

DECLARATIONS PAGE

THIS IS A CLAIMS MADE AND REPORTED POLICY. SUBJECT TO ALL PROVISIONS (INCLUDING ENDORSEMENTS), THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR DISCOVERY PERIOD (IF APPLICABLE) PROVIDED SUCH CLAIM IS REPORTED IN ACCORDANCE WITH NOTIFICATION PROVISION OF EACH COVERAGE SECTION. AMOUNTS INCURRED AS DEFENSE COSTS SHALL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY AND ARE SUBJECT TO THE RETENTIONS.

These Declarations along with the completed and signed Application and the Policy with endorsements shall constitute the contract between the **Insureds** and Underwriters.

Previous
Policy No.: N/A

Authority
Ref. No.:

Policy No.:

Item 1. **Broker/Dealer:**
Address:

Item 2. **Policy Period:** From:
To:

Both days at 12.01 a.m. Local Standard Time at the address shown in Item 1.

Item 3. **Limits of Liability:**

- Insuring Agreement A – Broker/Dealer Professional Liability
Limit of Liability: USD each **Claim** and in the aggregate
- Insuring Agreement B – Registered Representative Professional Liability
Limit of Liability: USD each **Claim** and in the aggregate
- Insuring Agreement C – Registered Investment Advisor Professional Liability
Limit of Liability: USD each **Claim** and in the aggregate

Nonstandard Coverages

- 1. Selling Away: USD each **Claim** and in the aggregate
- 2. Investment Banking: USD each **Claim** and in the aggregate
- 3. Alternate Investments: USD each **Claim** and in the aggregate
- 4. Penny Stocks: USD each **Claim** and in the aggregate

If the box before any Insuring Agreement or Nonstandard Coverage above is not checked, no Coverage is provided under the Policy for such Insuring Agreement or Nonstandard Coverage.

Overall Policy Aggregate Limit of Liability: USD applicable to Insuring Agreements A, B and C and any Nonstandard Coverages, if purchased, as indicated above.

Item 4. New York **Registered Representative** Coverage:

Limit of Liability for each New York **Registered Representative:** USD each **Claim** and in the aggregate

Number of New York **Registered Representatives:**

Item 5. **Retentions:**

- Insuring Agreement A – Broker/Dealer: USD each and every **Claim**
- Insuring Agreement B – Registered Representative: USD each and every **Claim**
- Insuring Agreement C – Registered Investment Advisor: USD each and every **Claim**

Non-Standard Coverages:

- 1. Selling Away: USD each **Claim** and in the aggregate
- 2. Investment Banking: USD each **Claim** and in the aggregate
- 3. Alternate Investments: USD each **Claim** and in the aggregate
- 4. Penny Stocks: USD each **Claim** and in the aggregate

Securities Broker-Dealer Professional Liability Insurance

Named Insured:

Policy No.:

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Item 6. Retroactive Date: (a)
(b) Continuity of **Retroactive Date** for Registered Representative as per Section 3. (p) 2. Included: Yes No *

**If "No" is checked, then Continuity of Retroactive Date as per Section 3.(p)2. is not provided.*

Item 7. Premium: USD (100%) in full for period hereon
USD Surplus Lines Taxes and Fees
USD Stamping Fee

Item 8. Notice of **Loss** to: Kaufman Dolowich & Voluck LLP
Attn: Stefan Dandelles, Managing Partner
55 E. Monroe Street, Suite 2950
Chicago, IL 60603
312.646.6742 (Direct) / 312.646.6744 (Main)
312.896.9403 (Fax) / Email: sdandelles@kdvlaw.com

Item 9. Notice of Election of Discovery to: Integro Insurance Brokers Limited
Attn: Mark Hogsden
100 Leadenhall Street
London EC3A 3BP
Telephone: +44(0)207444 6145
Email: mark.hogsden@integrogroupp.com

Item 10. Service of Suit: Kaufman Dolowich & Voluck LLP
55 E. Monroe Street, Suite 2950
Chicago, IL 60603

Item 11. Choice of Law:

Item 12. Discovery Period: % of the total Policy Premium for a period of 12 months
% of the total Policy Premium for a period of 24 months

Item 13. Forms and Endorsements attached hereto:

- 1.
- 2.
- 3.
- 4.

Securities Broker-Dealer Professional Liability Insurance

Named Insured:

Policy No.:

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SEVERAL LIABILITY NOTICE

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

08/94 LSW1001 (Insurance)

This evidences that insurance has been Underwritten by certain underwriters at Lloyd's as listed:

100.00%

This certificate is not valid until signed by an authorized signatory.

This contract is subject to US state surplus lines requirements. It is the responsibility of the surplus lines broker to affix a surplus lines notice to the contract document before it is provided to the insured. In the event that the surplus lines notice is not affixed to the contract document the insured should contact the surplus lines broker.

SECURITIES BROKER/DEALER PROFESSIONAL LIABILITY INSURANCE

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer in the application attached hereto and made a part hereof, and its attachments and the material incorporated therein, and subject to the Limit of Liability and all other terms and conditions contained herein, Underwriters at Lloyd's, hereinafter called the "Insurer", agrees as follows:

1. INSURING AGREEMENTS

A. BROKER/DEALER PROFESSIONAL LIABILITY INSURANCE (INCLUDING FAILURE TO SUPERVISE)

This policy shall pay on behalf of the **Broker/Dealer Loss** arising from a **Claim** first made against the **Broker/Dealer** during the **Policy Period** or the Discovery Period (if applicable) and reported in writing to the Insurer pursuant to the terms of this policy for any actual or alleged **Wrongful Act** committed by the **Broker/Dealer**:

1. in the rendering or failure to render **Professional Services** by the **Broker/Dealer**; or
2. in **Failing to Supervise** a **Registered Representative** in the rendering or failure to render **Professional Services** by such **Registered Representative** on the behalf of the **Broker/Dealer**
3. in **Failing to Supervise** a **Registered Representative** in connection with **Selling Away** by such **Registered Representative**.

B. REGISTERED REPRESENTATIVE PROFESSIONAL LIABILITY INSURANCE

This policy shall pay on behalf of a **Registered Representative Loss** arising from a **Claim** first made against the **Registered Representative** during the **Policy Period** or the Discovery Period (if applicable) and reported in writing to the Insurer pursuant to the terms of this policy for any actual or alleged **Wrongful Act** committed by the **Registered Representative** in the rendering or failure to render **Professional Services** on behalf of the **Broker/Dealer** or any other covered entity.

