

40ActPLUSSM

Hedge Fund and Private Investment Fund
Professional and Management Liability Coverage Part

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HEDGE FUND AND PRIVATE INVESTMENT FUND PROFESSIONAL AND MANAGEMENT LIABILITY COVERAGE PART

NOTICE: THE COVERAGE AFFORDED UNDER THIS COVERAGE PART IS CLAIMS MADE COVERAGE, WHICH APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD," OR ANY EXTENDED REPORTING PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS UNDER THIS COVERAGE PART WILL BE REDUCED, AND MAY BE EXHAUSTED, BY "DEFENSE EXPENSES," AND "DEFENSE EXPENSES" WILL BE APPLIED AGAINST THE RETENTION. THE UNDERWRITER HAS NO DUTY UNDER THIS COVERAGE PART TO DEFEND ANY "CLAIM." THE COVERAGE AFFORDED UNDER THIS COVERAGE PART DIFFERS IN SOME RESPECTS FROM THAT AFFORDED UNDER OTHER POLICIES. PLEASE READ THE ENTIRE POLICY, INCLUDING THE GENERAL TERMS AND CONDITIONS AND THIS COVERAGE PART, CAREFULLY.

Subject to the limit of liability and to all of the terms, conditions and limitations of this Policy and any endorsements to this Policy, Executive Risk Indemnity Inc. (the "Underwriter") and the Insureds agree as follows:

I. INSURING AGREEMENT

The Underwriter will pay on behalf of the **Insured Loss** from **Claims** first made against the **Insured** during the **Policy Period** or, if applicable, the Extended Reporting Period, for **Wrongful Acts**.

II. DEFINITIONS

- (A) **"Affiliated Service Provider"** means any entity scheduled on the **Affiliated Service Provider** endorsement.
- (B) **"Claim,"** as defined in GENERAL TERMS AND CONDITIONS (A), shall be deemed to include, for purposes of this Coverage Part, any such proceeding brought by, or any such written demand or notice by, a **Self-Regulatory Organization**.
- (C) **"Express Contract or Agreement"** is an actual agreement among the contracting parties, the terms of which are openly stated in distinct or explicit language, either orally or in writing, at the time of its making.

(D) “**Insured Person**” means any past, present, or future director, officer, member of the Board of Managers, trustee, or employee of:

- (1) a **Private Fund**;
- (2) the general partner or managing general partner of each **Private Fund** that is organized as a Limited Partnership;
- (3) the managing member of any **Private Fund** organized as a Limited Liability Company; and
- (4) an **Affiliated Service Provider**.

In the event of the death, incapacity, or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives, or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.

(E) “**Insured**” means:

- (1) each **Private Fund**;
- (2) the general partner or managing general partner of each **Private Fund** that is organized as a partnership;
- (3) the managing member of each **Private Fund** that is organized as a Limited Liability Company;
- (4) an **Affiliated Service Provider**; and
- (5) any **Insured Person**.

An **Outside Service Provider** is not an **Insured** under this Policy.

(F) “**Loss**,” as defined in GENERAL TERMS AND CONDITIONS (A), shall be deemed to include, for purposes of this Coverage Part, any costs incurred in connection with CONDITION (A) of this Coverage Part.

(G) “**Outside Service Provider**” means any person or entity that is not an **Insured**, that performs **Professional Services** at the direction or on behalf of a **Private Fund** pursuant to an **Express Contract or Agreement**.

- (H) **“Private Fund”** means:
- (1) any pooled investment vehicle listed in the Schedule of **Private Funds** in the **Application**; and
 - (2) any pooled investment vehicle formed during the **Policy Period** which is sponsored by the entity named in ITEM 1 of the Declarations or an **Affiliated Service Provider**.
- (I) **“Professional Services”** means advice given or services performed for others by a **Private Fund**, **Affiliated Service Provider**, or any **Outside Service Provider** on behalf of a **Private Fund**, which, alone or in combination with other advice or services, are performed for consideration; provided, such services are rendered in connection with the management or operation of such **Private Fund**.
- In clarification and not in limitation of the foregoing, **Professional Services** includes **Professional Supervision**, the provision of computer and Internet services, and publications prepared or written by any **Insured**; provided, such services are rendered in connection with the management or operation of such **Private Fund**.
- (J) **“Professional Supervision”** means the **Insured’s** selection of an **Outside Service Provider** and its oversight and direction of the performance of such **Outside Service Provider** in providing **Professional Services**.
- (K) **“Securities Activity Wrongful Act”** means:
- (1) any actual or alleged violation of the Investment Company Act of 1940, Investment Advisers Act of 1940, the Securities Act of 1933, or the Securities and Exchange Act of 1934 or the foreign equivalent of any of the preceding regulations, but only in connection with the management or operations of a **Private Fund**; or
 - (2) any actual or alleged act, error, omission, misstatement, misleading statement, or breach of duty by an **Insured**, but only in connection with a purchase or sale, or an offer to purchase or sell, securities and only in connection with the management or operation of a **Private Fund**.
- (L) **“Self-Regulatory Organization”** means any association of investment advisers or securities dealers registered under federal securities laws or any national securities exchange registered with the Securities Exchange Commission under the Securities and Exchange Act of 1934, as amended, or any similar Canadian or other national or international exchange or commission.

