

NavPro

**THIS IS A CLAIMS MADE POLICY
WITH DEFENSE COSTS INCLUDED IN THE LIMIT OF LIABILITY
PLEASE READ THE ENTIRE POLICY CAREFULLY**

EXCESS FINANCIAL PRODUCTS INSURANCE POLICY

I. INSURING AGREEMENT

- A. The Insurer designated in the Declarations (a Stock Insurance Company herein called the "Underwriters"), in consideration of the payment of the premium and subject to all of the terms, conditions and exclusions of this policy, agrees with the Insured(s) as follows:

The Underwriters shall provide the Insured(s) with insurance during the Policy Period which is in excess of the total Limits of Liability and any retention/deductible under all **Underlying Insurance**, as set forth in the Declarations under Item D., whether collectible or not.

II. LIMIT OF LIABILITY

- A. It is expressly agreed that liability for any loss shall attach to the Underwriters only after the Primary and Underlying Excess Insurers shall have duly admitted liability, and shall have paid the full amount of their respective liability (hereinafter referred to as the "**Underlying Insurance**"). The Underwriters shall then be liable to pay only such additional amounts up to the Limit of Liability set forth in the Declarations, under Item C. This shall be the maximum Limit of Liability of the Underwriters during the Policy Period.

- B. In the event of the reduction or exhaustion of the aggregate Limit of Liability under the **Primary and Underlying Excess Policy(ies)**, by reason of losses paid thereunder for claims first made while this policy is in force, this policy shall:

1. in the event of such reduction, pay the excess of the reduced Primary and Underlying Excess Limits,
2. in the event of exhaustion, continue in force as Primary Insurance, subject to the Underwriters' Limit of Liability and to other terms, conditions and exclusions of this policy,

provided always that in the latter event this policy shall only pay excess of the retention/deductible applicable to such Primary Insurance as set forth in the **Primary Policy**, and shall be applied to any subsequent loss in the same manner specified in such primary insurance. Written notice of exhaustion of **Underlying Insurance** shall be given the Underwriters immediately upon such exhaustion. Nothing herein shall be construed to provide for any duty on the part of the Underwriters to defend any Insured or to pay defense or any claim expenses in addition to the Limit of Liability set forth in the Declarations, under Item C.

- C. The inclusion of more than one Insured shall not operate to increase the Underwriters Limit of Liability as set forth in the Declarations, under Item C.

III. PRIMARY AND UNDERLYING INSURANCE

- A. This policy is subject to the same warranties, terms, conditions, definitions, exclusions and endorsements (except as regards the premium, the amount and Limits of Liability, and duty to defend and except as otherwise provided herein) as are contained in or as may be added to the policy of the Primary Insurer, together with all the warranties, terms, conditions, exclusions and limitations contained in or added by endorsement to any **Underlying Excess Policy(ies)**.

- B. In no event shall this policy grant broader coverage than is provided by the most restrictive Primary or Underlying Excess Policy(ies).

- C. It is a condition precedent to this policy that the policy(ies) of the Primary and Underlying Excess Insurers shall be maintained in full effect while this policy is in force, except for any reduction of the aggregate limits contained therein (as provided for in Paragraph II(B) above).
- D. Failure of the Insured to comply with the foregoing shall not invalidate this policy, but in the event of such failure, the Underwriters shall be liable only to the extent that it would have been liable had the Insured complied therewith.

IV. COSTS, CHARGES AND EXPENSES

- A. No costs, charges or expenses for investigation or defense of claims shall be incurred or settlements made without the Underwriters' written consent; such consent not to be unreasonably withheld. However, in the event of such consent being given, the Underwriters will pay subject to the provisions of Paragraph II, such costs, settlements, charges or expenses. Should any claim or suit be settled or disposed of for not more than the **Underlying Insurance** as set forth in the Declarations, under Item D., then no costs shall be paid by the Underwriter.
- B. The Underwriters may, at their sole option, elect to participate in the investigation, settlement or defense of any claim against any Insured(s) for matters covered by this policy even if the **Primary or Underlying Excess Policy(ies)** has not been exhausted.
- C. All expenses resulting from the investigation and defense of claims to which this policy applies, including court costs, appeal bonds, pre-judgment interest, and post-judgment interest, shall be included in the Limit of Liability of this policy and not in addition thereto.

