

# CERTIFICATE OF INSURANCE

Effective With

## UNDERWRITERS AT LLOYD'S, LONDON

By

PROFESSIONAL INDEMNITY AGENCY, INC.  
345 Route 17 South, Upper Saddle River, New Jersey 07624

In accordance with the authorization granted to Professional Indemnity Agency, Inc. under Contract No. PI \_\_\_\_\_ by certain Underwriters at Lloyd's, London, whose names and the proportions underwritten by them can be ascertained by reference to the said Contract, which bears the Seal of Lloyd's Policy Signing Office and is on file at the office of the said Agency and in consideration of the premium specified herein, the said Underwriters do hereby bind themselves, each for his own part and not one for another, their heirs, executors and administrators, to insure as follows in accordance with the terms and conditions contained herein or endorsed hereon.

### DECLARATIONS

#### PRIVATE EQUITY PROFESSIONAL INSURANCE CERTIFICATE (THIS IS A CLAIMS MADE CERTIFICATE)

Broker: \_\_\_\_\_ Certificate Number: PEP \_\_\_\_\_  
\_\_\_\_\_ Renewal of: PEP \_\_\_\_\_

Item A. Insured Organization: \_\_\_\_\_  
Principal Address: \_\_\_\_\_

Item B. Certificate Period: From \_\_\_\_\_ to \_\_\_\_\_  
12:01 a.m. Local Time at the Principal Address stated in Item A.

Item C. Limit of Liability: \$ \_\_\_\_\_ in the aggregate for the Policy.

Item D. Retentions:  
Insuring Agreement A: \$ \_\_\_\_\_ each Claim  
Insuring Agreement B: \$ \_\_\_\_\_ each Claim  
Insuring Agreement C(1) \$ \_\_\_\_\_ each Claim  
Insuring Agreement C(2) \$ \_\_\_\_\_ each Claim  
Insuring Agreement C(3) \$ \_\_\_\_\_ each Claim  
Insuring Agreement D \$ \_\_\_\_\_ each SEC Investigation

#### Optional Coverages (*check if purchased*):

\_\_\_\_\_ Insuring Agreement E (Employment Practices Liability) \$ \_\_\_\_\_ each Claim  
\_\_\_\_\_ Insuring Agreement F (Fiduciary Liability) \$ \_\_\_\_\_ each Claim

Item E. Sublimit of Liability for SEC Investigations: \$ \_\_\_\_\_

Item F. Premium: \$ \_\_\_\_\_

Item G. Insured Percentage: \_\_\_ % of Loss.

Item H. (1) Premium for Optional Extension Period: \_\_\_ % of the total annual premium.

(2) Length of Optional Extension Period: \_\_\_ days.

Item I. Continuity Date:

Item J. Form numbers of endorsements attached at issuance:

Item K. Notice of Claim to: Duane, Morris & Heckscher, LLP, 555 Pleasantville Road, North Building, Suite 200, Briarcliff, New York 10510

The Certificate terms and conditions contained herein or endorsed hereon and such other provisions, agreements or conditions as may be endorsed hereon or added hereto are hereby incorporated in this Agreement. No representative of the Underwriters shall have power to waive or be deemed to have waived any provision or condition of this Certificate unless such waiver, if any, shall be written upon or attached hereto; nor shall any privilege or permission affecting the insurance under this Certificate exist or be claimed by the Insured unless so written or attached.

IN WITNESS WHEREOF this Certificate has been signed at Upper Saddle River, New Jersey

by \_\_\_\_\_  
Authorized Representative

**PRIVATE EQUITY PROFESSIONAL  
INSURANCE CERTIFICATE**

In consideration of the payment of the premium, in reliance on the statements in the **Proposal** and subject to all of the provisions of this Certificate, Underwriters and the **Insureds** agree as follows:

**I. INSURING AGREEMENTS**

**COVERAGE A: PRIVATE EQUITY INVESTMENT PROFESSIONAL LIABILITY INSURANCE**

Underwriters shall pay on behalf of the **Insureds Loss** arising from a **Claim** first made during the **Certificate Period** arising from a **Wrongful Act** in the performance of **Private Equity Activities**.