(M) **“Wrongful Act”** means:

- (1) any actual or alleged act, error, omission, misstatement, misleading statement, or breach of fiduciary or other duty, committed by an **Insured Person** in rendering, or in failing to render, **Professional Services** or in his or her capacity as a director, officer, member of the Board of Managers, general partner, or managing general partner of a **Private Fund** or **Affiliated Service Provider**;
- (2) any actual or alleged libel, slander, or oral or written publication of defamatory or disparaging material committed by an **Insured** in rendering **Professional Services**;
- (3) any actual or alleged act, error, omission, misstatement, misleading statement, or breach of fiduciary duty committed by an **Insured** in rendering or failing to render **Professional Services**;
- (4) any matter asserted against an **Insured Person** solely by reason of his or her status as a director, officer, member of the Board of Managers, general partner, or managing general partner of a **Private Fund** or **Affiliated Service Provider**; and
- (5) any **Securities Activity Wrongful Act** by an **Insured**.

III. EXCLUSIONS

This Coverage Part does not apply to any **Claim**:

- (A) brought about or contributed to in fact by:
- (1) any dishonest, fraudulent, or criminal act or omission by an **Insured** or an **Outside Service Provider**;
 - (2) any willful or intentional violation of any statute, rule or law by an **Insured** or an **Outside Service Provider**; or
 - (3) the gaining of any profit, remuneration, or advantage by an **Insured** or an **Outside Service Provider** to which the **Insured** or **Outside Service Provider** was not legally entitled;

provided, that this EXCLUSION (A) shall only apply to an **Insured** if it is established that the **Insured** participated in or acquiesced in the dishonest, fraudulent, or criminal act or omission, the willful or intentional violation, or the gaining of profit, remuneration, or advantage.

- (B) based on or directly or indirectly arising out of or resulting from:
- (1) any **Wrongful Act** or any matter, fact, circumstance, transaction, or event which has been the subject of, or which is logically or causally connected to, any **Claim** made or notice given under any policy of insurance prior to the Inception Date set forth in ITEM 2(a) of the Declarations;
 - (2) any **Wrongful Act** or any matter, fact, circumstance, transaction, or event which was described in the **Application** or in any application for a policy of which this Policy is a renewal or replacement; or
 - (3) any civil, criminal, administrative or arbitration proceeding as to which any **Insured** has received written notice prior to the Inception Date set forth in ITEM 2(a) of the Declarations, or any matter, fact, circumstance, transaction, or event underlying or alleged in such proceeding;
- (C) based on or directly or indirectly arising out of or resulting from:
- (1) any actual, alleged, or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal, or disposal of, any smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants;
 - (2) any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination, or radioactive substance; or
 - (3) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize any of the foregoing, or any action taken in contemplation or anticipation of any such regulation, order, direction, or request;
- (D) for any actual or alleged invasion of privacy, malicious use or abuse of process, malicious prosecution, wrongful entry or eviction, false arrest, false imprisonment, assault, or battery;
- (E) for any bodily injury, emotional distress, mental anguish, sickness, disease, or death of any person, or loss of consortium, support, companionship, or services of any kind resulting therefrom; provided, that this EXCLUSION (E) will not apply to allegations of emotional distress or mental anguish if and only to the extent that they arise solely from an **Insured's** rendering of **Professional Services**;

