or direction.

K. **Retaliation** means an adverse employment act committed or allegedly committed by an **Insured** in response to any of the following activities:

1. the disclosure or threat of disclosure by an **Employee** of a **Company** or an **Outside Entity** to a superior or to any governmental agency of any act by an **Insured** that is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
2. the actual or attempted exercise by an **Employee** of a **Company** or an **Outside Entity** of any right that such **Employee** has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights;
3. the actual or threatened filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or
4. the actual or threatened labor strikes of an **Employee** of a **Company** or an **Outside Entity**.

L. **Settlement Opportunity** means an **Insurer** recommended settlement that is within any applicable Limit of Liability and that is acceptable to the claimant.

M. **Subsidiary** means:

1. any entity in which the **Company** has or had **Management Control** on or before the inception date of the policy either directly or indirectly through one or more other **Subsidiaries**;
2. any entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries** and whose total number of employees does not exceed 35% of the total number of **Employees** that fall under the definition of **Insured** under this policy prior to the **Company** acquiring **Management Control** of the **Subsidiary**; or
3. any entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries** and whose total number of employees exceed 35% of the total number of **Employees** that fall under the definition of **Insured** under this policy prior to the **Company** acquiring **Management Control** of the **Subsidiary** but

only for a period of 90 days subsequent to the **Company** acquiring **Management Control** of the **Subsidiary**.

N. **Wrongful Act** means any actual or alleged **Employment Practices Violation**.

III. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A. alleging, arising out of, based upon or attributable to:
1. the gaining of any profit or advantage to which any final adjudication establishes the **Insured** was not legally entitled; or
 2. the committing of any deliberate criminal or deliberate fraudulent act, or any willful violation of any statute, rule or law, if any final adjudication establishes that such deliberate criminal or deliberate fraudulent act or willful violation of statute, rule or law was committed.

For purposes of determining the applicability of this exclusion (i) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any other **Individual Insured**; and (ii) only facts pertaining to and knowledge possessed by any past, present or future chief executive officer, chief financial officer, or general counsel (or equivalent positions) of a **Company** or the signatory of the **Application** shall be imputed to such **Company**;

- B. alleging, arising out of, based upon or attributable to the circumstances alleged or the same **Wrongful Act** or **Related Wrongful Act** alleged or contained in any claim or demand which has been reported, or to any circumstances, **Wrongful Act** or **Related Wrongful Act** of which notice has been given, under any prior insurer's policy or policy of which this **Coverage Section** is a renewal or replacement or which it may succeed in time;
- C. alleging, arising out of, based upon or attributable to any demand, suit, EEOC (or similar state, local or foreign agency) proceeding or investigation or other proceeding pending against any **Insured**, or order, decree or judgment entered for or against any **Insured**, on or prior to the Continuity Date set forth in Item 5 of the Employment Practice Liability **Coverage Section** Declarations, or the alleging of any **Wrongful Act** which is the same or a **Related Wrongful Act** to that alleged in such pending or prior demand, suit, EEOC (or similar state, local or foreign agency) proceeding or investigation or other proceeding in the underlying demand, order, decree or judgment;
- D. with respect to an **Outside Entity Executive**, for any **Wrongful Act** occurring prior to the Continuity Date set forth in Item 5 of the Employment Practices Liability **Coverage Section** Declarations if any **Insured**, as of such **Continuity Date**, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Coverage Section**;
- E. alleging, arising out of, based upon or attributable to any actual or alleged act, error or omission of an **Individual Insured** serving in any capacity other than as an **Executive** or **Employee** of a **Company** or as an **Outside Entity Executive** of an **Outside Entity**;

- F. for bodily injury, sickness, disease or death of any person, or damage to, loss of use or destruction of any tangible property. This Exclusion shall not apply to a **Claim** for emotional distress or mental anguish arising from a **Wrongful Act**;
- G. for violations of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law or common law. This Exclusion shall not apply to the portion of a **Claim** attributable to **Retaliation**;
- H. alleging, arising out of, based upon or attributable to:
1. the refusal, failure or inability of any **Insured** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered (other than tort-based back pay or front pay damages for non-conversion related torts);
 2. improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**; or
 3. the failure to provide or enforce legally required meal or rest break periods.

This Exclusion shall not apply to the portion of a **Claim** attributable to **Retaliation**;

- I. alleging, arising out of, based upon or attributable to any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law. This Exclusion shall not apply to the portion of a **Claim** attributable to **Retaliation**.
- J. alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of any **Insured** under any express contract or agreement. This Exclusion shall not apply to:
1. liability which would have attached in the absence of such express contract or agreement; or
 2. **Defense Costs**.