**COVERAGE B: PORTFOLIO COMPANY OUTSIDE DIRECTOR LIABILITY INSURANCE**

Underwriters shall pay on behalf of the **Insured Organization Loss** which the **Insured Organization** pays as indemnification to the **Insured Persons** in excess of any indemnification and insurance provided by a **Portfolio Company** arising from a **Claim** first made during the **Certificate Period** against any of the **Insured Persons** arising from a **Wrongful Act** in the capacity of a director, officer, board representative, partner, managing member or trustee of a **Portfolio Company**, if such person is serving at the request, consent, or direction of the **Insured Organization**; provided that as of the inception date of the first Private Equity Professional Insurance Certificate issued by **Underwriters** to the **Insured Organization** or the date such **Insured Person** first begins serving such **Portfolio Company** in such capacity, whichever is later, such **Insured Person** was not aware of any facts or circumstances that reasonably could be expected to give rise to a **Claim** against such **Insured Person** in such capacity.

**COVERAGE C: MANAGEMENT LIABILITY INSURANCE**

- (1) Underwriters shall pay on behalf of the **Insured Persons Loss** which the **Insured Persons** is legally obligated to pay and which is not indemnified by the **Insured Organization or Portfolio Company** (either by reason of the insolvency of the **Insured Organization or Portfolio Company**, or because the **Insured Organization or Portfolio Company** is not permitted to indemnify the **Insured Persons**), and which arises from any **Claim** first made against the **Insured Persons** during the **Certificate Period** for a **Wrongful Act**.
- (2) Underwriters shall pay on behalf of the **Insured Organization Loss**, which the **Insured Organization** pays as indemnification to the **Insured Persons** resulting from a **Claim** first made during the **Certificate Period** for a **Wrongful Act**.
- (3) Underwriters shall pay on behalf of the **Insured Organization Loss**, which the **Insured Organization** is legally obligated to pay and which arises from any **Claim** first made against the **Insured Organization** during the **Certificate Period** for a **Wrongful Act**.

**COVERAGE D: SEC INVESTIGATION COVERAGE**

**Underwriters** shall pay on behalf of the **Insured Organization** those costs, charges, and expenses incurred by the **Insured Organization** in connection with an SEC investigation, subject to the sublimit of liability identified in Item E. of the Declarations.

## OPTIONAL COVERAGES

The following coverages are available only when the Declarations page of this Certificate reflects that such coverages have been purchased, and then subject to the terms and conditions for such additional coverage.

### COVERAGE E: EMPLOYMENT PRACTICES COVERAGE

Underwriters shall pay on behalf of the **Insureds Loss** resulting from any **Claim** first made during the **Certificate Period** for a **Wrongful Act** which such persons are legally obligated to pay arising from **Claims** against such persons for **Wrongful Employment Practices**.

### COVERAGE F: FIDUCIARY LIABILITY COVERAGE

Underwriters shall pay on behalf of the **Insureds Loss** resulting from any **Claim** first made during the **Certificate Period** for a **Wrongful Act** in connection with the creation, administration, operation or termination of an **Employee Benefit Plan**.

## II. DEFINITIONS

- A. Certificate Period** means the period from the effective date and hour of this Certificate to the Certificate expiration date and hour, as set forth in Item B. of the Declarations, or its earlier cancellation date and hour, if any, or the end of the **Optional Extension Period**, if purchased.
- B. Change in Control** means:
- (1) the acquisition by any person or entity of a controlling interest in the outstanding equity interest or securities controlling the right to manage the affairs of the **Insured Organization**;
  - (2) the merger of the **Insured Organization** into another entity such that the **Insured Organization** is not the surviving entity;
  - (3) the consolidation of the **Insured Organization** with another entity, or the acquisition of substantially all of the assets of the **Insured Organization** by another entity;
  - (4) the liquidation or dissolution of the **Insured Organization**, or the appointment of a conservator, receiver or administrator to manage the affairs of the **Insured Organization**; or
  - (5) the termination of the partnership or operating agreement for any **Insured Organization**, or the cessation of a general partner or manager listed in Endorsement No.1 to this Certificate acting as the general partner of any limited partnership or manager or any limited liability company.
- C. Claim** means:
- (1) any written demand for monetary damages or non-monetary relief against an **Insured** commenced by **Insured's** receipt of such demand;