- (F) for damage to, destruction of, loss of, or loss of use of, tangible property; provided, that this EXCLUSION (F) will not apply to any **Claim** arising from damage to, destruction of, loss of, or loss of use of, client records in an **Insured's** possession;
- (G) for libel, slander, oral or written publication of defamatory or disparaging material; provided, that this EXCLUSION (G) will not apply to any actual or alleged libel, slander, or oral or written publication of defamatory or disparaging material committed by an **Insured** in rendering **Professional Services**;
- (H) for an **Insured's** liability under any contract or agreement, regardless of whether such liability is direct or assumed; provided, that this EXCLUSION (H) will not apply to:
 - (1) any **Claim** against an **Insured** by a client or customer of the **Insured**, if and to the extent that the **Claim** alleges a breach of contractual obligations in the rendering of or failure to render **Professional Services**; or
 - (2) liability which would attach to an **Insured** even in the absence of a contract or agreement;
- (I) brought by or on behalf of, or in the name or right of, any **Insured** or any **Outside Service Provider**; provided, that this EXCLUSION (I) will not apply to:
 - (1) any **Claim** by an **Insured Person** or an **Outside Service Provider** in the form of a crossclaim, third party claim, or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Policy;
 - (2) any **Claim** by an **Insured** with respect to which failure to make such **Claim** would result in liability to the **Insured** for failure to do so; or
 - (3) any derivative action by a security holder of the **Private Fund** on behalf of, or in the name or right of, the **Private Fund**, if such action is brought and maintained independently of, and without the solicitation, assistance, participation, or intervention of any **Insured**;
- (J) based on or directly or indirectly arising out of or resulting from the service by any **Insured** as a member, a partner, a principal, a director, an officer, a trustee or an employee of:
 - (1) any entity other than a **Private Fund**, even if such service is directed or requested by the **Private Fund**; or

- (2) any entity acquired by the **Private Fund**, whether by merger, consolidation, or otherwise, at any time prior to the **Private Fund's** acquisition of such entity;
- (K) based on or directly or indirectly arising out of or resulting from the insolvency of any bank, banking firm, broker, or dealer in securities, 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, that this EXCLUSION (K) will not apply to any **Claim** arising from the negligence of an **Insured** in rendering or failing to render **Professional Services**;
- (L) based on or directly or indirectly arising out of or resulting from any actual or alleged violation of the Employee Retirement Income Security Act of 1974, as amended, or any regulations promulgated thereunder or relating thereto, or of any similar provisions of international, federal, state, or local statutory or common law, or any regulations pertaining thereto, in connection with any **Insured's** pension, employee benefit or welfare plan.
- (M) brought by or on behalf of, or in the name or right of, any person or entity with a legal or equitable interest in any form of security of, or other ownership interest in, the **Affiliated Service Provider**, except to the extent such **Claim** is brought in such person's or entity's capacity as a client of the **Affiliated Service Provider** and is brought and maintained independently of, and without the solicitation, assistance, participation or intervention of, any other **Insured**;

IV. **CONDITIONS**

(A) **Mitigation of Loss and Claim Resolution:**

With respect solely to any **Wrongful Act** reported in accordance with GENERAL TERMS AND CONDITIONS (B) which may subsequently give rise to a **Claim** for which coverage may be provided under this Coverage Part, the Underwriter may, but shall not be obligated to, pay costs incurred by the **Insured** with the Underwriter's written consent to mitigate loss or otherwise compensate any client of the **Private Fund** prior to any **Claim** being made in connection therewith. For the purposes of this CONDITION (A), **Loss** shall not include 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 performance of **Professional Services**; or loss of actual money, securities, property, or any other item of value in the custody, care, or control of an **Insured**.

(B) **Conversion of Coverage Under Certain Circumstances:**

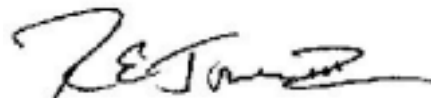
In addition to, and not by way of limitation of, GENERAL TERMS AND CONDITIONS (G), there will be no coverage under this Policy for **Claims** for **Wrongful Acts** with respect to any **Private Fund** or **Affiliated Service Provider** which is or has been sold, spun off, or terminated if such **Wrongful Acts** are committed or allegedly committed by any **Insured** after the effective date of such sale, spin-off, or termination. The **Insured** shall give the Underwriter written notice of the sale, spin-off, or termination of any **Private Fund** or **Affiliated Service Provider** during the **Policy Period** as soon as practicable after the effective date thereof.

(C) **Outside Service Provider Liability:**

All coverage for **Loss** from **Claims** against **Insureds** for **Wrongful Acts** in connection with the performance of, or failure to perform, services by any **Outside Service Provider** will be specifically excess of, and will not contribute with, any other valid insurance (whether collectible or not) available to such **Outside Service Provider**, and any indemnification by such **Outside Service Provider** available to such **Insureds** in connection with such services.

In witness whereof, the Underwriter has caused this Policy to be executed on the Declarations Page.

Henry A. Aubil
Secretary


President