IV. Limit of Liability

Subject to the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations, the Limit of Liability set forth in Item 3 of the Employment Practices Liability **Coverage Section** Declarations shall be the maximum aggregate limit of the **Insurer's** liability for all **Loss** under this **Coverage Section**. Upon exhaustion of the Limit of Liability set forth in Item 3 of the Employment Practices Liability **Coverage Section** Declarations or the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations, the **Insurer's** obligations under this **Coverage Section** shall be deemed completely fulfilled and extinguished and the **Insurer's** duty to defend and pay **Defense Costs** shall end.

V. Retentions

The following provision shall apply in addition to the provisions of Section V. Retentions of the General Terms and Conditions:

- A. The Retention set forth in Item 4 of the Employment Practices Liability **Coverage Section** Declarations shall apply to each **Claim** for an **Employment Practices Violation**.
- B. The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention set forth in Item 4. of the **Employment Practices Liability Coverage Section** Declarations. The Retention shall be borne by the **Insureds** and shall remain uninsured.
- C. A single Retention shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Acts**.
- D. In the event a **Company** is unable to pay the applicable Retention due to **Financial Insolvency**, the **Insurer** shall advance payment for **Loss** within the applicable Retention. The **Insurer** shall be entitled to recover the amount of **Loss** advanced within the Retention from such **Company** pursuant to Section X. Subrogation of the General Terms and Conditions.

VI. Defense Costs, Defense Counsel, Settlements & Judgments

A. Defense

Except as hereinafter stated, the **Insurer** shall have both the right and duty to defend any **Claim** made against an **Insured** alleging a **Wrongful Act**, even if such **Claim** is groundless, false or fraudulent. The **Insurer** shall have the right and duty to defend any **Claim** until the Limit of Liability set forth in Item 3 of the Employment Practices Liability **Coverage Section** Declarations or the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations has been exhausted by payment of **Loss**. With the express prior written consent of the **Insurer**, an **Insured** may select a defense counsel different from that selected by other **Insured** defendants if such selection is required due to an actual conflict of interest.

B. Cooperation

1. The **Named Insured** shall have the right to associate fully and effectively, at its own expense, with the **Insurer** in the defense of any **Claim** including but not limited to, choice of defense counsel and negotiating a settlement.
2. Each and every **Insured** agrees to provide such information as the **Insurer** may reasonably require and to give the **Insurer** full cooperation and take such actions which, in such **Insurer's** judgment, are deemed necessary and practicable to prevent or limit **Loss** arising from any **Wrongful Act**.

C. Prior Written Consent

The **Insured** shall not admit or assume any liability, enter into any settlement agreement or stipulate to any judgment without the prior written consent of the **Insurer**. If the **Insured** admits or assumes any liability in connection with any **Claim** without the consent of the **Insurer**, then the **Insurer** shall not have any obligation to pay **Loss** with respect to such **Claim**. Only those settlements, stipulated judgments and **Defense Costs** which have been consented to by the **Insurer** shall be recoverable as **Loss**

under the terms of this **Coverage Section**. The **Insurer** shall not unreasonably withhold any consent required under this **Coverage Section**, provided that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Claim** (or any portion thereof) is not covered under the terms of this **Coverage Section**. In addition, the **Insured** shall not take any action which prejudices the **Insurer's** rights under this **Coverage Section**.

In the event the **Insureds** do not consent to the first **Settlement Opportunity** within 30 days of the date the **Insureds** first are made aware of such **Settlement Opportunity** (or in the case of a **Settlement Opportunity** which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than 30 days after the settlement offer was made), then, subject to all applicable limits of liability, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** ("**Settlement Opportunity Amount**"), plus (2) 80% of covered **Loss** in excess of such **Settlement Opportunity Amount**, it being a condition of this insurance that the remaining 20% of such covered **Loss** in excess of such **Settlement Opportunity Amount** shall be carried by the **Insureds** at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until such **Settlement Opportunity Amount** exceeds the applicable Retention set forth in Item 4 of the Employment Practices Liability **Coverage Section** Declarations.

VII. Other insurance

The insurance that is provided by this **Coverage Section** shall be primary unless expressly written to be excess over other applicable insurance, except that, in the event of a **Claim** against an **Insured** arising out of his or her service as an **Outside Entity Executive**, or a **Claim** against an **Insured** for the **Insured's** liability with respect to a leased individual or independent contractor as described in the Definition of **Employee**, coverage as is afforded by this policy specifically shall be excess of any: (1) indemnification provided by such **Outside Entity** or leasing company; and (2) any other insurance provided to such **Outside Entity**, leasing company or independent contractor.