- (2) any civil, judicial, administrative, regulatory or arbitration proceeding (including any appeal therefrom) initiated against any of the **Insureds**, including any administrative or regulatory investigation commenced by a formal order of investigation; provided, however, that the foregoing shall not apply to any SEC Investigation.
- (3) criminal proceedings commenced by the return of an indictment;
- (4) any judicial or administrative proceeding, including any proceeding before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body with jurisdiction over **Wrongful Employment Practices** initiated against any of the **Insureds** for **Wrongful Employment Practices**;
- (5) a written agreement to toll any applicable statute of limitations prior to the commencement of any judicial, administrative, regulatory or arbitration proceeding; or
- (6) a proceeding brought by the Securities and Exchange Commission pursuant to a formal order of investigation, or similar proceeding by a similar state agency, against the **Insured Organization** (referred to in this Certificate as an “**SEC Investigation**”), provided that coverage with respect to such **Claim** is limited to the amount set forth at Item E. of the Declarations, which shall be a part of, and not in addition to, the Certificate’s Limit of Liability.

**D. Costs, Charges and Expenses** means reasonable and necessary legal fees and expenses (including expert fees) and cost of attachment or similar bonds incurred by the **Insureds** in defense of any **Claim**, but shall not include:

- (1) directors' fees, salaries, wages, overhead or benefit expenses associated with directors, officers or employees of the **Insured Organization**, or the **Portfolio Company**, or
- (2) any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.

**E. Discrimination** means termination of the employment relationship, a demotion or failure or refusal to hire or promote or denial of an employment benefit or the taking of any adverse or differential employment action including, but not limited to, retaliation because of race, color, religion, age, sex, sexual orientation, sexual preference, disability (including AIDS), pregnancy or national origin, or any other basis prohibited by federal, state or local law.

**F. Employee Benefit Plan** means any plan as defined by ERISA or any other benefit plan sponsored solely by the **Insured Organization** and solely for the benefit of the employees of the **Insured Organization**.

**G. Harassment** means unwelcome sexual or non-sexual advances, requests for sexual or non-sexual favors or other verbal or physical conduct of a sexual or non-sexual nature that: (1) explicitly or implicitly are made a condition of employment; (2) are used as a basis for employment decisions; or (3) create a work environment that interferes with performance. **Harassment** includes allegations of assault and battery, but only if they are related to a charge of sexual harassment.

**H. Insureds** means the **Insured Organizations** and the **Insured Persons** and, with respect to Insuring Agreement Coverage F only: (1) the **Insured Organizations**; or (2) any **Employee Benefit Plan**; or (3)

any of the **Insured Persons**, solely while serving as an administrator, trustee or fiduciary of an **Employee Benefit Plan**.

**I. Insured Organization** means:

- (1) the entity listed in Item A. of the Declarations of this Certificate;
- (2) those entities listed in Endorsement No. 1 to this Certificate; and
- (3) any **Subsidiary** thereof;

provided, however, that the term **Insured Organization** shall not include any **Portfolio Company**.

