

Investment Adviser Professional Liability Insurance Policy



LIBERTY SURPLUS INSURANCE CORPORATION

(A New Hampshire Stock Insurance Company, hereinafter the "Insurer")
175 Berkeley Street, Boston, MA 02117
Toll-free number: 1-800-677-9163

INVESTMENT ADVISER PROFESSIONAL LIABILITY INSURANCE POLICY

DECLARATIONS

NOTICE: EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OF THIS POLICY IS LIMITED GENERALLY TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE THEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.

NOTICE: THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR LEGAL DEFENSE. AMOUNTS INCURRED FOR LEGAL DEFENSE SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.

NOTICE: THE COMPANY DOES NOT ASSUME ANY DUTY TO DEFEND. THE COMPANY IS NOT REQUIRED TO ADVANCE DEFENSE COSTS PRIOR TO THE FINAL DISPOSITION OF THE CLAIM.

POLICY NUMBER:
RENEWAL OF:

PRODUCER:

ITEM I. NAME AND ADDRESS OF PARENT ORGANIZATION:

ITEM II. POLICY PERIOD: Inception Date: Expiration Date:
(12:01 A.M. at the address set forth in Item I)

ITEM III. LIMIT OF LIABILITY: A. \$0 Aggregate under all Insuring Agreements for the Policy Period
B. \$0 Additional aggregate under Insuring Agreement 1.1(a) for Independent Directors

ITEM IV. RETENTION: \$0 Each Claim under Insuring Agreement 1.1(b), 1.2 and/or 1.3

ITEM V. FUNDS: NA

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(Words and phrases printed in **bold**, other than in the headings, are defined in Section 23 below.)

In reliance upon the truthfulness and accuracy of the statements made in the **Application**, in consideration of, and subject to, the payment of premium when due, and subject to the terms, conditions, and exclusions of this Policy, the Insurer and the **Insured** agree as follows:

1. INSURING AGREEMENTS:

1.1 Directors and Officers Liability

- (a) The Insurer shall pay on behalf of the **Insured Persons** all **Loss** which the **Insured Persons** shall become legally obligated to pay as a result of a **Claim** first made against the **Insured Persons** during the **Policy Period** or the **Discovery Period**, if applicable, for a **Wrongful Act** which takes place before or during the **Policy Period** if such **Loss** is not indemnified by an **Insured Organization** or **Fund**.
- (b) The Insurer shall pay on behalf of the **Insured Organization** or **Fund** all **Loss** for which the **Insured Organization** or **Fund** grants indemnification and for which the **Insured Persons** shall become legally obligated to pay as a result of a **Claim** first made against the **Insured Persons** during the **Policy Period** or the **Discovery Period**, if applicable, for a **Wrongful Act** which takes place before or during the **Policy Period**.

1.2 Professional Liability

The Insurer shall pay on behalf of the **Insureds** all **Loss** which the **Insureds** shall become legally obligated to pay as a result of any **Claim** first made against the **Insureds** during the **Policy Period** or the **Discovery Period**, if applicable, for a **Wrongful Act** by the **Insureds** or by any other person for whose actions the **Insureds** are legally responsible, but only if such **Wrongful Act** takes place before or during the **Policy Period** in the rendering or failing to render **Professional Services**.

1.3 Cost of Corrections

The Insurer shall reimburse the **Insured Organization** or **Fund** for the reasonable amount which the **Insured Organization** or **Fund** shall have paid to a customer or client of the **Insured Organization** or **Fund** to mitigate or correct direct out-of-pocket monetary damages suffered by such customer or client resulting from any **Wrongful Act** by an **Insured** in the rendering or failing to render **Professional Services**, but only if:

- (a) such **Wrongful Act** takes place before or during the **Policy Period**;

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- (b) the **Insureds** first discover during the **Policy Period** or the **Discovery Period**, if applicable, such **Wrongful Act**;
- (c) such **Wrongful Act** arises in the ordinary course of the **Insured Organization's** or **Fund's** operations and, if not corrected, would have resulted in direct out-of-pocket monetary damages to such customer or client and would have resulted in a covered **Claim** under this Policy; and
- (d) such amount paid by the **Insured Organization** or **Fund** would otherwise constitute covered **Loss** under this Policy if such a **Claim** had been made.

