

FINANCIAL INSTITUTIONS PROFESSIONAL INDEMNITY POLICY

In consideration of the payment of the premium, in reliance on the statements in the **Application** and subject to all of the provisions of this Policy, Underwriters and the **Assureds** agree as follows.

I. INSURING CLAUSE

Underwriters shall reimburse the **Assureds** for **Loss** resulting from any **Claim** first made during the **Policy Period** for a **Wrongful Act** in the performance of **Professional Services**.

II. DEFINITIONS

The following terms whenever used in this Policy in boldface type shall have the meanings indicated.

A. **Application** means:

- (1) the application for this Policy or any policy of which this Policy is a renewal, and
- (2) any materials submitted therewith, which shall be retained on file by Underwriters and be deemed attached hereto, as if physically attached hereto.

B. **Assureds** means the **Company** and the **Directors, Officers and Employees**.

C. **Claim** means any judicial or administrative proceeding (including any appeal therefrom) initiated against any of the **Assureds** in which they may be subjected to a binding adjudication of liability for damages or other relief.

D. **Company** means:

- (1) the **Parent Company**, and
- (2) any **Subsidiary**.

E. **Corporate Takeover** means:

- (1) the acquisition by any person or entity of more than 50% of the outstanding securities of the **Parent Company** representing the present right to vote for the election of directors, or
- (2) the merger of the **Parent Company** into another entity such that the **Parent Company** is not the surviving entity, or
- (3) the consolidation of the **Parent Company** with another entity, or the acquisition of substantially all of the assets of the **Parent Company** by another entity, or
- (4) the appointment of a conservator, receiver or administrator to manage the affairs of the **Parent Company**, or
- (5) the **Parent Company** ceasing to be publicly held.

- F. **Costs, Charges and Expenses** means reasonable and necessary legal fees and expenses and cost of attachment or similar bonds incurred by the **Assureds** in defense of any **Claim**, but shall not include:
- (1) directors' fees, salaries, wages, overhead or benefit expenses associated with directors, officers or employees of the **Company**, or
 - (2) any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.
- G. **Directors, Officers and Employees** means all persons who were, now are, or shall be directors, officers or employees of the **Company** including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.
- H. **Interrelated Wrongful Acts** means **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.
- I. **Loss** means damages, settlements and **Costs, Charges and Expenses** incurred by any of the **Assureds**, but shall not include:
- (1) punitive or exemplary damages or that portion of any multiplied damages award which exceeds the amount multiplied;
 - (2) taxes, criminal or civil fines or penalties imposed by law; or
 - (3) matters deemed uninsurable under the law pursuant to which this Policy shall be construed.
- J. **Parent Company** means the entity named in Item A. of the Declarations.
- K. **Policy Period** means the period from the effective date and hour of this Policy to the Policy expiration date and hour as set forth in Item B. of the Declarations, or its earlier cancellation date and hour, if any.
- L. **Professional Services** means activities allowed under the law and regulations governing services provided by the **Assureds** which are performed for or on behalf of any client or customer of the **Company** and which are declared in the **Application Form**.
- M. **Subsidiary** means any corporate entity while more than 50% of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the **Parent Company** directly or indirectly, if such entity:
- (1) was so owned prior to the inception date of this Policy and was insured under a policy issued by Underwriters of which this Policy is a renewal; or
 - (2) was so owned on the inception date of this Policy and is named in the **Application**; or
 - (3) becomes so owned after the inception date of this Policy provided the assets of the entity do not exceed 10% of the consolidated assets of the **Company** as set forth in Item I of the Declarations; or

- (4) becomes so owned after the inception date of this Policy provided that if the assets of the entity exceed 10% of the consolidated assets of the **Company** as set forth in Item I. of the Declarations the provisions of Clause VII B. must be fulfilled.

N. **Wrongful Act** means any actual or alleged negligent error, negligent omission or negligent act or breach of professional duty in rendering or failing to render **Professional Services**.