**J. Insured Persons** means any:

- (1) natural person who was, is, or shall become a duly appointed or elected director, officer, general partner, manager, or equivalent executive of an **Insured Organization**. For purposes of Insuring Agreement Coverage E only (Employment Practices Liability Coverage), if purchased, the term **Insured Persons** also shall include employees of the **Insured Organization**;
- (2) natural persons serving on management committees, advisory boards, and similar committees formed pursuant to the **Insured Organization's** articles of incorporation, by-laws, operating agreement, partnership agreement or similar document; and
- (3) the functional equivalent to the positions identified in (1) above, in the event the **Insured Organization** is incorporated or domiciled outside the United States.

**K. Interrelated Wrongful Acts** means **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.

**L. Loss** means damages, settlements and **Costs, Charges and Expenses** incurred by any of the **Insureds**, including punitive, exemplary or multiplied damages; provided, however, that such punitive, exemplary or multiplied damages are insurable pursuant to any applicable law. (Underwriters agree not to contest the application of the law of, or removal of the litigation to, any jurisdiction that may provide for the insurability of punitive, exemplary or multiple damages if such law can be demonstrated as applicable by the **Insureds**.) **Loss** shall not include:

- (1) the multiple portion of any multiplied damage award or fines or penalties other than, with respect to Insuring Agreement Coverage F only, the five percent or less, or the twenty percent or less, of the civil fines imposed upon an **Insured** under Section 502(i) or (1) of the Employee Retirement Income Security Act of 1974, as amended;
- (2) taxes, criminal or civil fines or penalties imposed by law;
- (3) matters deemed uninsurable under the law pursuant to which this Certificate shall be construed; or

- (4) any amounts paid to or on behalf of the **Insured Persons** as indemnification from a **Portfolio Company** under any applicable agreement or as required or permitted by statute, by-laws or charter of the **Portfolio Company**, or any amounts paid to or on behalf of the **Insured Persons** under any insurance coverage provided by the **Portfolio Company**;
- (5) any amount allocable to uncovered **Loss** under this Certificate; or
- (6) the return of any contribution of capital to any **Insured Person**.

**M. Negligent Hiring** means an allegation by a claimant that an **Insured** is liable for **Discrimination or Harassment** because of negligence in the hiring of any employee.

**N. Optional Extension Period** means the period described in Clause XI. A. of this Certificate.

**O. Portfolio Company** means any corporation, partnership, limited liability company or other type of organization in which the **Insured Organization** maintains an equity investment and/or board representation or board advisor or board observer status, but solely in connection with **Private Equity Activities** by the **Insured Organization**.

**P. Private Equity Activities** means: (1) services as a director, officer, board representative, partner, managing member or trustee of any **Portfolio Company** in connection with an investment by the **Insured Organization**; or (2) the investment in, formation, capitalization or disposition of, or rendering of management or advisory services to, a **Portfolio Company** or other third-party pursuant to a fee-based oral or written agreement for such activities by the **Insured Organization**; or (3) the creation, distribution, sale of securities in, or the management or administration of a private equity fund.

**Q. Proposal** means:

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

**R. Subsidiary** means any organization:

- (1) which at the inception date of this Certificate is named in the **Proposal**; and
- (2) in which more than fifty percent (50%) of the voting stock or other equity interest is owned by any **Insured Organization**, either directly or through one or more of its **Subsidiaries**.

**Subsidiary** shall not include any **Portfolio Company**.

**S. Wrongful Act** means:

- (1) with respect to Insuring Agreement Coverage A, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or negligent act by the **Insured Organization** or the **Insured Persons** in the scope of **Private Equity Activities**;

- (2) with respect to Insuring Agreement Coverage B, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or negligent act by the **Insured Persons** while serving as directors, officers, agents, representatives, board observers, or trustees of a **Portfolio Company**, but only if such service is at the specific request, consent or direction of the **Insured Organization**;
- (3) with respect to Insuring Agreement Coverage C, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or negligent act by the **Insured Organization** or the **Insured Persons** in their respective capacities as such, or any matter claimed against them solely by reason of their status as **Insured Persons**;
- (4) with respect to Insuring Agreement Coverage E, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or negligent act by any of the **Insureds** for **Wrongful Employment Practices**; and
- (5) with respect to Insuring Agreement Coverage F, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or negligent act by any **Insured** in connection with the creation, administration, operation or termination of an **Employee Benefit Plan**.