VIII. Allocation

If both **Loss** covered under this **Coverage Section** and loss not covered under this **Coverage Section** are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters, then coverage under this **Coverage Section** with respect to such **Claim** shall apply as follows:

- A. **Defense Costs**: 100% of **Defense Costs** incurred by the **Insured** or the **Insurer** on account of such **Claim** will be considered covered **Loss**; and
- B. **Loss** other than **Defense Costs**: All remaining amounts incurred by the **Insured** on account of such **Claim** shall be allocated by the **Insurer** pro rata between covered **Loss** and non-covered loss based on the legal liability and financial exposures of the **Insureds** to covered and non-covered matters and, in the event of a settlement in such **Claim**, also based on the number of covered and non-covered counts, causes of action or allegations against the **Insureds**.

If the **Insureds** and the **Insurer** cannot agree on an allocation of covered **Loss** and non-covered loss:

- A. no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
- B. the **Insurer**, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two arbitrators.

Fiduciary Liability Coverage Section Declarations

1. **NAMED INSURED:**

2. **POLICY PERIOD:** Inception:
Expiration:

The **Policy Period** incepts and expires as of 12:01 A.M. at the **Named Insured** Address.

3. (a) **COVERAGE SECTION LIMIT OF LIABILITY:** \$
(b) **Voluntary Compliance** Loss Sub-Limit of Liability: \$
(c) **HIPAA Penalties** Sub-Limit of Liability: \$

4. **RETENTION:**

Each **Claim:** \$

5. **CONTINUITY DATE:**

Fiduciary Liability Coverage Section

In consideration of the premium charged and in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this policy, and subject to all the terms and conditions of this policy, the **Insurer** agrees as follows:

I. Insuring Agreements

Coverage A: Fiduciary Liability Coverage

The **Insurer** shall pay **Loss** of an **Insured** arising from a **Claim** first made against such **Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for any actual or alleged **Wrongful Act** of such **Insured** or any person for whom such **Insured** is legally responsible.

Coverage B: Voluntary Settlement Program Coverage

The **Insurer** shall pay **Voluntary Compliance Loss** of an **Insured** with respect to a **Voluntary Settlement Program Notice** first given to the **Insurer** during the **Policy Period** or the Extended Reporting Period, if applicable, provided that the **Voluntary Compliance Loss** is incurred after such **Voluntary Settlement Program Notice** first is given to the **Insurer**.

The payment of any **Voluntary Compliance Loss** under this **Coverage Section** shall not waive any of the **Insurer's** rights under this policy or at law, including in the event that a **Voluntary Compliance Loss** results in a **Claim**.

II. Definitions

In addition to the Definitions in the General Terms and Conditions, the following terms whenever set forth in boldface type in this **Coverage Section**, whether in singular or in plural, shall have the meanings indicated.

- A. **Benefits** means any obligation under a **Plan** to a participant or beneficiary that is a payment of money or property, or the grant of a privilege, right, option or perquisite.
- B. **Breach of Fiduciary Duty** means a violation of the responsibilities, obligations or duties imposed upon **Insureds** by **ERISA**.
- C. **Claim** means
 - 1. a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations);
 - 2. a civil, criminal or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:
 - (i) service of a complaint or similar pleading;
 - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or

- (iii) receipt or filing of a notice of charges;
 - 3. a formal agency or regulatory or adjudicative proceeding commenced by the filing of a notice of charges or similar document or by entry of a formal investigative order or similar document to which an **Insured** is subject; or
 - 4. a written notice of commencement of a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority located outside the United States of America, including, but not limited to, the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or rules or regulations thereunder.
- D. **Consulting Fees** means fees charged by a third party actuary, benefits consultant or accountant resulting solely from the correction of an actual or potential **Breach of Fiduciary Duty**, but excluding any fees, costs or expenses associated with: (1) a routine or regularly scheduled **Plan** audit; or (2) an audit or review for the purpose of identifying or finding the **Breach of Fiduciary Duty** or assessing the extent of **Loss** resulting from such **Breach of Fiduciary Duty**.
- E. **Defense Costs** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, but excluding compensation of any **Individual Insured**. **Defense Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.
- F. **ERISA** means the Employee Retirement Income Security Act of 1974, the English Pension Scheme Act 1993, the English Pensions Act 1995, all as amended, any similar common or statutory law anywhere in the world, and any rules or regulations promulgated under any such Acts or law.
- G. **HIPAA Penalties** means civil monetary penalties imposed upon an **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA").
- H. **Individual Insured** means
- 1. any past, present or future director, officer, governor, general partner, management committee member, duly elected or appointed member of a **Pension Oversight Committee**, member of the board of managers or employee of a **Company** or, if applicable, of a **Plan**;
 - 2. any past, present or future natural person in a position equivalent to a position listed in subparagraph 1 of this Definition in the event that a **Company** is operating in a jurisdiction other than the United States of America or any of its territories or possessions.
- I. **Insured** means
- 1. any **Individual Insured**;
 - 2. any **Plan**;
 - 3. any **Company**;
 - 4. any **Pension Oversight Committee**; or

5. any other person or entity in his, her or its capacity as a fiduciary, administrator or trustee of a **Plan** and included by written endorsement attached to this Fiduciary Liability **Coverage Section**.