The **Insureds** and the Insurer agree that it is their intention that coverage under this Insuring Agreement 1.3 operates to reduce or avoid in an expeditious and economic fashion monetary liability from a **Claim** which would have been made against the **Insureds**, and that this Insuring Agreement 1.3 does not afford any coverage to the extent that any sum paid by the **Insured** constitutes an ex-gratia settlement or a commercial settlement for the primary purpose of supporting the **Insureds** reputation or business relationships.

2. DEFENSE COSTS AND SETTLEMENTS:

- 2.1 It shall be the duty of the **Insureds**, not the Insurer, to defend any **Claim**. The Insurer shall have the right to associate in the defense and settlement of any **Claim** reasonably likely to involve this Policy. The Insurer may investigate, as it deems appropriate, any **Claim**, circumstance, or **Wrongful Act** involving the **Insureds**.
- 2.2 The **Insureds** shall not incur any **Defense Costs**, admit any liability, assume any obligation, agree to any settlement, or make any settlement offer with respect to any **Claim** without the Insurer's prior written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for any **Defense Costs** incurred or any admissions, obligations, agreements, or settlements made by the **Insureds** without the Insurer's prior written consent.
- 2.3 The Insurer shall advance covered **Defense Costs** incurred by the **Insureds** in excess of the Retention as provided in Section 20.2.
- 2.4 Notwithstanding the above, the **Insureds** may settle any **Claim** without the Insurer's prior written consent if the total **Loss** resulting from such **Claim** does not exceed 50% of the Retention amount set forth in Item IV of the Declarations. This provision shall not affect the **Insureds'** obligations under Section 6. The **Insureds** shall promptly notify the Insurer of any settlement entered into pursuant to this Section 2.4 and provide any information in connection therewith that the Insurer reasonably requests.

3. COOPERATION:

As a condition precedent to the **Insureds'** rights under this Policy, the **Insureds** shall give to the Insurer all information and cooperation as the Insurer reasonably may require and shall do nothing that may prejudice the Insurer's position or its rights of recovery.

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4. EXCLUSIONS:

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

- 4.1 for bodily injury, sickness, disease, death, emotional distress, mental anguish, false arrest or imprisonment, abuse of process, malicious prosecution, libel, slander, defamation, violation or invasion of any right of privacy or private occupancy, trespass, nuisance or wrongful entry or eviction, or for damage to or destruction of any tangible property, including loss of use thereof;
- 4.2 based upon, arising from, or in any way related to any fact, circumstance or **Wrongful Act** which has been reported or has been the subject of any notice under any insurance policy of which this Policy is a renewal or replacement or under any other policy which this Policy may succeed in time;
- 4.3 based upon, arising from, or in any way related to:
 - (a) any demand, suit, or other proceeding against an **Insured** which existed or was pending prior to the Prior Litigation Date set forth in Item VII of the Declarations; or
 - (b) the same or substantially the same facts, circumstances or allegations involved in such demand, suit, or other proceeding;
- 4.4 brought or maintained by or on behalf of any **Insured** in any capacity; provided, however, that this exclusion shall not apply to the extent that:
 - (a) such **Claim** is on behalf of the **Insured Organization** or **Fund** by one or more persons who are not **Insured Persons** and who bring the **Claim** without the solicitation, assistance or active participation of any **Insured Person**,
 - (b) such **Claim** is by any **Insured Person** in his/her capacity as a customer, client or investor of the **Insured Organization** or **Fund**, or is by an employee for employment-related **Wrongful Acts**,
 - (c) such **Claim** is by any **Insured Person** for contribution or indemnity, if the **Claim** is part of or directly results from a **Claim** covered under this Policy,
 - (d) such **Claim** is against an **Independent Director**,
 - (e) such **Claim** is by an **Insured Organization** or its **Insured Persons** against a **Fund** or any **Fund Insured Person** who is not also an **Insured Person** of an **Insured Organization**, or
 - (f) such **Claim** is by a **Fund** or its **Insured Persons** against an **Insured Organization**, another **Fund** or any **Insured Person** of an **Insured Organization** or the other **Fund** in their capacity as such;
- 4.5 based upon, arising from, or in any way related to any **Insured** gaining in fact any profit, remuneration or financial advantage to which they are not legally entitled;
- 4.6 based upon, arising from, or in any way related to any deliberately dishonest, malicious or fraudulent act or omission or any willful violation of law by any **Insured** if a judgment or other final adjudication adverse to the **Insured** establishes such an act, omission or willful violation;