**T. Wrongful Employment Practices** means any actual or alleged:

- (1) **Discrimination**;
- (2) **Harassment**;
- (3) termination, actual or constructive, of an employment relationship in any manner which is allegedly against the law and wrongful;
- (4) allegations of wrongful demotion, retaliation, misrepresentation, promissory estoppel and intentional interference with contract, which arise from an employment relationship;
- (5) libel, slander, defamation, infliction of emotional distress or mental anguish, humiliation, false imprisonment, invasion of privacy and other personal injury allegations which arise from the employment relationship;
- (6) allegations of breach of an implied employment contract and breach of the covenant of good faith and fair dealing in the employment contract;
- (7) employment terminations, disciplinary actions, demotions or other employment decisions which violate public Certificate or the Family Medical Leave Act or similar state law;
- (8) violations of the Uniformed Services Employment and Reemployment Rights Act;
- (9) allegations of breach of an employee's federal, state or local civil rights including, but not limited to, any violation of the Civil Rights Act of 1866 or 42 U.S.C. Section 1983;
- (10) allegations of retaliation against an **Insured** including, but not limited to, retaliation for filing claims under the Federal False Claims Act, retaliation in connection with whistleblowing, retaliation for union activities or in connection with strikes or lockouts;

- (11) allegations of wrongful deprivation of career opportunity or failure to grant tenure; and
- (12) **Negligent Hiring.**

### **III. EXTENSIONS**

#### **A. Estate and Representatives Extension**

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

#### **B. Spousal Extension**

Subject otherwise to the terms hereof, this Certificate shall cover **Loss** arising from a **Claim** made against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an **Insured Person** for a **Claim** arising solely out of his or her status as the spouse of an **Insured Person**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held or transferred from the **Insured Person** to the spouse.

#### **C. Non-Profit Outside Position Liability Extension**

Subject to all of its terms and conditions, this Certificate covers any **Insured Person** serving in an **Outside Position**, but such coverage shall be specifically excess of any indemnity or insurance available from or provided by the entity in which the **Insured Person** serves in such **Outside Position**.

“**Outside Position**” means the position of director, manager, officer, trustee, or other equivalent executive position held by an **Insured Person** in:

- (1) any **Non-Profit Entity**, or
- (2) any entity other than a **Non-Profit Entity** or a **Portfolio Company**, provided such coverage is specifically granted by endorsement to this Certificate,

if such position is with the knowledge and consent or at the request of the **Insured Organization**.

“**Non-Profit Entity**” means any non-profit corporation, community chest, fund or foundation that (i) is not included in the definition of the **Insured Organization**, and (ii) is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