J. **Loss** means

1. the amount that any **Insured** becomes legally obligated to pay in connection with any covered **Claim**, including, but not limited to
 - (i) judgments (including pre-judgment and post-judgment interest on any covered portion thereof) and settlements;
 - (ii) damages, including punitive or exemplary damages and the multiplied portion of multiplied damages relating to punitive or exemplary damages. The enforceability of this subparagraph (ii) shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages; and
2. **Defense Costs**, except for items specifically excluded from Loss pursuant to subparagraph 6 below; and
3. **Voluntary Compliance Loss** solely with respect to Coverage B.

Loss does not include

1. any amount for which an **Insured** is not financially liable or which is without legal recourse to the **Insured**;
2. any costs incurred by a **Company** or **Plan** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
3. any amount incurred by an **Insured** in the defense or investigation of any action, proceeding, investigation or demand that is not then a **Claim** even if (i) such amount also benefits the defense of a covered **Claim**, or (ii) such action, proceeding, investigation or demand subsequently gives rise to a **Claim**;
4. matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
5. taxes, fines or penalties (whether imposed by federal, state, local or other governmental authority), except:
 - (i) the 5% or less, or the 20% or less, civil penalties imposed upon an **Insured** as a fiduciary under Section 502(i) or (l), respectively, of **ERISA**, as amended;
 - (ii) any civil penalties imposed by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or rules or regulations hereunder. Any coverage for such civil penalties applies only if the funds or assets of the subject **Plan** are not used to fund, pay or reimburse the premium for this **Coverage Section**;
 - (iii) solely with respect to Coverage B, any fines or penalties paid in connection with **Voluntary Compliance Loss**; or
 - (iv) any **HIPAA Penalties**; or
6. **Benefits**, or that portion of any settlement or award in an amount equal to such **Benefits**, unless and only to the extent that recovery of such **Benefits** is based upon a covered **Wrongful Act** and is payable as a personal obligation of an **Individual Insured**. **Loss** shall include a monetary award in, or fund for settling, a **Claim** against any **Insured** to the extent it alleges a reduction in the value of **Plan** assets or a reduction in the value of the actual accounts of **Plan** participants by reason of a change in value of the investments held by that

Plan, regardless of whether the amounts sought in such **Claim** have been characterized by plaintiffs as “benefits” or held by a court to be “benefits.”

Defense Costs shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs 1, 2, 3, 4, and 5, subject to the other terms, conditions and Exclusions of this **Coverage Section**. **Defense Costs** shall not be provided for items specifically excluded from **Loss** pursuant to subparagraph 6 above.

K. **Pension Oversight Committee** means any committee or subcommittee duly formed by a **Trustee Company** and duly appointed to act as a trustee of the **Plan** or acting as a constructive trustee of the **Plan** with responsibility for pension or **Benefits** oversight.

L. **Plan** means

1. any plan, fund, trust or program (including any Employee Benefit Plan, Pension Benefit Plan, Welfare Plan or IRA-Based Plan, as each are defined in **ERISA**), established anywhere in the world, which was, is or shall be sponsored solely by a **Company**, or sponsored jointly by a **Company** and a labor organization, solely for the benefit of the employees or the directors and officers of such **Company** and which existed on or before the inception date set forth in Item 2 of the Fiduciary Liability **Coverage Section** Declarations or which is created, formed or acquired after such inception date. Any coverage with respect to any such **Plan** created, formed or acquired during the **Policy Period** shall apply only for **Wrongful Acts** committed, attempted, or allegedly committed or attempted, after the effective date of such creation, formation or acquisition and shall be subject to Section IX. of this **Coverage Section**;
2. any other employee benefit plan or program not subject to **ERISA** which is sponsored solely by a **Company** for the benefit of the employees or directors and officers of such **Company**, including any fringe benefit or excess benefit plan;
3. any other plan or program otherwise described in paragraphs 1 or 2 of this Definition while such plan or program is being actively developed, formed or proposed by a **Company** prior to the formal creation of such plan or program; provided, however, no coverage is afforded under this **Coverage Section** for any **Claim** against an **Insured** as a settler of any plan, fund, trust or program or similar uninsured capacity with respect to any plan or program; and
4. any other plan, fund or program specifically included as a **Plan** by endorsement to this **Coverage Section**.