III. EXCLUSIONS

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

- A. for actual or alleged libel, slander, defamation, bodily injury, sickness, disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of tangible or intangible property (including loss of use thereof), including but not limited to property represented by securities, documents, or other written instruments, whether owned by the **Company**, held by the **Company** in any capacity, or for which the **Company** may be liable;
- B. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
- (1) any **Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given prior to the **Policy Period** under any other policy, or
- (2) any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**;
- C. to the extent it is insured under any other existing valid policy, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, and regardless of whether or not any **Loss** in connection with such **Claim** is collectible or recoverable under such other policy; provided, however, this exclusion shall not apply to the amount of **Loss** which is in excess of the amount of any deductible and the limit of liability of such other policy where such **Claim** is otherwise covered by this Policy;
- D. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, actual or alleged seepage, pollution or contamination of any kind;
- E. brought about or contributed to in fact by any dishonest, fraudulent, malicious or criminal acts or omissions by any of the **Assureds**, or any personal profit or advantage gained by any of the **Directors, Officers and Employees** to which they were not legally entitled.
- F. against any of the **Directors, Officers and Employees** of any **Subsidiary**, or against any **Subsidiary** based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:

- (1) any **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or subsequent to the date such entity ceased to be a **Subsidiary**, or
 - (2) any **Wrongful Act** occurring while such entity was a **Subsidiary** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**;
- G. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, any **Wrongful Act** actually or allegedly committed subsequent to a **Corporate Takeover**;
- H. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any employee pension, welfare, benefit or retirement plan or trust sponsored, established or maintained in whole or in part for the benefit of any of the employees of the **Company**;
- I. for legal liability assumed by the **Company** under the terms, conditions or warranties of any contract or agreement, or by virtue of any waiver or release from liability of any third party, except to the extent that liability would have attached to any of the **Assureds** in the absence thereof;
- J. for legal liability arising by virtue of the **Company** purchasing or participating in any loan or transaction in the nature of a loan not originating with the **Company**, or for that portion of any **Claim** representing the principal amount plus interest of any loan or transaction in the nature of a loan originating with the **Company**;
- K. made against any of the **Assureds** by or at the behest of any federal or state government, governmental body or governmental agency, except when acting solely in the capacity of a customer or client of the **Company**.
- L. by or on behalf of or at the behest of any security holder of the **Company** when such **Claim** is in any way related to any interest in such security;
- M. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving depreciation (or failure to appreciate) in value of any investments, including but not limited to securities, commodities, currencies, leased products or services, options, derivatives and futures transactions, or as a result of any actual or alleged representation, guarantee or warranty provided by or on behalf of any of the **Assureds** as to the performance of any such investments;
- N. for the reimbursement of fees, commissions, costs or other charges paid or payable to any of the **Assureds**, or based upon allegations against any of the **Assureds** of excessive fees, commissions, costs or other charges;
- O. for legal liability arising from or contributed to by any failure to provide insurance of any kind, whether such failure concerns the amount, existence or adequacy of such insurance or otherwise; provided, however, that this exclusion shall not apply to any **Loss** due solely to negligence on the part of any of the **Assureds** in failing to effect or maintain a specific insurance in accordance with the specific prior instructions of a customer or client of the **Company**;
- P. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or attempted merger, purchase or acquisition of another entity by the **Company** or any purchase or sale transactions in the shares of

the **Company** except to the extent that any of the **Assureds** is acting upon the specific prior instructions of a customer or client of the **Company**;

- Q. based upon, arising out of, directly or indirectly from or in consequence of, or in any way involving any actual or alleged:
- 1) solicitation or receipt of any excessive, additional, undisclosed, improper or illegal Compensation relating to an Offering, or Compensation greater than that disclosed in the prospectus or registration statement relating to the Offering;
 - 2) improper solicitations or agreements, whether express or implied, relating to any Offering, including, but not limited to, solicitations or tie-in agreements to purchase: (i) additional shares of the Company's stock at pre-determined prices; or (ii) shares of another corporation's stock; or

For the purposes of this Endorsement, the term "Offering" shall mean the public or private sale of the Company's stock, including, but not limited to, an initial public offering, secondary offering or a private placement.

For the purposes of this endorsement, the term "Compensation" shall mean any commissions, payments, fees, compensation or any other type of remuneration. "Compensation" shall also mean kickbacks, bribes or any other similar type of payments.