### **IV. EXCLUSIONS**

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

- A. for bodily injury, sickness, disease, death, false arrest, false imprisonment, damage to or destruction of tangible property (including loss of the use thereof), and, except to the extent a **Claim** is made for **Wrongful Employment Practices**, assault, battery, invasion of privacy, emotional distress, libel, slander or defamation;
- B. for, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
- (1) any demand, suit, action or other proceeding against the **Insured Organization**, any **Portfolio Company**, or any **Insured Person(s)** which was pending on or existed prior to the date stated in Item I. of the Declarations, or based upon or arising from the same or substantially similar facts, circumstances or allegations which are the subject of the basis for such demand, suit, action or other proceeding;
  - (2) any **Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given prior to the **Certificate Period** or Policy Period under any other Certificate or policy of which this Certificate is a renewal or replacement, or
  - (3) any other **Wrongful Act**, fact, circumstance or allegation, whenever occurring, which, together with a **Wrongful Act** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;
- C. for an accounting of profits made from the purchase or sale by such **Insured Persons** of securities of the **Insured Organization** or any **Portfolio Company** within the meaning of Section 16(b) of the 1934 Securities Exchange Act and amendments thereto or similar provisions of any federal, state, local or common law;
- D. for, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, actual or alleged seepage, pollution or contamination of any kind; provided, however, this exclusion will not apply to **Loss** for which the natural person **Insureds** are not entitled to indemnification from the **Insured Organization** or any third party;
- E. brought about or contributed to by any dishonest, fraudulent or criminal act or omission committed with the intent to deceive, or any personal profit or advantage gained by any of the **Insureds** to which they were not legally entitled, if such dishonest, fraudulent or criminal act or personal profit or advantage is established by judgment or other final adjudication adverse to the **Insureds**;
- F. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act** actually or allegedly committed subsequent to a **Change in Control**; provided, however, if the **Change in Control** occurs in an entity set forth in Clause II. Definitions B.(2), this exclusion will apply only to such **Insured Organization** in which such **Change of Control** occurs;
- G. for, based upon, arising from, or in any way related to any actual or alleged violation of the responsibilities, obligations and duties imposed by the Employee Retirement Income Security Act of 1974, as amended, or any similar federal, state, local or common law in connection with the activities of any **Insured(s)** as a fiduciary for, or in the administration of, any pension and/or welfare plan created for the benefit of the employees of the **Insured Organization** or any **Portfolio Company**; provided, however, that this exclusion shall not apply if Insuring Agreement Coverage F (Fiduciary Liability Coverage) is purchased;

- H. for that portion of **Loss** assumed by the **Insured Organization** under any contract or agreement (other than an agreement to provide professional services) including, but not limited to, liability attaching:
- (1) under indemnity or hold-harmless agreements; or
  - (2) by virtue of any waiver or release from liability of any third party, except to the extent that such liability would have attached to the **Insureds** in the absence thereof; or
  - (3) for salary, benefits or other remuneration contemplated by any express or implied employment agreement; provided, however, that the foregoing shall not apply to other employment-related **Loss**;
- I. by or on behalf of any **Insured** in any capacity except:
- (1) a **Claim** brought directly or derivatively by a security or interest holder of an **Insured Organization**, or a direct **Claim** by any **Portfolio Company**, if such **Claim** is brought and maintained without the solicitation or assistance of any of the **Insureds**; provided, however, that with respect to any **Claim** against the **Insured Organization** brought on behalf of an **Insured** who also is an interest holder in an **Insured Organization** which is a private equity fund, such **Claim** will not be excluded solely because such **Insured** may be an interest holder in the limited partnership if such **Claim** is brought without the solicitation or assistance of any **Insured**,
  - (2) a cross-claim or third party complaint or similar judicial process seeking contribution or indemnity which is part of, and results directly from, a **Claim** not otherwise excluded by this Certificate, or
  - (3) is brought by one or more of the **Insured Persons** for **Wrongful Employment Practices**;
- J. for, based upon, arising out of, directly or indirectly resulting from, or in any way involving, the service of any **Insured** as a director, officer, board representative, partner, managing member or trustee of any entity other than the **Insured Organization, Non-Profit Entity, Portfolio Company** or any **Employee Benefit Plan**;
- K. solely with respect to Insuring Agreement Coverage E, based upon, arising out of or involving any obligation under any workers compensation law, disability benefits or unemployment compensation law or any similar law;
- L. solely with respect to Insuring Agreement Coverage F, based upon, arising out of or involving:
- (1) any **Wrongful Act** actually or allegedly committed prior to the creation, or sponsorship by an **Insured**, of an **Employee Benefit Plan**; or
  - (2) any **Wrongful Act** actually or allegedly committed subsequent to the termination, or termination of sponsorship by an **Insured**, of an **Employee Benefit Plan**;
- M. solely with respect to Insuring Agreement Coverage F, that part of **Loss**, other than **Costs, Charges and Expenses**, which:

- (1) is based upon or arises from the failure of the **Insureds** to collect the necessary employers' contributions owed to an **Employee Benefit Plan**, unless such failure results from the negligence of the **Insureds**;
- (2) constitutes benefits due or to become due under the terms of an **Employee Benefit Plan**, unless such benefits have been diverted, reduced or lost based on a covered **Wrongful Act** or an **Insured**; or
- (3) constitutes the return or reversion of any contribution or asset of an **Employee Benefit Plan**.