C. REGISTERED INVESTMENT ADVISOR PROFESSIONAL LIABILITY INSURANCE

This policy shall pay on behalf of a **Registered Representative** acting in his/her capacity as a **Registered Investment Advisor Loss** arising from a **Claim** first made against the **Registered Representative** during the **Policy Period** or the Discovery Period (if applicable) and reported in writing to the Insurer pursuant to the terms of this policy for any actual or alleged **Wrongful Act** committed by the **Registered Representative** in the rendering or failure to render **Professional Services**

2. DEFENSE, INVESTIGATION AND SETTLEMENT (INCLUDED IN THE LIMITS OF LIABILITY)

A. Defense

The Insurer shall have the right and duty to defend, subject to and as part of the Limits of Liability, any **Claim** made against an **Insured** during the **Policy Period** or Discovery Period (if applicable) and reported in writing to the Insurer pursuant to the terms of this policy for any actual or alleged **Wrongful Act** for which coverage is afforded by this policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent.

B. Investigation and Settlement

The Insurer shall have the right to make any investigation it deems necessary with respect to any **Claim** or notice of circumstances under this policy. The Insurer shall have the right to make any settlement of a **Claim** under this policy it deems expedient.

In the event the **Insured(s)** refuse to consent to a settlement opportunity, then Underwriters' liability for all **Loss** including **Defense Costs** on account of such **Claim** shall not exceed the total sum of:

- (a) the amount for which Underwriters could have settled such **Claim**, plus **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to such settlement; and
- (b) twenty percent (20%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (a) above, incurred in connection with such **Claim**. The remaining eighty percent (80%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (a) above will be borne uninsured and at the **Insured's** own risk;

In all events, the Insurer shall not be obligated to settle any **Claim**, pay any **Loss** or undertake or continue defense of any **Claim** after the applicable Limit of Liability has been exhausted by settlement of **Claim(s)** or payment of **Loss**. In each such case, the Insurer shall have the right to withdraw from the further defense of the **Claim** by tendering control of the defense to the **Insured(s)**.

The **Insured(s)** shall not admit liability for or settle any **Claim** or incur any **Defense Costs** without the Insurer's prior written consent. The **Insured(s)** shall give the Insurer and defense counsel full cooperation and such information as the Insurer and defense counsel reasonably request; including upon the Insurer's request, assisting in making

settlements in the conduct of **Claims**, attending hearings, trials, arbitrations, mediations, and assisting in securing and giving evidence and obtaining the attendance of witnesses.

If all **Insured** defendants are able to dispose of all **Claims** which are subject to one Retention amount, for an amount not exceeding the Retention amount (inclusive of **Defense Costs**), then the Insurer's consent to such disposition shall not be required for such **Claims**.

3. DEFINITIONS

- (a) "**Alternative Investments**" shall include hedge funds, funds of hedge funds, Real Estate Investment Trusts (REITs), Delaware Statutory Trusts (DSTs), Tenant-in-Common Interests (TICs), limited partnerships, direct participation programs (DPPs), limited liability company interests, other pooled investment vehicles, structured investment products, 1031 exchanges, collateralized mortgage obligations (CMOs), real estate interests (excluding primary residence), or any like investment generally accepted in the securities industry as alternative.
- (b) "**Approved Activity**" means a service or activity performed by the **Registered Representative** including in his capacity as a **Registered Investment Advisor** on behalf of the **Broker/Dealer** which:
- (1) has been approved by the **Broker/Dealer** to be performed by the **Registered Representative**, including duly submitted and approved Outside Business Activities, and is
 - (2) in connection with the purchase or sale of a specific security, annuity or insurance product which has been approved by the **Broker/Dealer** to be transacted through the **Registered Representative**, and for which
 - (3) the **Registered Representative** has obtained all licenses required by the **Broker/Dealer** or applicable law or regulation
- (c) "**Broker/Dealer**" means the **Broker/Dealer** designated in Item 1 of the Declarations and any **Subsidiary** thereof.
- (d) "**Claim**" means the following brought by an **Insured's** customer or client in such capacity:
- (1) a written demand for monetary relief; or
 - (2) a civil or arbitration proceeding for monetary or non-monetary relief which is commenced by:
 - (i) service of a complaint or similar pleading; or
 - (ii) receipt or filing of an arbitration demand or statement of claim.
- (e) "**Defense Costs**" means reasonable and necessary fees, costs and expenses consented to by the Insurer (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured(s)**, but excluding salaries of any **Insured**.
- (f) "**Failing to Supervise**" means the failure to create, implement, enact or enforce any applicable supervisory procedures required by law, common or statutory, regulation, governmental authority or regulation authority or self-regulatory authority, including but not limited to the procedures established by the Financial Industry Regulatory Authority ("FINRA") outlined in Section 3000 of the FINRA Rules, and any amendments thereto.
- (g) "**Insured**" means:
- (1) a **Broker/Dealer** and/or a **Registered Representative** including any former **Registered Representative** if listed on Schedule A attached to this policy;
 - (2) any past, present or future director, officer, partner or employee (other than a **Registered Representative**) of the **Broker/Dealer**;
 - (3) any present or future **Registered Representative** of the **Broker/Dealer**;
 - (4) an administrative, clerical or secretarial employee of a **Registered Representative** identified in Definition (o), or an entity identified in Definition (p), solely in his or her capacity as such, provided that:
 - (a) the administrative, clerical or secretarial employee is engaged solely in the **Professional Services** of such **Registered Representative**;
 - (b) receives no commission income based on employment with the **Registered Representative**; and
 - (c) has no other insurance applicable to a **Claim**;
 - (5) heirs or executors of a **Registered Representative**.
- (h) "**Interrelated Wrongful Act(s)**" means **Wrongful Acts** which are the same, related or continuous, or **Wrongful Acts** which arise from the same, related or common nexus of facts regardless of whether such **Claims** involve the same or different claimants, **Insureds** or legal causes of action. Further, and without limiting the aforementioned, the following **Claims** shall automatically be deemed to allege **Interrelated Wrongful Acts**:

1. **Claims** in connection with securities of any entity (or affiliated entities) which become(s) the subject of any bankruptcy, insolvency, receivership, liquidation or reorganization proceeding; or
2. **Claims** in connection with securities purchased in connection with an offering (or series of offerings) of securities issued by the same entity or affiliated entities; or
3. Multiple **Selling Away Claims** alleging the sale, attempted sale, or servicing of any of the same unapproved products.