- R. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the bankruptcy of, insolvency of, or suspension of payment by any bank or banking firm, any broker or dealer in securities or commodities, any insurance company, or any other financial institution.
- S. by or on behalf of or at the behest of any of the **Assureds**, or any affiliate of any of the **Assureds**, or any entity in which any of the **Assureds** have a controlling interest, or by the **Parent Company** or by any entity which has a controlling interest in the **Parent Company**.
- T. Any legal liability arising from or contributed to by the any Deliberate breach of any law, enactment or regulation relating to the constitution, operation and conduct of the **Assured** while performing **Professional Services** anywhere in the world that are consistent with the charter and or business operations of the **Assured**; provided, however, this exclusion shall only apply upon a final and unappealable adjudication adverse to the **Assured(s)** establishing that such deliberate and knowing violation of any law, enactment or regulation occurred.
- U. Arising out or, based upon or attributable to:
- (i) any mechanical, electronic or software failure, faulty construction, error in design, latent defect, wear or tear, gradual deterioration, electrical disturbance, electronic data processing media failure or breakdown or any malfunction or error in programming or errors or omissions in processing; or
 - (ii) any shortcoming in the Insured's computer system; or
 - (iii) an Insured's failure to take reasonable steps to maintain and upgrade the Insured's computer system; or
 - (iv) breakdown or malfunction of any machine or system of machines including any electrical power interruption, surge, brown out or black out; or failure of

telephone lines, data transmission line, satellites or other infrastructure compromising or supporting the internet.

IV. LIMIT OF LIABILITY, RETENTIONS AND DATE OF CLAIM

- A. Underwriters shall be liable to pay the percentage of **Loss** set forth in Item E. of the Declarations in excess of the amount of the Retention up to the Limit of Liability, it being warranted that the remaining percentage of **Loss** shall be uninsured.
- B. The amount shown in Item C. of the Declarations shall be the maximum aggregate Limit of Liability of Underwriters under this Policy.
- C. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times:
 - (1) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made, or
 - (2) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Clause VI.B.
- D. A **Claim** is considered to be made at the earliest date of its filing.
- E. Payments of **Loss** by Underwriters shall reduce the Limit of Liability.
- F. Underwriters shall reimburse **Loss** only upon the final disposition of any **Claim**; provided, however, that Underwriters at their sole discretion may elect to advance **Costs, Charges and Expenses** at any time.

V. SETTLEMENTS AND DEFENSE

- A. No settlement shall be made and no **Costs, Charges and Expenses** shall be incurred without Underwriters' consent, such consent not to be unreasonably withheld.
- B. It shall be the duty of the **Assureds** and not the duty of Underwriters to defend **Claims**.

VI. NOTIFICATION

- A. The **Assureds** shall, as a condition precedent to their rights to payment under this Policy, give to Underwriters notice in writing of any **Claim** as soon as practicable but in no event later than 60 days after the end of the **Policy Period**.
- B. If during the **Policy Period** the **Assureds** first become aware of a specific **Wrongful Act**, and if the **Assureds** during the **Policy Period** give written notice to Underwriters as soon as practicable of:

- (1) the specific **Wrongful Act**, and
- (2) the consequences which have resulted or may result therefrom, and
- (3) the circumstances by which the **Assureds** first became aware thereof,

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Policy to have been made at the time such notice was first given.

- C. Notice to Underwriters provided for in Clause VI. shall be given to the firm shown under Item G. of the Declarations.

VII. GENERAL CONDITIONS

A. Warranty Clause

It is warranted that the particulars and statements contained in the **Application**, a copy of which is attached hereto, are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy.

By acceptance of this Policy the **Assureds** agree:

- (1) that the statements in the **Application** are their representations, that they shall be deemed material to the acceptance of the risk or the hazard assumed by Underwriters under this Policy and that this Policy is issued in reliance upon the truth of such representations, and
- (2) that in the event that the **Application** contains misrepresentations made with the actual intent to deceive, or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by Underwriters under this Policy, this Policy in its entirety shall be void and of no effect whatsoever, and
- (3) that this Policy shall be deemed to be a single unitary contract and not a severable contract of insurance or a series of individual contracts of insurance with each of the **Assureds**.

B. Adjustment Clause

- (1) This Policy is issued and the premium computed on the basis of the information submitted to Underwriters as part of the **Application**. In the event the **Company** acquires any other entity or acquires substantially all of the assets of another entity, or merges with another entity such that the **Company** is the surviving entity, or creates or acquires a **Subsidiary** as defined in Clause II.N. (4) after the inception of this Policy, no coverage shall be afforded for any **Loss** in any way involving the assets acquired or the assets, liabilities, directors, officers or employees of the entity acquired or merged with, or such **Subsidiary** unless:
 - (a) written notice of such transaction or event is given to Underwriters by the **Parent Company**, and

- (b) the **Parent Company** provides Underwriters with such information in connection therewith as Underwriters may deem necessary, and
 - (c) the **Assureds** accept any special terms, conditions, exclusions or additional premium charge as may be required by Underwriters, and
 - (d) Underwriters, at their sole discretion, agree to provide such coverage.
- (2) In the event any entity ceases to be a **Subsidiary** after the inception date of this Policy, or of any policy issued by Underwriters of which this Policy is a renewal or replacement, this Policy, subject to its terms, shall continue to apply to any of the **Directors, Officers and Employees** who were directors, officers or employees of such **Subsidiary** with respect to **Claims** first made during the **Policy Period** for **Wrongful Acts** committed or allegedly committed prior to the time such entity ceased to be a **Subsidiary**.