It is agreed that the acts of an **Insured** shall not be imputed to any other natural person **Insured** for the purpose of determining the applicability of the above stated Exclusions.

#### V. **LIMIT OF LIABILITY, RETENTIONS AND DATE OF CLAIM**

- A. Underwriters shall be liable to pay the percentage of **Loss** set forth in Item G. of the Declarations in excess of the amount of the individual Retentions set forth in Item D. of the Declarations for Insuring Agreement Coverages A, B, C, D, E and F up to the Limit of Liability, it being warranted that the remaining percentage of **Loss** shall be uninsured.
- B. In the event a single **Claim** is covered in part under more than one of the Retentions set forth in Item D. of the Declarations, each applicable Retention shall be applied separately to that part of the **Loss** resulting from such **Claim** covered by each Insuring Agreement. The sum of the total Retentions as finally applied shall constitute the Retention applicable to such **Claim**. The total Retentions as finally determined shall in no event exceed the largest single Retention.
- C. Underwriters' maximum liability under the Certificate, whether covered under one or more Insuring Agreements, shall be the Limit of Liability shown in Item C. of the Declarations of this Certificate.
- D. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times:
  - (1) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made, or
  - (2) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Clause VIII.B.
- E. Payments of **Loss** by Underwriters, including **Costs, Charges and Expenses**, shall reduce the Limit of Liability.
- F. Underwriters shall pay **Costs, Charges and Expenses** no more than once every ninety days.
- G. The Retentions applicable to Insuring Agreement Coverages B and C(2) shall apply to **Loss** covered by such Insuring Agreement if indemnification by the **Insured Organization** or **Portfolio Company** is required by law or legally permissible to the fullest extent permitted by law, regardless whether actual indemnification is made, unless the **Insured Organization** or **Portfolio Company** is unable to make such actual indemnification by reason of its insolvency.

## VI. SETTLEMENTS AND DEFENSE

- A. As a condition precedent to coverage, no settlement negotiations or settlement Agreements shall occur and no **Costs, Charges and Expenses** shall be incurred without Underwriters' consent, such consent not to be unreasonably withheld.
- B. Underwriters shall have the right to associate themselves in the defense and settlement of any **Claim** that appears reasonably likely to involve this Certificate. Underwriters may make any investigation they deem appropriate. However, it shall be the duty of the **Insureds**, and not the duty of Underwriters, to defend **Claims**.

## VII. ALLOCATION

If both **Loss** covered under this Certificate and **Loss** not covered by this Certificate are incurred in connection with any **Claim**, the **Insured Person(s)**, the **Insured Organization** and Underwriters shall use all reasonable efforts to agree upon a fair and proper allocation of such amount between covered **Loss** and uncovered **Loss**.

If there can be an agreement on **Costs, Charges and Expenses**, Underwriters shall advance on a current basis **Costs, Charges and Expenses** allocated to covered **Loss**. If there can be no agreement on an allocation of **Loss**:

- A. no presumption as to allocation shall exist in any arbitration, suit or other proceeding;
- B. Underwriters shall advance on a current basis **Costs, Charges and Expenses** which Underwriters believes to be covered under the Certificate until a different allocation is negotiated, arbitrated or judicially determined; and
- C. Underwriters, if requested by the **Insured Person(s)** or the **Insured Organization**, shall submit such dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insured Person(s)** or the **Insured Organization**, one arbitrator selected by Underwriters, and a third independent arbitrator selected by the first two arbitrators.

Any negotiated, arbitrated or judicially determined allocation of **Costs, Charges and Expenses** on account of a **Claim** shall be applied retroactively to all **Costs, Charges and Expenses** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Costs, Charges and Expenses** 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**.