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- 4.7 based upon, arising from, or in any way related to any bank or banking firm or broker or dealer in securities or commodities being financially unable to make any payment or to effect any transaction;
- 4.8 based upon, arising from, or in any way related to any pension, profit sharing, health and welfare or other employee benefit plan or trust sponsored, established or maintained for the purpose of providing benefits to employees of the **Insured Organizations** or **Funds**;
- 4.9 based upon, arising from, or in any way related to:
- (a) the **Insureds** giving advice or performing services with respect to any aspect of mergers, acquisitions, leveraged buy-outs, tender offers, proxy contests, recapitalizations, financial restructurings, divestitures or investment banking activities; provided, however, this exclusion shall not apply with respect to (i) shares issued by a **Fund**, (ii) a restructuring of a **Fund**, or (iii) voting shares held by or in portfolios of a **Fund** or under management by the **Insured Organization**; or
 - (b) the **Insureds** forming, syndicating, operating, administering, advising, or rolling up a limited partnership or real estate investment trust; provided, however, this exclusion shall not apply to the advising of a limited partnership, other than a real estate limited partnership, where the **Insureds** do not act as a general partner to the limited partnership and such limited partnership is not otherwise owned, managed, operated or in any way affiliated with the **Insureds**;
 - (c) the **Insureds** acting as a “broker” or “dealer” in securities, as those terms are defined in Sections 3(a)(4) and 3(a)(5), respectively, of the Securities Exchange Act of 1934, as amended; provided, however, this exclusion shall not apply to the distribution, underwriting or resale of securities purchased directly from the **Fund** by a distributor for resale to any broker or dealer;
- 4.10 for **Wrongful Acts** committed or attempted by an **Insured Organization** or **Fund** or its **Insureds** before the date such **Insured Organization** or **Fund** became an **Insured** or after the date such **Insured Organization** or **Fund** ceased being a **Subsidiary** or **Fund**;
- 4.11 for a **Wrongful Act** actually or allegedly committed or attempted by **Insured Persons** in their capacity as a director, officer, trustee, partner or employee of any organization other than the **Insured Organization**, **Fund** or an **Outside Entity**;
- 4.12 for the actual or alleged breach of any oral, written or implied contract or agreement; provided, however, this exclusion shall not apply (i) to Insuring Agreement 1.2, or (ii) to the extent that liability would have attached to the **Insureds** in the absence of such contract or agreement; or
- 4.13 based upon, arising from, or in any way related to the actual, alleged, or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify, or neutralize **Pollutants**, including without limitation any actual or alleged property damage or financial loss incurred by, or bodily injury, sickness, disease or death of, any **Insured** or its creditors or securities holders resulting from the matters described in this exclusion.