(i) **“Investment Banking Activity”** means, but is not limited to, the underwriting, syndicating or promotion of any security or partnership interest in connection with any of the following: any actual, alleged or threatened merger, acquisition, divestiture, tender offer, proxy contest, leveraged buy-out, going private transaction, reorganization (voluntary or involuntary), capital restructuring, recapitalization, spin-offs, primary or secondary offerings of securities (regardless of whether the offering is a public offering or private placement), dissolution or sale of all or substantially all of the assets or stock of a business entity, or effort to raise or furnish capital or financing for any enterprise or entity, or any acquisition or sale of securities by the **Broker/Dealer** for its own account, or any activity by any **Insured** as a specialist or market maker (including the failure to make a market) for any securities, or any disclosure requirements in connection with any of the foregoing. **Investment Banking Activity** also includes the rendering of advice or recommendations or the rendering of a written opinion in connection with any of the foregoing.

(j) **“Loss”** means damages, judgments, settlements and **Defense Costs**; however, **Loss** shall not include:

- (1) salaries of any **Insured**;
- (2) the cost of complying with any settlement for or award of non-monetary relief;
- (3) civil or criminal fines or penalties imposed by law, punitive or exemplary damages, the multiplied portion of multiplied damages, taxes, any amounts for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**, or matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed; notwithstanding the foregoing, **Loss** shall include awards of punitive or exemplary damages (where insurable by law) in an amount not greater than the amount of the compensatory damages award; and
- (4) the return of fees, commissions, or other compensation for any **Professional Services** rendered or required to be rendered by the **Insured** or that portion of any settlement or award in an amount equal to such fees, commissions, or other compensation.

(k) **“Policy Period”** means the period from the inception date of this policy shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of the Declarations or the effective date of cancellation of this policy.

(l) **“Professional Services”** means the following services if rendered in connection with an **Approved Activity** (except with respect to **Selling Away Claims** if covered pursuant to Item 3 of the Declarations) for or on the behalf of a customer or client of the **Broker/Dealer** pursuant to a written agreement between the **Broker/Dealer** and the customer or client:

- (1) purchase or sale of **Securities**, including investment companies;
- (2) purchase or sale of variable annuities;
- (3) purchase or sale of commodities, futures contracts, forwards contracts or any type of option or futures contract, or any similar investment or investment product; or
- (4) purchase or sale of life, health, accident, disability and long term care insurance products, and fixed annuities, subject to the following;
- (5) providing brokerage services for individual retirement accounts (IRA’s), Keogh retirement plans and employee benefit plans (other than multiple employer or multi employee welfare arrangements),
- (6) services performed as a **Registered Investment Advisor** or advice provided to a client in accordance with the Investment Advisors Act 1940, as amended concerning Securities and products provided that such Securities and products are approved and authorized by the **Broker/Dealer**, but only if coverage under Insuring Agreement C is provided by this policy.

and in connection with or incidental to any of the foregoing 6 activities:

- (7) providing financial planning advice including without limitation any of the following activities in conjunction therewith: the preparation of a financial plan or personal financial statements, the giving of advice relating to personal risk management, insurance, savings, investments, retirement planning or taxes.

If elected per the Declarations, **“Professional Services”** shall also mean **“Investment Banking Activity”**.

(m) **“Registered Investment Advisor”** means an investment advisor or an Investment Advisor Representative registered with the Securities and Exchange Commission, or a state securities agency in the U.S.A., or a securities agency of the District of Columbia, including any duly registered Investment Advisor Representative.

- (n) **"Registered Representative"** means an individual who is registered with the Financial Industry Regulatory Authority, including a registered principal, and whose business is conducted on behalf of the **Broker/Dealer** or any other covered entity pursuant to a valid written contract in force at the time a **Claim** is first made.

In addition, **Registered Representative** shall include a **Registered Representative Company**.

For purposes of coverage identified in Item 4 of the Declarations, **Registered Representative** shall also include a **Registered Representative** who is domiciled and/or maintains a principal place of business in the State of New York.

- (o) **"Registered Representative Company"** means any corporation, partnership or other business entity which engages in the conduct of **Professional Services** and which is either owned or controlled by a **Registered Representative** or in which a **Registered Representative** is an employee and then only with respect to those operations of the business entity related to **Professional Services** provided by the **Registered Representative**.

- (p) **"Retroactive Date"** means:

1. as to the **Broker/Dealer**, the date stated in Item 6(a) of the Declarations;
2. as to a **Registered Representative**, or a Retired or Disabled Representative, the date stated in Item 6(a) of the Declarations or if indicated as included in Item 6(b) of the Declarations, the first date on which the **Registered Representative** had insurance coverage for errors and omissions under a securities broker-dealer professional liability insurance policy provided that such **Registered Representative** continuously renewed and maintained such insurance in effect thereafter up to the date that the **Registered Representative** became an **Insured** under this Policy.

- (q) **"Securities"** means:

1. stocks, bonds and other investments, as defined by the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 or the Investment Advisors Act of 1940, and any amendments thereto, other than variable life insurance, universal life insurance, whole life insurance, variable annuities, flexible annuities, scheduled premium mutual funds.
2. In the event **Alternative Investment** coverage is elected as per Item 3 of the Declarations, **Securities** shall include **Alternative Investments** which are on the insured **Broker/Dealer's** approved product list. Additionally, it is agreed and understood that in the event a **Claim** arises out of **Alternative Investments** that have been approved, authorized and distributed through the **Broker/Dealer**, the **Broker/Dealer** must provide the Insurer proof that the **Broker/Dealer** had conducted a comprehensive due diligence of the **Alternative Investment** at issue prior to adding it to the approved product list and prior to the sale of such **Alternative Investment** at issue in such **Claim**.

- (r) **"Selling Away"** means a **Registered Representative's** purchase, sale, attempted sale, solicitation, or servicing of **Securities, Alternative Investments**, or life insurance products that are not approved or authorized by the **Named Insured**, including, but not limited to, participating, in any manner, in a private securities transaction (as that term is used in FINRA Rule 3280) except in accordance with the requirements of FINRA Rule 3280.