C. Cancellation Clause

- (1) By acceptance of this Policy, the **Assureds** hereby confer the exclusive power and authority to cancel this Policy on their behalf to the **Parent Company**. Such entity may cancel this Policy by surrender thereof to Underwriters, or by mailing to Underwriters written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
- (2) This Policy may be cancelled by Underwriters by mailing to the **Parent Company** written notice stating when, not less than 30 days thereafter, such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by Underwriters shall be equivalent to mailing. If the foregoing notice period is in conflict with any governing law or regulation, then such period shall be amended to afford the minimum notice period permitted thereunder.
- (3) If this Policy is cancelled pursuant to (1) hereinabove, Underwriters shall retain the customary short rate proportion of the premium hereon. If this Policy is cancelled pursuant to (2) hereinabove, Underwriters shall retain the pro rata proportion of the premium hereon. Payment or tender of any unearned premium by Underwriters shall not be a condition precedent to the effectiveness of cancellation.

D. Company Authorization Clause

By acceptance of this Policy the **Assureds** agree that the **Parent Company** will act on their behalf with respect to the giving of all notices to Underwriters, the receiving of notices from Underwriters, the payment of the premium and the receipt of any return premium.

VIII. COMPUTATION OF LOSS RIDER

All money received from any source whatsoever in connection with any matter from which a claimed loss has arisen, including payments and receipts of principal, interest, dividends, commissions and the like, whenever received, shall be deducted from the amount actually paid out, advanced, taken or otherwise lost. The value of all property received from any source whatsoever in connection with any matter from which a claimed loss has arisen, whenever received, shall likewise be deducted from the Assured's claimed loss.

VIII. ASSISTANCE, COOPERATION, SUBROGATION AND RECOVERIES

- A. The **Assureds** agree to provide Underwriters with such information, assistance and cooperation as Underwriters or their counsel may reasonably request, and they further agree that they shall not take any action which in any way increases Underwriters' exposure under this Policy.
- B. In the event of any payments under this Policy, Underwriters shall be subrogated to the **Assureds'** rights of recovery therefor against any person or entity. The **Assureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents as are necessary to enable Underwriters effectively to bring suit in their name, and shall provide all other assistance and cooperation which Underwriters may reasonably require.
- C. All recoveries from third parties for payments made under this Policy shall be applied (after first deducting the costs and expenses incurred in obtaining such recovery) in the following order of priority:
 - (1) the **Assureds** shall first be reimbursed for the amount by which their legal liability exceeds the amounts paid under this Policy; and
 - (2) Underwriters shall then be reimbursed for the amount of their liability under this Policy, and
 - (3) any remaining sum shall be applied towards reimbursement of the retention borne by the **Assureds** under this Policy.

IX. ASSIGNMENTS AND ACTION AGAINST UNDERWRITERS

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

Jurisdiction: New York

X. ENTIRE AGREEMENT

By acceptance of this Policy, the **Assureds** agree that this Policy embodies all agreements existing between them and Underwriters or any of their agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of Underwriters shall not effect a waiver or a change in any part of this Policy or estop Underwriters from asserting any right under the terms of this Policy, nor shall the terms be waived or changed except by written endorsement or rider issued by Underwriters to form a part of this Policy.

XI. SERVICE OF SUIT

It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States.

It is further agreed that service of process in such suit may be made upon Mendes & Mount, LLP, 750 Seventh Avenue, New York, NY 10019-6829 and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the Insured (or Reinsured) that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

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

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XII. CHANGE OF CONTROL.

When the **Assured** learns of a change in control, it shall give written notice to the Underwriter.

As used in this General Agreement, control means the power to determine the management or policy of a controlling holding company or the **Assured** by virtue of voting stock ownership. A change in ownership of voting stock which results in direct or indirect ownership by a

stockholder or an affiliated group of stockholders of twenty percent (20%) or more of such stock shall be presumed to result in a change of control for the purpose of the required notice.

Failure to give the required notice shall result in termination of coverage for any loss involving a transferee, to be effective upon the date of the stock transfer.

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