The Definition of **Plan** also shall include the following government-mandated programs: unemployment insurance, Social Security or disability benefits, but solely with respect to a **Wrongful Act** defined in subparagraph 2(ii) of the Definition of **Wrongful Act**.

In no event, however, shall the Definition of **Plan** include any employee stock ownership plan or multiemployer plan.

M. **Pollutants** means any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and Waste. “Waste” includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.

N. **Remediation Expenses** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** resulting from the correction of an actual or

potential **Breach of Fiduciary Duty**, but excluding any fees, costs and expenses associated with finding or assessing such **Breach of Fiduciary Duty** and any compensation of **Individual Insureds** or employees of an **Insured**.

O. **Settlement Opportunity** means the **Insurer** recommended settlement that is within any applicable Limit of Liability and that is acceptable to the claimant.

P. **Subsidiary** means:

1. any entity, whose securities are not publicly traded, in which the **Company** has or had **Management Control** on or before the inception date of the policy either directly or indirectly through one or more other **Subsidiaries**;
2. any entity, whose securities are not publicly traded, in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries**, and whose assets do not exceed 35% of the assets of the **Company** prior to the **Company** acquiring **Management Control** of the **Subsidiary**; or
3. any entity, whose securities are not publicly traded, in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries**, and whose assets exceed 35% of the assets of the **Named Insured** prior to the **Company** acquiring **Management Control** but only for a period of 90 days subsequent to the **Company** acquiring **Management Control**.

Q. **Trustee Company** means a corporate trustee company that is:

1. established by a **Company** formed and operating in a jurisdiction outside the United States of America, its territories or possession, or any predecessor of such **Company**; and
2. duly appointed to act as a trustee of a **Plan** in a jurisdiction outside the United States of America, its territories or possessions and sponsored solely by such **Company**.

R. **Voluntary Compliance Loss** means any **Remediation Expenses, Consulting Fees** or other amounts paid by an **Insured** to a governmental authority pursuant to a **Voluntary Settlement Program** for the actual or alleged inadvertent noncompliance by a **Plan** with any statute, rule or regulation. **Voluntary Compliance Loss** shall not include: (1) any costs to correct the actual or alleged inadvertent noncompliance, or any other charges, expenses, taxes or damages; or (2) any fees, fines, penalties or sanctions relating to a **Plan** which, as of the earlier of the inception of this **Coverage Section** or the inception of the first policy in an uninterrupted series of policies issued by the **Insurer** of which this **Coverage Section** is a direct or indirect renewal or replacement, any **Insured** had knowledge of the actual or alleged inadvertent non-compliance.

S. **Voluntary Settlement Program** means any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service or the U.S. Department of Labor, including, but not limited to, the Employee Plans Compliance Resolution System, the Audit Closing Agreement Program, the Voluntary Compliance Resolution Program, the Walk-in Closing Agreement Program, the Administrative Policy Regarding Self-Correction, the Tax Sheltered Annuity Voluntary Correction Program, the Delinquent Filer Voluntary Compliance Program and the Voluntary Fiduciary Correction Program, or any similar program administered by a governmental authority located outside the United States of America.

T. **Voluntary Settlement Program Notice** means prior written notice to the **Insurer** by the **Insured** of the **Insured's** intent to enter into a **Voluntary Settlement Program**.

U. **Wrongful Act** means:

1. a violation of any of the responsibilities, obligations or duties imposed upon fiduciaries by **ERISA** with respect to a **Plan**, or any matter claimed against an **Insured** solely by reason of his, her or its status as a fiduciary, but only with respect to a **Plan**; or
2. any act, error or omission solely in the performance of the following administrative duties or activities, but only with respect to a **Plan**:
 - (i) counseling employees, participants and beneficiaries;
 - (ii) providing interpretations;
 - (iii) handling of records;
 - (iv) conducting activities affecting enrollment, termination or cancellation of employees, participants and beneficiaries under the **Plan**;
 - (v) complying with the privacy provisions of the **HIPAA** and any amendments thereto; or
3. any matter claimed against an **Insured** solely by reason of his, her or its status as an administrator, but only with respect to a **Plan**.

III. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A. alleging, arising out of, based upon or attributable to:
1. the gaining of any profit or advantage to which any final adjudication establishes the **Insured** was not legally entitled; or
 2. the committing of any deliberate criminal or deliberate fraudulent act, or any willful violation of any statute, rule or law, including, but not limited to **ERISA** if any final adjudication establishes that such deliberate criminal or deliberate fraudulent act or willful violation of statute, rule or law was committed.

For purposes of determining the applicability of this exclusion (i) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any other **Individual Insured**; and (ii) only facts pertaining to and knowledge possessed by any past, present or future chief executive officer, chief financial officer, general counsel (or equivalent positions) of a **Company** or the signatory of the **Application** shall be imputed to such **Company**;

- B. alleging, arising out of, based upon or attributable to the facts alleged, or the same **Wrongful Act** or **Related Wrongful Act(s)** alleged or contained in any claim or demand which has been reported, or to any circumstances of which notice has been given, under any prior insurer's policy or policy of which this **Coverage Section** is a renewal or replacement or which it may succeed in time;

- C. alleging, arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the Continuity Date set forth in Item 5 of the Fiduciary Liability **Coverage Section** Declarations, or the alleging of any **Wrongful Act** which is the same or a **Related Wrongful Act** to that alleged in such pending or prior demand, suit, proceeding or in the underlying demand, order, decree or judgment;

- D. for discrimination in violation of any law. This Exclusion shall not apply to discrimination in violation of **ERISA**;
- E. for failure to fund a **Plan** in accordance with **ERISA** or the **Plan** instrument or documents, or the failure to collect contributions owed to the **Plan**. This Exclusion shall not apply to: (1) **Defense Costs**; or (2) the portion of **Loss** that is payable as a personal obligation of an **Individual Insured**;
- F. alleging, arising out of, based upon or attributable to any act, error or omission of an **Insured** in his, her or its capacity as a fiduciary or administrator of any plan, fund or program, other than a **Plan** as defined in this **Coverage Section**, or by reason of his, her or its status as a fiduciary or administrator of such other plan, fund or program;
- G. for bodily injury, sickness, disease, death, emotional distress or mental anguish of any person, or damage to, loss of use or destruction of any tangible property. This Exclusion shall not apply to **Defense Costs** incurred in the defense of a **Claim** for **Breach of Fiduciary Duty**;
- H. alleging, arising out of, based upon or attributable to any **Wrongful Act** with respect to the **Plan** taking place at any time when a **Company** did not sponsor such **Plan** or when the **Individual Insured** was not a fiduciary, administrator, trustee, **Pension Oversight Committee Member**, director, officer, governor, management committee member, member of the board of managers, general partner or employee of a **Company** or, if applicable, a **Plan**; or
- I. for any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**. Other than for expenses (including, but not limited to, legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**, this Exclusion shall not apply to:
 1. **Loss** for which the **Company** is neither permitted nor required to indemnify or advance to the **Individual Insureds** arising from a **Claim** alleging damage to a **Plan**, other than expenses (including, but not limited to, legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**; or
 2. any **Claim** brought by or on behalf of a beneficiary of or participant in any **Plan** based upon, arising from or attributable to the diminution in value of any securities owned by the **Plan** in any entity other than a **Company**, if such diminution in value is allegedly as a result of the matters described above in this Exclusion I.

IV. Limits of Liability

- A. Subject to the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations, the **Coverage Section** Limit of Liability set forth in Item 3(a) of the Fiduciary Liability **Coverage Section** Declarations shall be the maximum aggregate limit of the **Insurer's** liability for all **Loss** under this **Coverage Section**. Upon exhaustion of the Limit of Liability set forth in Item 3(a) of the Fiduciary Liability **Coverage Section** Declarations or the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations, the **Insurer's** obligations under this **Coverage Section** shall be deemed completely fulfilled and extinguished and the **Insurer's** duty to defend and pay **Defense Costs** shall end.

- B. The maximum limit of the **Insurer's** liability for all **Voluntary Compliance Loss** incurred during the **Policy Period** and the Extended Reporting Period, if applicable, in the aggregate, shall be the **Voluntary Compliance Loss** Sub-Limit of Liability set forth in Item 3(b) of the Fiduciary Liability **Coverage Section** Declarations. The **Voluntary Compliance Loss** Sub-Limit of Liability shall be part of, and not in addition to, the **Coverage Section** Limit of Liability set forth in Item 3(a) of the Fiduciary Liability **Coverage Section** Declarations which is also part of and not in addition to the Policy Aggregate Limit of Liability shown in Item 3 of the General Declarations.
- C. The maximum limit of the **Insurer's** liability for all **HIPAA Penalties** incurred during the **Policy Period** and the Extended Reporting Period, if applicable, in the aggregate shall be the **HIPAA Penalties** Sub-Limit of Liability set forth in Item 3(c) of the Fiduciary Liability **Coverage Section** Declarations. The **HIPAA Penalties** Sub-Limit of Liability shall be part of, and not in addition to, the **Coverage Section** Limit of Liability as set forth in Item 3(a) of the Fiduciary Liability **Coverage Section** Declarations which is also part of and not in addition to the Policy Aggregate Limit of Liability shown in Item 3 of the General Declarations.