Selling Away Claim means any **Claim** based on or arising out of **Selling Away**.

- (s) **"Subsidiary"** means:

- (1) a corporation of which the **Broker/Dealer** owns on or before the inception of the **Policy Period** more than 50% of the issued and outstanding voting stock either directly, or indirectly through one or more of its subsidiaries;
- (2) a corporation created or acquired during the **Policy Period** if the number of **Registered Representatives** of such other corporation total less than 10% of the total number of **Registered Representatives** of the **Broker/Dealer** as of inception date of this policy. However, as a condition hereto, the **Broker/Dealer** shall provide the Insurer with full particulars of the new entity within 30 days of creation or acquisition or before the end of the **Policy Period**, whichever comes first;
- (3) a corporation created, or acquired during the **Policy Period** (other than a corporation described in paragraph (2) above) but only upon the condition that within 30 days of its becoming a **Subsidiary**, the **Broker/Dealer** shall have provided the Insurer with full particulars of the new **Subsidiary** and agreed to any additional premium and/or amendment of the provisions of this policy required by the Insurer relating to such new **Subsidiary**. Further, coverage as shall be afforded to the new **Subsidiary** is conditioned upon the **Broker/Dealer** paying when due any additional premium required by the Insurer relating to such new **Subsidiary**.

A **Broker/Dealer** creates or acquires a **Subsidiary** when the **Broker/Dealer** owns more than 50% of the issued and outstanding voting stock, either directly or indirectly through one or more of its Subsidiaries. A corporation ceases to be a **Subsidiary** when the **Broker/Dealer** ceases to own more than 50% of the issued and outstanding voting stock, either directly or indirectly through one or more of its Subsidiaries.

In all events, coverage as is afforded with respect to a **Claim** made against a **Subsidiary** or any director, officer, employee or **Registered Representative** thereof shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time that such **Subsidiary** became a **Subsidiary** and prior to the time that such **Subsidiary** ceased to be a **Subsidiary**.

- (t) "**Wrongful Act**" means any negligent act, error or omission by the **Broker/Dealer**, any director, officer, partner or employee thereof, or by any **Registered Representative** thereof and solely in their respective capacities as such.

4. EXTENSIONS

Subject otherwise to the terms hereof, this policy shall cover **Loss** arising from a **Claim** made against the estates, legal heirs, or legal representatives of any deceased individual **Insured**, and the legal representatives of such individual **Insured** in the event of incompetency, insolvency or bankruptcy, who were individual **Insured** at the time the **Wrongful Acts** upon which such **Claims** are based were committed.

Subject otherwise to the terms hereof, this policy shall cover **Loss** arising from a **Claim** made against the lawful spouse or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an individual **Insured** for a **Claim** arising solely out of his or her status as the spouse or domestic partner of an individual **Insured**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the individual **Insured** and the spouse or domestic partner, or property transferred from the individual **Insured** to the spouse or domestic partner ; provided, however, that this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Acts** of the spouse or domestic partner , but shall apply only to **Claims** arising out of any actual or alleged **Wrongful Acts** of an individual **Insured**, subject to the policy's terms, conditions and exclusions.

5. EXCLUSIONS

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

- a) alleging, arising out of, based upon or attributable to the gaining in fact any profit or advantage to which the **Insured** was not legally entitled, including but not limited to any actual or alleged commingling of funds or accounts, as determined by a final adjudication in the underlying action or in a separate action or proceeding;
- b) alleging, arising out of, based upon or attributable to the committing in fact of: any criminal or deliberately fraudulent act, or any wilful violation of any law of the United States or Canada, or any state, territory, county, political division or municipality thereof, or any rules or regulations promulgated thereunder, as determined by a final adjudication in the underlying action or in a separate action or proceeding;
- c) for bodily injury, sickness, disease, death or emotional distress of any person, or damage to or destruction of any tangible property, including the **Loss** of use thereof, or for injury from libel or slander or defamation or disparagement, or for injury from a violation of a person's right of privacy.
- d) alleging, arising out of, based upon or attributable to any bankruptcy, insolvency, conservatorship, receivership or liquidation of, or suspension of payment or refusal to pay by any broker or dealer in securities or commodities, clearing agency, limited partnership, REIT, hedge fund, direct private placement, special purpose vehicle, or any bank or banking firm, or any insurance or reinsurance entity or any **Insured**; provided, however, this exclusion will not apply to: 1) **Wrongful Acts** solely in connection with any **Insured's** investment on the behalf of the claimant in the stock of any of the foregoing entities; and 2) a **Claim** based upon or arising out of the bankruptcy, insolvency, conservatorship, receivership or liquidation of, or suspension of payment or refusal or inability to pay of any insurance company rated by A.M. Best as A- or better at the time when the **Insureds** placed such coverage or placed such funds;
- e) alleging, arising out of, based upon or attributable to any **Wrongful Act** occurring prior to the inception date of the first Securities Broker/Dealer Errors And Omissions policy or Securities Brokers Professional Liability Insurance policy issued to the **Broker/Dealer** designated in Item 1 of the Declarations by the Insurer and continuously renewed and maintained in effect thereafter to the inception date of this policy, if on or before such date any **Insured** knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim**, or alleging, arising out of, based upon or attributable to any subsequent **Interrelated Wrongful Act**;
- f) alleging, arising out of, based upon or attributable to any **Wrongful Act** occurring prior to the **Retroactive Date** stated in Item 6 of the Declarations or arising out of any subsequent **Interrelated Wrongful Act**;
- g) alleging, arising out of, based upon or attributable to any: (i) employee benefit plan or trust sponsored by any **Insured** or sponsored by any business enterprise that is operated or managed or owned, directly or indirectly, in whole or in part, by any **Insured**; or (ii) any plan in which an **Insured** is a participant or is a named fiduciary; or arising out of, based upon or attributable to any services performed by any **Insured** acting in fact as a trustee, administrator or fiduciary under the Employee Retirement Income Security Act of 1974, or amendments thereto, or any similar federal or state statutory law or any regulation or order issued pursuant thereto.