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5. APPLICATION REPRESENTATIONS:

The **Insureds** represent that the statements and representations contained in the **Application** are true and shall be deemed material to the acceptance of the risk or the hazard assumed by the Insurer under this Policy. This Policy is issued in reliance upon the truth of such statements and representations. The **Insureds** agree that if the **Application** contains statements or representations that are untrue, this Policy shall be void and of no effect whatsoever.

6. REPORTING REQUIREMENTS:

6.1 The **Insureds**, as a condition precedent to coverage under Insuring Agreements 1.1 and 1.2 of this Policy, shall report every **Claim** to the Insurer as soon as practicable, but in no event later than 60 days after the end of the **Policy Period** or **Discovery Period**, if applicable.

6.2 The **Insureds**, as a condition precedent to coverage under Insuring Agreement 1.3 of this Policy, shall give written notice to the Insurer of the **Wrongful Act** for which the mitigation or correction payment is made by the **Insureds**, as soon as practicable after the **Insured Organization's** director of insurance or risk management, in-house general counsel, or equivalent person first becomes aware of such **Wrongful Act**, but no later than 60 days after the end of the **Policy Period** or **Discovery Period**, if applicable.

6.3 Notice of any **Claim**, circumstance, or **Wrongful Act** shall be forwarded to **Liberty International Underwriters USA, 55 Water Street 18th Floor, New York, NY 10041 Attention: Specialty Casualty Claims**. All other notices under this Policy shall be given to the same addressee but to the attention of the Specialty Casualty Division.

6.4 All notices under this Policy shall be sent in writing by mail, prepaid express courier, or facsimile and shall be effective upon receipt thereof by the addressee.

7. NOTICE OF CIRCUMSTANCE OR WRONGFUL ACT:

If during the **Policy Period** the **Insureds** become aware of any circumstance or **Wrongful Act** that reasonably may be expected to give rise to a **Claim**, and if such circumstance or **Wrongful Act** is reported to the Insurer during the **Policy Period** in writing with details as to the nature and date of such circumstance or **Wrongful Act**, the identity of any potential claimant, the identity of any **Insured** involved in such circumstance or **Wrongful Act**, and the manner in which the **Insured** first became aware of such circumstance or **Wrongful Act**, then any **Claim** subsequently arising from such circumstance or **Wrongful Act** shall be deemed under this Policy to be a **Claim** made during the **Policy Period** in which the circumstance or **Wrongful Act** was first duly reported to the Insurer.

8. LIMIT OF LIABILITY:

8.1 Subject to Section 8.2, the Insurer's maximum aggregate Limit of Liability for all **Loss** under this Policy shall be the amount set forth in Item III(A) of the Declarations. Amounts incurred as **Defense Costs** shall reduce the Limit of Liability.

8.2 If the Limit of Liability stated in Item III(A) of the Declarations is exhausted, the Additional Limit of Liability stated in Item III(B) of the Declarations shall be the maximum liability of the Insurer under this Policy for all **Loss** under this Policy subsequently incurred by the **Independent Directors** arising out of **Claims** made against the **Independent Directors**. Any coverage afforded under this Policy pursuant to the Additional Limit of Liability shall be specifically excess of (i) the Limit of Liability stated in Item III(A) of the Declarations, and (ii) the limit of liability under any other policy that is specifically excess of this Policy.

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8.3 Notwithstanding the foregoing, the Insurer's maximum liability under the Limit of Liability stated in Item III(A) and the Additional Limit of Liability stated in Item III(B), combined, for all **Loss** arising out of a single **Claim** shall be the amount set forth in Item III(A) of the Declarations. This paragraph creates a sublimit which further limits and does not increase the Insurer's maximum liability under this Policy.

8.4 All **Claims** arising from the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed one **Claim**, and such **Claim** shall be deemed first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**.

9. RETENTION:

9.1 The Insurer shall be liable under Insuring Agreements 1.1(b), 1.2 and 1.3 to pay only the amount of covered **Loss** in excess of the Retention amount set forth in Item IV of the Declarations. Such Retention shall be uninsured and shall be borne by the **Insureds**.