V. Retentions

The following provision shall apply in addition to the provisions of Section V. Retentions of the General Terms and Conditions:

- A. The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the Retention set forth in Item 4 of the Fiduciary Liability **Coverage Section** Declarations. The Retention shall be borne by the **Insureds** and shall remain uninsured, with regard to (1) **Indemnifiable Loss**, and (2) **Loss** of a **Company**.
- B. A single retention shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Acts**.
- C. No retention is applicable to:
 - 1. **Loss** for which a **Company** is not permitted to indemnify an **Individual Insured** pursuant to law, contract or the charter, by-laws, operating agreement or similar documents of such **Company**, or
 - 2. that part of **Loss** constituting **Voluntary Compliance Loss**, or
 - 3. that part of **Loss** constituting **HIPAA Penalties**.

VI. Defense Costs, Defense Counsel, Settlements & Judgments

- A. Defense
Except as hereinafter stated, the **Insurer** shall have both the right and duty to defend any **Claim** against an **Insured** alleging a **Wrongful Act**, even if such **Claim** is groundless, false or fraudulent. The **Insurer** shall have the right and duty to defend any **Claim** until the Limit of Liability set forth in Item 3 of the Fiduciary Liability **Coverage Section** Declarations or the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations has been exhausted by payment of **Loss**. With the express prior written consent of the **Insurer**, an **Insured** may select a defense counsel different from that selected by other **Insured** defendants if such selection is required due to an actual conflict of interest.

The **Insured** shall have the right to associate effectively with the **Insurer** in the defense of any **Claim**, including, but not limited to, negotiating a settlement, subject to the provisions of this Section VII.

B. **Insured's Option to Assume Defense.**

Notwithstanding the above, the **Insureds** shall have the right to assume the defense of any **Claim** made against them. This right shall be exercised in writing by the **Named Insured** on the behalf of all **Insureds** within thirty (30) days of the reporting of the **Claim** to the **Insurer** pursuant to Section VI. of the General Terms and Conditions. Upon receipt of such written request, the **Insurer** shall tender the defense of the **Claim** to the **Insureds** and the **Insurer** cannot re-assume the defense of the **Claim**. The **Insurer** shall have the right to associate effectively with the **Insureds** in the defense of any **Claim**, including, but not limited to, negotiating a settlement and approving the selection of defense counsel. Provided that the **Insurer** shall be permitted to associate effectively with the **Insureds** in the defense of any **Claim**, including, but not limited to, negotiating a settlement of any **Claim** and approving the selection of defense counsel, the **Insurer's** consent to settlements, stipulated judgments and **Defense Costs** shall not be unreasonably withheld.

C. **Advancement**

The **Insurer** shall advance **Defense Costs** on behalf of the **Insured** prior to the final disposition of a **Claim**, subject to the other provisions of this Fiduciary Liability **Coverage Section**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally according to their respective interests, in the event and to the extent that the **Insureds** shall not be entitled to payment of such **Loss** under the Terms and Conditions of this Fiduciary Liability **Coverage Section**.

D. The **Insureds** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, incur any **Defense Costs** or **Voluntary Compliance Loss** or retain any defense counsel without the prior written consent of the **Insurer**. Only those settlements, stipulated judgments, **Defense Costs** and **Voluntary Compliance Loss** which have been consented to in writing by the **Insurer** shall be recoverable as **Loss** under the terms of this Fiduciary Liability **Coverage Section**.

E. **Settlement**

If an **Insured** has not assumed the defense of a **Claim** and does not consent to the first **Settlement Opportunity** within thirty (30) days of the date the **Insureds** are first made aware of such **Settlement Opportunity** (or in the case of a **Settlement Opportunity** which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made), then, subject to any applicable Limit of Liability, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** ("**Settlement Opportunity Amount**"), plus (2) 80% of covered **Loss** in excess of such **Settlement Opportunity Amount**, it being a condition of this insurance that the remaining 20% of such covered **Loss** excess of such **Settlement Opportunity Amount** shall be carried by the **Insureds** at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until such **Settlement Opportunity Amount** exceeds the applicable Retention set forth in Item 4. of the Declarations or to those **Claims** for which the **Insured** has assumed the defense.