However, this exclusion will not apply to services performed (i) as a 'fiduciary adviser' as defined under sections 601 of the Pension Protection Act of 2006; (ii) as a functional fiduciary commonly defined or described in Section 3(21) of ERISA when performing covered service and solely arising out of rendering investment advice for a fee or other compensation; (iii) as a fiduciary as an investment manager defined or described in Section 3(38) of ERISA when performing a covered service; or (iv) related 'securities' or insurance purchases or sales by an **Insured** within the normal scope of retirement or benefit planning services performed by a "financial services professional".

- h) brought by or on behalf of any **Insured**, or the successors or assigns of any **Insured**; or by or on behalf of any enterprise, trust or other entity that is operated or managed or owned, directly or indirectly, in whole or in part, by any **Insured**; or for which any **Insured** is a trustee, fiduciary, director or officer thereof;
- i) alleging, arising out of, based upon or attributable to, in whole or in part, any **Investment Banking Activity** by an **Insured**, including but not limited to any disclosure requirements in connection with the foregoing; provided, however, that this exclusion shall not apply to **Claims** arising out of the sale by an **Insured** to a particular client or customer of any open-ended investment company or variable annuity which alleges that a client or customer of the **Broker/Dealer** was unsuitable for and wrongfully placed into such investment company or variable annuity. This exclusion shall not apply if Investment Banking coverage is elected per Item 3 of the Declarations.
- j) alleging, arising out of, based upon or attributable to the facts alleged, or arising out of the same or **Interrelated Wrongful Acts** alleged or contained in any **Claim** which has been reported, or in any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- k) brought by or on behalf of any clearing agency, or alleging, arising out of, based upon or attributable to any function of any **Insured** as a clearing agency;
- l) alleging, arising out of, based upon or attributable to any: use by any **Insured** of, or aiding or abetting by any **Insured** in the use of, or participating after the fact by any **Insured** in the use of, non-public information in a manner prohibited by the laws of the United States, including, but not limited to, the Insider Trading and Securities Fraud Enforcement Act of 1988 (as amended), Section 10(b) of the Securities Exchange Act of 1934 (as amended) and Rule 10b-5 thereunder, any state, commonwealth, territory or subdivision thereof, or the laws of any other jurisdiction, or any rules or regulations promulgated under any of the foregoing;
- m) alleging, arising out of, based upon or attributable to the purchase or sale of (or failure to purchase or sell) any of the following, or any advice in connection therewith:
 - 1) any collectible, including but not limited to stamps, art, cards, jewelry, antiques or any other tangible personal property; or
 - 2) any equity security priced under USD5.00 at the time that the **Wrongful Act** triggering such **Claim** arose; however, this exclusion shall not apply if the security is:
 - (i) registered or authorized, or approved for registration or authorization upon notice of issuance, on a national securities exchange; or
 - (ii) issued by an investment company registered under the Investment Company Act of 1940 (as amended); or
 Provision m) 2) shall not apply if Penny Stock coverage is elected as per Item 3 of the Declarations.
 - 3) annuities used in connection with any structured settlement; or
 - 4) any security in any market outside of the United States of America and its territories and possessions and Canada.
- n) alleging, arising out of, based upon or attributable to any mechanical or electronic failure, breakdown or malfunction of machines or systems;
- o) brought by or on behalf of, or instigated or continued with the solicitation, assistance, participation or intervention of, any State or Federal regulatory or administrative agency or bureau or any other governmental, quasi-governmental or self-regulatory entity ("Governmental Entity"), whether directly or indirectly, and whether brought in its capacity as trustee, liquidator, or assignee of the **Broker/Dealer**, or in any other capacity and whether brought in its own name or in the name of any other entity; however, this exclusion shall not apply to any **Claim** brought solely in such Governmental Entity's capacity as a customer or client of the **Broker/Dealer** and instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any **Insured**.
- p) alleging, arising out of, based upon or attributable to rendering of or failure to render any of the following services or activities:
 - 1) actuarial,
 - 2) accounting,
 - 3) legal,
 - 4) real estate agent or broker,
 - 5) tax preparation or appearing before the Internal Revenue Service as an enrolled agent;
- q) for any actual or alleged **Wrongful Act** in rendering or failure to render **Professional Services** to any securities broker/dealer; however this exclusion shall not apply if the **Professional Service** is solely the purchase or sale of securities to such broker/dealer for its own account;

- r) alleging, arising out of, based upon or attributable to any activity of, or service provided by a **Registered Representative**, other than a covered **Professional Service**, including but not limited to **Selling Away**. This exclusion shall not apply to coverage provided under Insuring Agreement A.3, if elected pursuant to Item 3 of the Declarations;
- s) alleging, arising out of, based upon or attributable to an **Insured** exercising discretionary authority or control with regard to management or disposition of assets; however, this exclusion shall not apply to **Registered Investment Advisors** or any **Insured's** purchase or sale of no-load investment company or variable annuities in which there is no initial or contingent sales charge or commission;
- t) alleging, arising out of, based upon or attributable to, or in any way involving, directly or indirectly, the formation, operation, administration or management by an **Insured**, in part or in whole, of any entity other than the **Broker/Dealer** including but not limited to general partnerships, including but not limited to **Claims** arising out of an **Insured** acting as a general partner of any limited partnership and/or managing general partner of any general partnership;
- u) alleging, arising out of, based upon or attributable to any liability assumed by the **Insured** under any indemnification contract or agreement, either oral or in writing; however, this exclusion does not apply to liability that would exist in the absence of such contract or agreement;
- v) alleging, arising out of, based upon or attributable to employment or work place practices, including **Claims** arising under worker compensation laws or **Claims** in respect of alleged discrimination, harassment or inappropriate employment conduct of any sort.;
- w) alleging, arising out of, based upon or attributable to any third party **Claim** for the reimbursement of fees, commissions, costs or other charges paid or payable to the **Insured** or any third party **Claim** based upon allegations against the **Insured** of excessive fees, commissions, costs or other charges.
- x) arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving a qualified intermediary's or other similar party's conversion, defalcation, misuse or embezzlement of monies, funds or other assets held for the purpose of a 1031 exchange or TIC, regardless of whether any **Insured** was a participant in such conduct or had notice or knowledge of same.

The foregoing shall only apply in the event coverage was extended under this Policy to sales and servicing of 1031 exchanges and TICs by way of the election of **Alternative Investments** coverage as per Item 3 of the Declarations.

- y) in connection with any **Claim** for any intentional, "Corporate or Business Policy".