9.2 No Retention amount shall apply under Insuring Agreement 1.1(a).

9.3 If an **Insured Organization** or **Fund** is permitted or required by law to indemnify an **Insured Person** for **Loss** covered under Insuring Agreement 1.1(a), but fails to grant such indemnification, no Retention amount shall apply to such **Loss**, but such **Insured Organization** or **Fund** shall hold the Insurer harmless from such **Loss** up to the Retention amount set forth in Item IV of the Declarations applicable to Insuring Agreement 1.1(b).

10. OTHER INSURANCE:

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

10.2 Without limiting the foregoing, any coverage under this Policy for **Insured Persons** serving in **Outside Positions** shall be specifically excess of any indemnity and insurance available from or provided by the **Outside Entity** in which the **Insured Person** serves in the **Outside Position**.

11. DISCOVERY PERIOD:

11.1 If the Insurer or the **Insured** fails or refuses to renew this Policy or if the **Insured** cancels this Policy, the **Insured** shall have the right to an extension of the coverage granted by this Policy for the duration of time set forth in Item VI of the Declarations following the effective date of such cancellation or non-renewal. Such extension of coverage shall apply solely with respect to **Wrongful Acts** taking place before the effective date of such cancellation or non-renewal. A written request for this extension, together with payment of the Discovery Period Premium set forth in Item VI of the Declarations, must be made within 30 days after the effective date of cancellation or non-renewal of the Policy. Such Discovery Period Premium shall be deemed fully earned as of such date. This extension shall not apply if this Policy is terminated by the Insurer for failure to pay any premium when due.

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11.2 The offer by the Insurer of renewal terms, conditions, limits of liability and/or premiums different from those of the expiring policy shall not constitute refusal to renew. Any coverage under this Policy during the **Discovery Period** is specifically excess of any other insurance maintained by the **Insureds** during the **Discovery Period**.

11.3 The extension of coverage for the **Discovery Period** shall not in any way increase the Limit of Liability set forth in Item III of the Declarations.

12. SUBROGATION:

If the Insurer pays any **Loss** under this Policy, the Insurer shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery therefor, including without limitation the **Insured Persons'** rights to indemnification or advancement from the **Insured Organization and Fund**. The **Insured** 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 necessary to enable the Insurer effectively to bring suit in the name of the **Insured**. The obligations of the **Insured** pursuant to this Section 12 survive the termination of the **Policy Period**.

13. AMENDMENT, ASSIGNMENT AND HEADINGS:

13.1 Any amendment to this Policy or assignment of an interest in this Policy, in whole or in part, shall be effective only if made by endorsement to this Policy signed by an authorized representative of the Insurer.

13.2 The headings to the provisions in this Policy, including those found in any endorsements attached hereto, are provided for convenience only and do not affect the construction hereof.

14. TERRITORY:

This Policy applies to **Claims** made anywhere in the world for **Wrongful Acts** occurring anywhere in the world.

15. SPOUSAL BENEFIT:

If a **Claim** against an **Insured Person** for a **Wrongful Act** otherwise covered under this Policy includes a claim against his/her legal spouse where the claimant asserts such claim by reason of spousal status or seeks to obtain recovery against property in which such spouse has an interest, the amount which such spouse becomes legally obligated to pay in respect of such **Claim** (including defense costs) shall be deemed the **Loss** of such **Insured Person**, subject to this Policy's terms, conditions, and exclusions. In any event, this extension shall not cover any conduct or wrongful act actually or allegedly committed by such legal spouse.

16. ACQUISITION OF PARENT COMPANY (AUTOMATIC RUN-OFF):

16.1 In the event of a **Change in Control** during the **Policy Period**, coverage under this Policy shall continue until the end of the **Policy Period**, but only with respect to **Claims** for **Wrongful Acts** taking place prior to the effective date of such **Change in Control**. The entire premium for this Policy shall be deemed fully earned as of the effective date of such **Change in Control**.

