

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.