"Corporate or Business Policy" shall mean any policy which has been approved, condoned or endorsed by two or more of the **Broker/Dealer's** Management and which financially disadvantages all of the **Insured's** clients or any group or class of the **Insured's** clients.

The **Broker/Dealer's** Management shall be deemed to be the **Broker/Dealer's** executive level officers, including but not limited to the CEO, President, COO, CCO, CFO and General Counsel.

- z) alleging, arising out of, based upon, or attributable to depreciation (or failure to appreciate) in value of any investments, including but not limited to securities, leased products, commodities, currencies, options and futures transactions as to which the Assured has expressly or implicitly made a guarantee, representation or warranty as to the performance of such investments;

6. LIMITS OF LIABILITY

- A. The Limits of Liability stated in Item 3 of the Declarations as "each **Claim**" is the limit of the Insurer's liability for all **Loss** arising out of all **Claims** alleging the same **Wrongful Act** or **Interrelated Wrongful Acts**. This "each **Claim**" limit shall be part of and not in addition to the "aggregate" limit set forth in Item 3 of the Declarations as well as the "Overall Policy Aggregate" limit set forth in Item 3 of the Declarations, as described below.
- B. The Limits of Liability stated in Item 3 of the Declarations as "aggregate" is the total limit of the Insurer's liability for all **Loss** arising out of all **Claims** first made against the **Insureds** during the **Policy Period** and the Discovery Period (if applicable) and reported to the Insurer in accordance with the terms herein. This "aggregate" limit shall be part of and not in addition to the "Overall Policy Aggregate" limit set forth in Item 3 of the Declarations, as described below.
- C. The Overall Policy Aggregate Limit of Liability stated in Item 3 of the Declarations is the aggregate total limit of the Insurer's liability for **Loss** arising out of all **Claims** first made against the **Insureds** during the **Policy Period** and the Discovery Period (if applicable) and reported to the Insurer in accordance with the terms herein under this policy.
- D. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts**, regardless of the causes of action plead or the number or identity of claimants involved, shall be deemed to constitute a single **Claim**, and shall be deemed to have been made at the earliest of the following times, regardless of whether such date is before or during the **Policy Period**:
 - 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 subsection 8(c) below.

- E. The Limit of Liability for the Discovery Period shall be part of, and not in addition to, the applicable Limit of Liability for the **Policy Period**. Further, a **Claim** which is made subsequent to the **Policy Period** or the Discovery Period (if applicable) which pursuant to Clause 8(b) or 8(c) is considered made during the **Policy Period** or the Discovery Period (if applicable) shall also be subject to the aggregate Limit of Liability stated in Item 3 of the Declarations.
- F. Solely with respect to coverage afforded under this Policy for **Selling Away Claims**, subject to the Insurer's maximum "each **Claim**" Limit of Liability shown in Item 3 of the Declarations, the "each **Claim**" limit set forth in Item 3 of the Declarations shall be the maximum per **Claim** limit for each **Selling Away Claim**. Subject to the Insurer's "aggregate" limit shown in Item 3 of the Declarations, the "aggregate" limit set forth in Item 3 of the Declarations shall be the maximum aggregated Limit of Liability for all **Loss** under the Policy in connection with **Selling Away Claims**, regardless of the number of **Selling Away Claims** made against the **Insureds**. This is a sublimit of liability which further reduces, and in no way increases, the "each **Claim**" or "aggregate" Limit of Liability of this Policy as stated in the Declarations.
- G. In the event of the total erosion of the Overall Policy Aggregate Limit of Liability stated in Item 3 of the Declarations, the Limit of Liability for a **Registered Representative** domiciled or with a principal place of business in New York as stated in Item 4 of the Declarations shall be made available to each such New York **Registered Representative**.
- The total limit of liability available to any one New York **Registered Representative** following the total erosion of the Overall Policy Aggregate Limit of Liability in Item 3C of the Declarations will be the "each **Claim**" and "aggregate" Limit of Liability as stated in Item 4 of the Declarations for each such New York **Registered Representative**.
- The "each **Claim**" and "aggregate" Limit of Liability set forth in Item 4 of the Declarations is only available to the number of New York **Registered Representatives** as identified in Item 4 of the Declarations.
- H. **Defense Costs** are not payable by the Insurer in addition to the Limit of Liability. **Defense Costs** are part of **Loss** and as such are subject to the applicable Limit of Liability.

7. RETENTION

The Insurer shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention Amount stated in Item 5 of the Declarations, such Retention Amount to be borne by the **Insureds** and shall remain uninsured with regard to all **Loss** arising from any **Claim**.

The Retention stated in Item 5 of the Declarations as the "Broker/Dealer Retention" shall apply to **Claims** for which coverage is provided under Insuring Agreement A of this policy.

The Retention stated in Item 5 of the Declarations as the "Registered Representative Retention" shall apply to **Claims** for which coverage is provided under Insuring Agreement B of this policy except for those **Claims** described immediately below.

The Retention stated in Item 5 of the Declarations as the "Registered Investment Advisor Retention" shall apply to **Claims** for which coverage is provided under Insuring Agreement C of this policy except for those **Claims** described immediately below.

The Retention stated in Item 5 of the Declarations as the "**Selling Away Claim Retention**" shall apply to **Selling Away Claims** for which coverage is provided, but only when 50% or more of the alleged damages (excluding any punitive or exemplary amounts) arise from **Selling Away**.

In the event of a **Claim** (or **Claims** alleging **Interrelated Wrongful Acts**) for which more than one retention amount set forth in Item 5 of the Declarations is applicable, then the highest applicable single Retention Amount shall apply.