16.2 The **Parent Organization** shall give written notice of such **Change in Control** to the Insurer as soon as practicable, together with such information as the Insurer may reasonably require.

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17. ESTATES AND LEGAL REPRESENTATIVES:

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

18. TERMINATION:

18.1 The Insurer may not cancel this Policy except for non-payment of premium when due. Such cancellation shall be effective as of the inception date of the **Policy Period**.

18.2 The **Parent Organization** may cancel this Policy by sending notice of cancellation to the Insurer. Such cancellation shall be effective on the date the Insurer receives such notice. In the event the **Parent Organization** cancels this Policy, the Insurer shall retain the customary short rate premium. Payment 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.

19. ACTION AGAINST INSURER:

19.1 No action shall be taken against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, or the amount of the **Insureds'** obligation to pay shall have been finally determined either by judgment against the **Insureds** after actual trial, or by written agreement of the **Insureds**, the claimant and the Insurer.

19.2 No person or organization shall have the right under this Policy to join the Insurer as a party to any action against an **Insured**, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives.

20. ALLOCATION:

20.1 If in any **Claim** the **Insureds** who are afforded coverage under this Policy for such **Claim** incur **Loss** jointly with others (including **Insureds**) who are not afforded coverage under this Policy for such **Claim**, or incur an amount consisting of both **Loss** covered by this Policy and loss not covered by this Policy because such **Claim** includes both covered and uncovered matters, then the **Insureds** and the Insurer shall allocate such amount between covered **Loss** and uncovered loss based upon the relative legal exposure of the parties to such matters.

20.2 If there can be an agreement on an allocation of **Defense Costs**, the Insurer shall advance on a current basis **Defense Costs** allocated to covered **Loss**. If there can be no agreement on an allocation of **Defense Costs**, the Insurer shall advance on a current basis **Defense Costs** which the Insurer believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined. Any advancement of **Defense Costs** shall be subject to, and conditioned upon receipt by the Insurer of, a written undertaking by the **Insureds** that such advanced amounts shall be repaid to the Insurer by the **Insureds** severally according to their respective interests if and to the extent it is determined the **Insureds** shall not be entitled under the terms and conditions of this Policy to coverage for such **Defense Costs**.

20.3 Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim** or any other **Claim**.

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21. AUTHORIZATION:

By acceptance of this Policy, the **Parent Organization** agrees to act on behalf of the **Insureds** with respect to the giving and receiving of notice of **Claim** or termination, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this Policy, and the **Insureds** agree that the **Parent Organization** shall act on their behalf.

22. PRIORITY OF PAYMENT:

22.1 If the amount of any covered **Loss** which is otherwise due and owing by the Insurer under this Policy exceeds the then-remaining Limit of Liability applicable to such **Loss**, the Insurer shall pay such **Loss** (subject to such Limit of Liability) in the following priority:

- (a) First, the Insurer shall pay any such **Loss** covered under Insuring Agreement 1.1(a);
- (b) Second, only if and to the extent the payment under subparagraph (a) above does not exhaust the applicable Limit of Liability, the Insurer shall pay any such **Loss** covered under Insuring Agreement 1.1(b), 1.2 or 1.3.

22.2 Subject to the foregoing paragraph, the Insurer shall, upon receipt of a written request from the **Parent Organization**, delay any payment of covered **Loss** otherwise due and owing under Insuring Agreement 1.1(b), 1.2 or 1.3 until such time as the **Parent Organization** designates, provided the Insurer's liability with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

23. DEFINITIONS:

23.1 "**Application**" means all signed applications, including attachments and materials submitted therewith or as a part thereof, or incorporated therein, for this Policy and for any policy in an uninterrupted series of policies issued by the Insurer of which this Policy is a direct or indirect renewal or replacement. All such applications, attachments, and materials are deemed attached to and incorporated into this Policy.