- F. The **Insureds** shall give the **Insurer** full cooperation and such information as the **Insurer** may reasonably require and take such actions which, in such **Insurer's** judgment, are deemed necessary and practicable to prevent or limit **Loss** arising from any **Wrongful Act**.

VII. Other Insurance

Such insurance as is provided by this Fiduciary Liability **Coverage Section** shall apply only as excess over any other valid and collectible insurance, unless such other insurance is expressly written to be excess over any applicable Limit of Liability for this policy or any **Coverage Section**. This policy specifically shall be excess of any other policy pursuant to which any other **Insurer** has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**.

VIII. Allocation

Provided that the **Insured** does not assume the defense of a **Claim** in accordance with Section VI. above, the following allocation provision shall apply:

If both **Loss** covered under this Fiduciary Liability **Coverage Section** and loss not covered under this Fiduciary Liability **Coverage Section** are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters, then coverage under this **Coverage Section** with respect to such **Claim** shall apply as follows:

- A. **Defense Costs**: 100% of **Defense Costs** incurred by the **Insurer** on account of such **Claim** will be considered covered **Loss** subject to Clause VII. of this **Coverage Section**; and
- B. **Loss** other than **Defense Costs**: All remaining amounts incurred by the **Insured** on account of such **Claim** shall be allocated by the **Insurer** pro rata between covered **Loss** and noncovered loss based on the legal liability and financial exposures of the **Insureds** to covered and non-covered matters and, in the event of a settlement in such **Claim**, based on the number of counts, causes of action or allegations against the **Insureds**.

If the **Insureds** and the **Insurer** cannot agree on an allocation of covered **Loss** or non-covered loss

- A. no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
- B. the **Insurer**, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two arbitrators.

IX. Plans Created, Formed or Acquired During the Policy Period

If a **Plan**:

- A. is created, formed or acquired during the **Policy Period** as a result of a **Company's** acquisition of a **Subsidiary** whose assets total less than 25% of the total consolidated assets of such **Company** as of the inception date of this **Coverage Section**; or

- B. is created, formed or acquired during the **Policy Period** and such **Plan's** assets total less than 25% of the total consolidated assets of all covered **Plans** as of the inception date of this **Coverage Section**;

then, this **Coverage Section** shall apply to such **Plan** solely with respect to any **Wrongful Act** occurring after the date of such creation, formation or acquisition, and only upon the condition that within ninety (90) days of its creation, formation or acquisition, the **Named Insured** shall have provided the **Insurer** with a completed **Application** for such new **Plan** and agreed to any additional premium or amendment of the provisions of this **Coverage Section** required by the **Insurer** relating to such new **Plan**.

Coverage for Terminated **Plans**

If a **Company** terminates a **Plan** before or after the inception date set forth in Item 2. of the Declarations, coverage under this **Coverage Section** with respect to such terminated **Plan** and its **Insureds** shall continue until termination of this **Coverage Section** for those who were **Insureds** prior to or at the time of such **Plan** termination or who would have been **Insureds** at the time of such termination if this **Coverage Section** had then been in effect. Such continuation of coverage shall apply with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted, prior to or after the date the **Plan** was terminated.

X. Subrogation

Notwithstanding anything in Clause X. Subrogation of the General Terms and Conditions to the contrary, the **Insurer** shall not exercise its subrogation rights unless required to exercise its recourse rights pursuant to **ERISA**.

In the event the **Insurer** recovers any amounts based on its recourse rights under **ERISA**, any Limit of Liability applicable to this **Coverage Section** shall be restored to the extent of such recovery after subtracting any costs, expenses or reimbursements incurred by the **Insurer** in connection therewith.

XI . Order of payments

In the event of **Loss** arising from a covered **Claim** for which payment is due under the provisions of this **Coverage Section**, then the **Insurer** shall in all events:

- A. first, pay **Loss** for which coverage is provided under this Fiduciary Liability **Coverage Section** for any **Individual Insured**;
- B. second, only after payment of **Loss** has been made pursuant to subparagraph 1 of this Section XI. with respect to whatever remaining amount of any Limit of Liability applicable to this **Fiduciary Liability Coverage Section** is available after such payment, pay **Loss** of any covered **Plan**; and
- C. then, only after payment of **Loss** has been made pursuant to subparagraphs 1 and 2 of this Section XI. with respect to whatever remaining amount of any Limit of Liability applicable to this Fiduciary Liability **Coverage Section** is available after such payment, shall payment for a **Company** be made for such other **Loss** for which coverage is provided under this Fiduciary Liability **Coverage Section**.