8. NOTICE/CLAIM REPORTING PROVISIONS

Notice hereunder shall be given in writing to the persons and/or entities shown under Item 8 of the Declarations Page. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

- (a) The **Broker/Dealer** or the **Insured** shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer of a **Claim** made against an **Insured** as soon as practicable after the general counsel, chief compliance officer or risk manager (or functional equivalent) of the **Broker/Dealer** first becomes aware of such **Claim** but in no event later than 30 days after the Policy Period or Discovery Period (if purchased).
- (b) If written notice of a **Claim** has been given to the Insurer pursuant to Clause 8 (a) above, then a **Claim** which is subsequently made against the **Insureds** and reported to the Insurer alleging, arising out of, based upon or attributable to the facts alleged in the **Claim** for which such notice has been given, or alleging any **Wrongful Act** which is the same as or related to any **Wrongful Act** alleged in the **Claim** of which such notice has been given, shall be considered made at the time such notice was given.
- (c) If during the **Policy Period** or during the Discovery Period (if applicable) the **Broker/Dealer** or the **Insureds** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against the **Insureds** and shall give written notice to the Insurer of the circumstances and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then a **Claim** which is subsequently made against the **Insureds** and reported to the Insurer alleging, arising out of, based upon or attributable to such circumstances or alleging any **Wrongful Act** which is the same as or related to any **Wrongful Act** alleged or contained in such circumstances, shall be considered made at the time such notice of such circumstances was given.

9. PROTECTION FOR INNOCENT INSURED

Whenever coverage under this policy would be excluded under Exclusion a) or b) because an **Insured** committed a criminal or deliberately fraudulent act; or wilfully violated the law or gained a profit or advantage to which the **Insured** was not legally entitled, the coverage otherwise afforded under this policy to a natural person **Insured** will continue to apply to each such **Insured** who did not personally commit or personally participate in committing such criminal or deliberately fraudulent act; did not wilfully violate the law or gain a profit or advantage; and did not personally acquiesce in or remain passive after having personal knowledge or becoming aware of one or more such acts, wilful violation or improper gain as set forth in Exclusions a) and b).

10. DISCOVERY CLAUSE

A. If this Policy is not renewed by the **Broker/Dealer** or by the Insurer, or if this Policy is cancelled for any reason other than non-payment of premium in whole or in part, then the **Broker/Dealer** shall have the right, upon payment of the additional premium set forth in Item 12 of the Declarations for this Policy, to an extension of the coverage granted by this Policy for a period of either one (1) year or two (2) years with respect to any **Claim** first made during the period of time set forth in Item 12 of the Declarations after the Policy expiration date, but only with respect to any **Wrongful Act** committed before such date. This period shall be referred to as the Discovery Period.

As a condition precedent to the right to purchase the Discovery Period in A. above, the total premium for this Policy must have been paid in full. The right to purchase the Discovery Period shall terminate unless written notice together with full payment of the premium for the Discovery Period is received by the Insurer within 30 days after the Policy expiration date. If such notice and premium payment is not so given to the Insurer, there shall be no right to purchase the Discovery Period.

B. In the event of a Transaction, as set forth in Clause 12., the **Broker/Dealer** shall have the right to request a Discovery Period (with respect to **Wrongful Acts** occurring prior to the effective date of the Transaction) for a period of up to 6 years. Insurer shall offer such Discovery Period pursuant to such terms, conditions and additional premium as Insurer may reasonably decide. The **Broker/Dealer** shall make an election with respect to the Discovery Period no later than 10 days after the date of such Transaction. The right to a Discovery Period in the event of a Transaction shall not otherwise exist except as indicated in this paragraph.

As a condition precedent to the right to purchase the Discovery Period in B. above, the total premium for this Policy must have been paid. The right to purchase the Discovery Period shall terminate unless full payment of the premium for the Discovery Period is received by the Insurer within 30 days after the Transaction or election of Discovery Period, whichever is later. If such notice and premium payment is not so received by the Insurer, there shall be no right to purchase the Discovery Period.

C. The additional premium for the Discovery Period shall be fully earned at the inception of the Discovery Period. The Discovery Period is not cancelable. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

D. 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 a refusal to renew.

E. The exercise of the Discovery Period shall not in any way increase the Limit of Liability of the Insurer.

11. CANCELLATION CLAUSE

This Policy is non-cancellable by the Insurer except for non-payment of premium, when the Insurer may cancel this Policy by mailing to the **Broker/Dealer** written notice stating when, not less than 45 days thereafter, such cancellation shall be effective. If payment is not received within the forty five (45) day period, then this Policy will be cancelled *ab initio*, meaning coverage is null and void from inception. 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 the Insurer 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.

This policy may be cancelled by the **Broker/Dealer** first named in Item 1 of the Declarations at any time only by mailing written prior notice to the Insurer stating when thereafter such cancellation shall be effective, or by surrender of this policy to the Insurer or its authorized agent.

If this policy shall be cancelled by the **Broker/Dealer**, the Insurer shall retain the customary short rate proportion of the premium hereon.

Payment or tender 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. 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 limitation permitted by such law.

12. CHANGE IN CONTROL OF BROKER/DEALER

If during the **Policy Period**:

- a. the **Broker/Dealer** shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert; or
- b. any person or entity or group of persons and/or entities acting in concert shall acquire an amount of the outstanding securities representing more than 50% of the voting power for the election of directors of the **Broker/Dealer**, or acquires the voting rights of such an amount of such securities;

(either of the above events herein referred to as the "Transaction")

then this policy shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of the Transaction, but there shall be no coverage afforded by any provision of this policy for any actual or alleged **Wrongful Act** occurring after the effective time of the Transaction. This policy may not be canceled after the effective time of the Transaction and the entire premium for this policy shall be deemed earned as of such time. The **Broker/Dealer** shall also have the right to an offer by the Insurer of a Discovery Period described in Clause 9 of the policy.

The **Broker/Dealer** shall give the Insurer written notice of the Transaction as soon as practicable, but not later than 30 days after the effective date of the Transaction.

13. SUBROGATION

In the event of any payment under this policy, the Insurer shall be subrogated to the extent of such payment to all the **Broker/Dealer's** and the **Insureds'** rights of recovery thereof, and the **Broker/Dealer** and the **Insureds** shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the **Broker/Dealer** and/or the **Insureds**. In no event, however, shall the Insurer exercise its rights to subrogation against an **Insured** under this policy unless such **Insured** has been convicted of a criminal act, or been judicially determined to have committed a deliberate fraudulent act, or obtained any profit or advantage to which such **Insured** was not legally entitled, or arising out of an act other than a covered **Professional Service** or **Broker/Dealer** service by such other **Insured**.

14. OTHER INSURANCE

Such insurance as is provided by this policy shall apply only as excess over any other valid and collectible insurance.