23.2 "**Change in Control**" means:

- (a) the acquisition by another entity or person, or group of entities and/or persons acting in concert, of securities or voting rights resulting in ownership or voting control by such other entities and/or persons of more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors or equivalent positions of the **Parent Organization**; or
- (b) the merger of the **Parent Organization** into another entity such that the **Parent Organization** is not the surviving entity, or the consolidation of the **Parent Organization** with another entity.

23.3 "**Claim**" means:

- (a) a written demand for monetary or non-monetary relief against an **Insured**;
- (b) a civil proceeding or arbitration against an **Insured**;

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- (c) a criminal proceeding against an **Insured Person**;
- (d) a formal administrative or regulatory proceeding against an **Insured**; or
- (e) a formal criminal, administrative, or regulatory investigation against an **Insured Person**;

including any appeal therefrom. A **Claim** will be deemed first made on the earliest date any **Insured** receives the written demand, complaint, indictment, notice of charges, or order of formal investigation in such **Claim**.

- 23.4 "**Defense Costs**" means reasonable and necessary fees (including attorneys' fees and experts' fees) and expenses incurred in the defense of a **Claim** and the cost of attachment or similar bonds, but shall not include the wages, salaries, benefits or expenses of any directors, officers or employees of the **Insured Organization** or **Fund**.
- 23.5 "**Discovery Period**" means the period of time set forth in Item VI of the Declarations.
- 23.6 "**Fund(s)**" means any organization registered as an investment company under the Investment Company Act of 1940, as amended, which is sponsored or managed by, or otherwise affiliated with, the **Insured Organization**, and any portfolios of any such investment company(ies) (including without limitation any investment companies or portfolios listed in Item V of the Declarations) if such sponsorship, management or affiliation commences:
- (a) prior to the inception date of the **Policy Period**;
 - (b) after the inception date of the **Policy Period** and the assets of such investment company do not exceed 20% of the total consolidated assets of the **Insured Organizations** as reflected in the **Parent Organization's** then most recent audited consolidated financial statement; or
 - (c) after the inception date of the **Policy Period** and the assets of such investment company equal or exceed 20% of the total consolidated assets of the **Insured Organization** as reflected in the **Parent Organization's** then most recent audited consolidated financial statement but only upon the condition that the **Parent Organization**:
 - (i) gives written notice of such transaction to the Insurer within 90 days after the effective date of such transaction;
 - (ii) provides the Insurer with such information as the Insurer may require; and
 - (iii) pays any additional premium required by the Insurer.
- 23.7 "**Independent Director**" means any past, present or future director or trustee of an **Insured Organization** or **Fund** if such director or trustee is not an "interested person" of such **Insured Organization** or **Fund** within the meaning of Section 2(a)(19) of the Investment Company Act of 1940.

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- 23.8 “Insured Persons” means:
- (a) any past, present or future director, trustee, officer or, solely with respect to Insuring Agreement 1.2, employee of an **Insured Organization** or **Fund**; and
 - (b) with respect to any **Insured Organization** or **Fund** chartered outside the United States, the functional equivalent of any position described in (a) above.
- 23.9 “Insured Organization” means any entity named in Item I of the Declarations and any **Subsidiary**, including any such entity operating as a debtor-in-possession.
- 23.10 “Insureds” means:
- (a) solely with respect to Insuring Agreements 1.1(b), 1.2 and 1.3, the **Insured Organizations** and **Funds**; and
 - (b) **Insured Persons**.
- 23.11 “Interrelated Wrongful Acts” means **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions, or causes.
- 23.12 “Loss” means sums which the **Insured** is legally obligated to pay solely as a result of any **Claim** insured by this Policy, including **Defense Costs**, damages, judgments, settlement amounts, legal fees and costs awarded pursuant to judgments, punitive or exemplary damages, and the multiple portion of any multiplied damage award. If the **Insureds** have in good faith determined that punitive, exemplary, or multiplied damages are insurable under applicable law, the Insurer shall not challenge such determination.
- Loss** shall not include:
- (a) fines, penalties, or taxes;
 - (b) compensation or interest charged to or due from clients or customers of the **Insured Organization**, unless such compensation is used as a measure of damages incurred by the claimant;
 - (c) the cost of complying with any settlement for, or award of, non-monetary relief;
 - (d) amounts for which there is no legal recourse against the **Insureds**; or
 - (e) matters uninsurable pursuant to any applicable law.
- 23.13 “Outside Entity” means:
- (a) any non-profit organization that is not an **Insured Organization** or **Fund**; and
 - (b) any for-profit organization that is not an **Insured Organization** or **Fund** if **Outside Position** coverage is specifically granted with respect to such organization pursuant to an endorsement to this Policy.