V. GENERAL CONDITIONS

A. Definitions

1. **Primary Policy** means the policy scheduled in the Declarations, under Item D. (1).
2. **Underlying Excess Policy(ies)** means the policy(ies) scheduled as such in the Declarations, under Item D. (2).
3. **Underlying Insurance** means all those policies scheduled in the Declarations.

B. Discovery Clause

If the Underwriters shall cancel or refuse to renew this policy, the Insured shall have the right upon payment of an additional premium, as set forth in the Declarations under Item G.:

- (1) to an extension of the coverage granted by this policy in respect of any claim or claims which may be made against the Insured during the period set forth in the Declarations under Item G.;
- (2) after the date of such cancellation or non-renewal, but only in respect of any act committed before the date of cancellation or non-renewal of the policy. A written request for this extension, together with payment of the appropriate premium, must be made to the Underwriters within ten (10) days after the effective date of cancellation or non-renewal of this policy.

C. Subrogation

All recoveries or payments recovered or received subsequent to a settlement under this policy, shall be applied as if recovered or received prior to such settlement, and all necessary adjustments shall then be made between the Insured and the Underwriters.

D. Cancellation Clause

This policy may be cancelled by the Insured at any time by written notice or surrender of this policy. This policy may also be cancelled by or on behalf of the Underwriters by delivering to the Insured or by mailing to the Insured by registered, certified, or other first class mail at the Insured's address shown in this policy, written notice stating when, not less than sixty (60) days thereafter, the cancellation shall become effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. This policy shall terminate at the date and hour specified in such notice.

If the policy shall be cancelled by the Insured, the Underwriters shall retain the customary short rate proportion of the premium hereon.

If this policy shall be cancelled by or on behalf of the Underwriters, the Underwriters shall retain the pro rata proportion of the premium hereon. Payment or tender of any unearned premium by the Underwriters shall not be a condition precedent to the effectiveness of cancellation. Such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitations permitted by law.

E. Termination of Any Underlying Insurance

This policy shall terminate immediately upon the termination of any **Underlying Insurance**, whether by the Insured or any Underlying Insurer. Notice of cancellation or non-renewal of all or part of the **Underlying Insurance** duly given by any such Insurer shall serve as notice of the cancellation or non-renewal of this policy by the Underwriters.

F. Termination of Prior Policy(ies)

The inception of coverage under this policy shall terminate, if not already terminated, the policy(ies) specified in the Declarations, under Item F.

G. Notice

The Underwriters shall be given notice in writing as soon as practicable:

- (a) in the event of the cancellation of any **Underlying Insurance**; and
- (b) of any additional or return premiums charged or paid in connection with any **Underlying Insurance**.

Any changes in coverage or in the Insured in the **Underlying Insurance** shall be promptly reported to the Underwriters and the Insured shall, upon request, furnish the Underwriters with copies of such changes.

In the event any claim is made against any Insured, written notice shall be given to:

Navigators Insurance Company
One Penn Plaza
55th Floor
New York, NY 10119
ATTN: Navigators Pro Claims Department

and otherwise pursuant to all appropriate notice provisions contained in the **Underlying Insurance**. Such notice shall contain particulars sufficient to identify the Insured and the fullest information obtainable at the time.

If legal proceedings are begun, the Insured shall forward to Underwriters each pleading or document, or a copy thereof, received by the Insured or the Insured's representatives, together with copies of reports or investigations made by the Insured with respect to such proceedings.

H. Company Authorization Clause

Except as respects the giving of notice to exercise the Discovery Clause under Paragraph V(b), by acceptance of this policy the Named Insured in the Declarations agrees to act on behalf of all Insured(s) with respect to the giving and receiving of notice of claim or cancellation, the payment of premiums, and the receiving of any return premiums that may become due under this policy.

I. The Insured shall give the Underwriters such information and cooperation as they may reasonably require.

J. Loss shall be paid in United States currency.

K. Appeals

In the event the Insured or the Insured's Primary or Underlying Excess Insurer(s) elects not to appeal a judgment which exceeds the **Underlying Insurance**, the Underwriters may elect to do so at their own expense, and shall be liable for the taxable costs, disbursements and interest incidental thereto.

L. Other Insurance

If other insurance is available to the Insured, which covers a loss also covered by this policy other than insurance that is specifically purchased as being in excess of this policy, this policy shall operate in excess of, and not contribute with, such other insurance.