15. NOTICE AND AUTHORITY

It is agreed that the **Broker/Dealer** first named in Item 1 of the Declarations shall act on behalf of **Insureds** with respect to the giving of notice of **Claim** or giving and receiving notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy and the exercising or declining to exercise any right to a Discovery Period. Notice to any agent or knowledge possessed by any agent or any other person shall not effect a waiver or a change in any part of this policy or stop the Insurer from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed except by endorsement issued to form a part of this policy and signed by an authorized representative of the Insurer.

16. TERRITORY

This policy applies to **Claims** which are brought anywhere in the World.

17. ASSIGNMENT

This policy and any and all rights hereunder are not assignable without the written consent of the Insurer.

18. ALTERNATIVE DISPUTE RESOLUTION PROCESS

It is hereby understood and agreed that all disputes or differences which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of **Loss**, shall be subject to the alternative dispute resolution process ("ADR") set forth in this clause.

Either the Insurer or the **Insured(s)** may elect the type of ADR discussed below; provided, however, that the **Insureds** shall have the right to reject the Insurer's choice of ADR at any time prior to its commencement, in which case the **Insureds'** choice of ADR shall control.

The Insurer and **Insured(s)** agree that there shall be two choices of ADR: (1) non-binding mediation administered by the America Arbitration Association, in which the Insurer and **Insureds** shall try in good faith to settle the dispute by mediation under or in accordance with its then-prevailing Commercial Mediation Rules; or (2) arbitration submitted to the America Arbitration Association under or in accordance with its then-prevailing commercial arbitration rules, in which the arbitration panel shall be composed of three disinterested individuals. In either mediation or arbitration, the mediator(s) or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. The mediator(s) or arbitrators shall also give due consideration to the general principles of the law of the state where the **Broker/Dealer** is incorporated in the construction or interpretation of the provisions of this policy; provided, however, that the terms, conditions, provisions and exclusions of this policy are to be construed in an even-handed fashion in the manner most consistent with the relevant terms, conditions, provisions or exclusions of the policy. In the event of arbitration, the decision of the arbitrators shall

be final and binding and provided to both parties, and the arbitrators' award shall not include attorney's fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least 120 days shall have elapsed from the date of the termination of the mediation. In all events, each party shall share equally the expenses of the ADR.

Either choice of ADR may be commenced in either New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state indicated in Item 1 of the Declarations as the mailing address for the **Broker/Dealer**. The **Broker/Dealer** shall act on behalf of all **Insureds** in deciding to proceed with ADR under this clause.

19. ACTION AGAINST INSURER

Except as provided in Clause 18 of this policy, no action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until 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.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Insurer as a party to any action against the **Insureds** or the **Broker/Dealer** to determine the **Insureds'** liability, nor shall the Insurer be impleaded by the **Insureds** or the **Broker/Dealer** or their legal representatives. Bankruptcy or insolvency of the **Broker/Dealer** or the **Insureds** or of their estates shall not relieve the Insurer of any of its obligations hereunder.

20. HEADINGS

The descriptions in the headings of this policy are solely for convenience, and form no part of the terms and conditions of coverage.

21. SERVICE OF SUIT CLAUSE (U.S.A.)

This Clause is not intended to conflict with or override the parties' obligated to arbitrate their disputes in accordance with Clause 18.

It is agreed that in the event of the failure of the Insurers hereon to pay any amount claimed to be due hereunder, the Insurers hereon, at the request of the **Insured**, 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 Insurers' 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 the firm shown under Item 10 of the Declarations and that in any suit instituted against any one of them upon this contract, Insurers will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The firm shown under Item 10 of the Declarations is directed to accept service of process on behalf of Insurers in any such suit and/or upon the request of the **Insured** to give a written undertaking to the **Insured** (or Reinsured) that they will enter a general appearance upon Insurers' 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 Insurers 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 any beneficiary hereunder arising out of this contract of insurance, 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.

22. CHOICE OF LAW

This insurance shall be governed by and construed in accordance with the law of the state designated in Item 11 of the Declarations. Each party agrees to submit to the exclusive jurisdiction of any competent court within the United States of America.

23. MANDATORY LLOYD'S EXCLUSIONS

A. NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT (BROAD) (U.S.A.)

This Policy does not apply:

- I. Under any Liability Coverage, to injury, sickness, disease, death or destruction:
 - (a) with respect to which an **Insured** under the Policy is also an **Insured** under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an **Insured** under any such policy but for its termination upon exhaustion of its limit of liability; or

- (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the **Insured** is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
- (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an **Insured** or (2) has been discharged or dispersed therefrom;
- (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **Insured**; or
- (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.
- IV. As used in herein:

"hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof; "nuclear facility" means:

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the **Insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

* NOTE: As respects policies which afford liability coverages and other forms of coverage in addition, the words underlined should be amended to designate the liability coverage to which this clause is to apply.

B. RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE-LIABILITY-DIRECT (U.S.A.)

In relation to liability arising outside the U.S.A., its Territories or Possessions, Puerto Rico or the Canal Zone, this Policy does not cover any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

C. WAR AND TERRORISM EXCLUSION

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes **Loss**, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the **Loss**:

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
2. any act of terrorism.

For the purpose of this exclusion, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion also excludes **Loss**, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1 and/or 2 above.

If the Insurers allege that by reason of this exclusion, any **Loss**, damage, cost or expense is not covered by this insurance, the burden of proving the contrary shall be upon the **Insured**.

In the event any portion of this provision is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

D. ASBESTOS, TOXIC MOLD & LEAD EXCLUSION

The Insurer shall not be liable in respect of any **Claim**, **Loss**, liability or expenses arising directly or indirectly out of or in any manner related to:

- a) the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to asbestos or materials or products containing asbestos whether or not there is another cause of **Loss** which may have contributed concurrently or in any sequence to a **Claim**, or
- b) "Fungi" whether or not there is another cause of **Loss** which may have contributed concurrently or in any sequence to a **Claim**;
"Fungi" as utilized herein shall mean any fungus or mycota or any by-product or type of infestation produced by such fungus or mycota, including but not limited to mold, mildew, mycotoxins, spores or any biogenic aerosols, or
- c) lead or lead containing products.

E. OFAC EXCLUSION

The Insurer shall not be liable for the payment of any **Loss** directly or indirectly arising from, in connection with, or in any way involving an alleged or actual violation of any economic or trade sanctions by the United States government including, but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ("OFAC").

F. SANCTION LIMITATION AND EXCLUSION CLAUSE

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.