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- 23.14 **"Outside Position"** means the position of director, officer, trustee or equivalent position in any **Outside Entity** held by an **Insured Person**, provided and so long as such service is part of such person's regularly assigned duties with the **Insured Organization** or **Fund** or is at the specific written request or direction of the **Insured Organization** or **Fund**.
- 23.15 **"Parent Organization"** means the **Insured Organization** first named in Item I of the Declarations.
- 23.16 **"Policy Period"** means the period from the Inception Date set forth in Item II of the Declarations to the Expiration Date set forth in Item II of the Declarations, or its earlier termination pursuant to Section 18.
- 23.17 **"Pollutants"** means any substance exhibiting hazardous characteristics as is or may be identified on any list of hazardous substances issued by the United States Environmental Protection Agency, or any state, local, or foreign counterpart. This definition shall include, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos-containing products, waste (including material to be recycled, reconditioned or reclaimed), and any electric, magnetic or electromagnetic field of any frequency, as well as any air emission, waste water, infectious medical waste, nuclear materials, or nuclear waste.
- 23.18 **"Professional Services"** means the following services of the **Insured** rendered for compensation to a client, third party or any **Fund** at any time whether before, on or after the inception date of this Policy, pursuant to an oral or written agreement defining the scope of such services, including services performed by third parties retained by the **Insured** for the benefit of any **Fund** or the **Insured's** client if such services relate to **Professional Services** rendered by the **Insured** to such **Fund** or client:
- (a) financial, economic and/or investment advice,
 - (b) investment management services, and
 - (c) services in connection with the management, operation, administration or marketing of a **Fund**.
- 23.19 **"Subsidiary"** means any entity in which more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors or equivalent positions are owned, in any combination, by one or more **Insured Organizations** if such ownership commences:
- (a) prior to the inception date of the **Policy Period**;
 - (b) after the inception date of the **Policy Period** and the assets of such entity do not exceed 20% of the total consolidated assets of the **Insured Organizations** as reflected in the **Parent Organization's** then most recent audited consolidated financial statement; or
 - (c) after the inception date of the **Policy Period** and the assets of such entity equal or exceed 20% of the total consolidated assets of the **Insured Organization** as reflected in the **Parent Organization's** then most recent audited consolidated financial statement but only upon the condition that the **Parent Organization**:
 - (i) give written notice of such transaction to the Insurer within 90 days after the effective date of such transaction;

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- (ii) provide the Insurer with such information as the Insurer may require; and
- (iii) pay any additional premium required by the Insurer.

23.20 "**Wrongful Act**" means any actual or alleged error, misstatement, misleading statement, act, omission, neglect, or breach of duty, actually or allegedly committed (i) by the **Insureds** in their capacity as such, (ii) solely with respect to Insuring Agreement 1.1, by any **Insured Person** in an **Outside Position**, or (iii) by any other person or entity for whom the **Insureds** are legally responsible.



PRESIDENT
David A. Cohen



VICE PRESIDENT and SECRETARY
Dexter R. Legg

SPECIMEN