## VIII. NOTIFICATION

- A. The **Insureds** shall, as a condition precedent to their rights to payment under this Certificate, give to Underwriters notice in writing of any **Claim** as soon as practicable but in no event later than 60 days after the end of the **Certificate Period**.

- B. If, during the **Certificate Period**, the **Insureds** first become aware of a specific **Wrongful Act**, and if the **Insureds** during the **Certificate Period** give written notice to Underwriters of: (1) the specific **Wrongful Act**; (2) the consequences which have resulted or may result therefrom; and (3) the circumstances by which the **Insureds** first became aware thereof, then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Certificate to have been made at the time such notice was first given.
- C. Notice to Underwriters provided for in Clause VIII. shall be given in writing to the firm identified in Item K. of the Declarations.

## IX. OTHER INSURANCE

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

## X. GENERAL CONDITIONS

### A. Warranty Clause

It is warranted that the particulars and statements contained in the **Proposal** are the basis of this Certificate and are to be considered as incorporated into and constituting a part of this Certificate.

By acceptance of this Certificate, the **Insureds** agree that:

- (1) the statements in the **Proposal** are their representations, that they shall be deemed material to the acceptance of the risk or the hazard assumed by Underwriters under this Certificate and that this Certificate is issued in reliance upon the truth of such representations;
- (2) in the event the **Proposal** contains misrepresentations made with the actual intent to deceive, or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by Underwriters under this Certificate, this Certificate in its entirety shall be void and of no effect whatsoever with respect only to those **Insured Persons** who had knowledge of any such misrepresentation; and
- (3) except as provided in Clause X.A. (2) above, this Certificate shall be deemed a single unitary contract and not a severable contract of insurance or a series of individual contracts of insurance with each of the **Insureds**.

### B. Coverage for Acquisitions, Mergers and Consolidations

This Certificate is issued and the premium computed on the basis of the information submitted to Underwriters as part of the **Proposal**. In the event the **Insured Organization**: (1) acquires any other entity or acquires substantially all of the assets of another entity; or (2) merges with or is consolidated with another entity such that the **Insured Organization** is the surviving entity, coverage shall be

afforded for **Loss** arising from **Wrongful Acts** attributable to and occurring subsequent to such acquisition, merger or consolidation for 90 days from the effective date of such acquisition, merger or acquisition. After 90 days, coverage under this Certificate shall only be provided to the **Insureds** if:

- (1) written notice of such transaction or event was given to Underwriters by the **Insured Organization**, and
- (2) the **Insured Organization** provides Underwriters with such information in connection therewith as Underwriters deem necessary, and
- (3) the **Insureds** accept any special terms, conditions, exclusions or additional premium charge required by Underwriters.

C. Coverage for New Investment Funds

This Certificate is issued and the premium computed on the basis of the information submitted to Underwriters as part of the **Proposal**. In the event the **Insured Organization** creates a new investment fund(s), coverage will automatically be provided under the Certificate for **Wrongful Acts** subsequent to such creation if: (1) the offering size of any newly created investment fund does not exceed 150% of the most recently created investment fund; and (2) the investment objectives of the investment fund, as disclosed in the prospectus or offering circular, do not differ materially from the investment objective of those investment funds already disclosed to Underwriters. If the new investment fund does not meet the foregoing criteria, coverage will be afforded for **Loss** arising from **Wrongful Acts** by the **Insureds** subsequent to the creation of the new investment fund for 90 days from the effective date of such creation, merger or acquisition. After 90 days, coverage under this Certificate shall only be provided to the **Insureds** if:

- (1) written notice of such transaction or event was given to Underwriters by the **Insured Organization**, and
- (2) the **Insured Organization** provides Underwriters with such information in connection therewith as Underwriters deems necessary, and
- (3) the **Insureds** accept any special terms, conditions, exclusions or additional premium charge required by Underwriters.

D. Cancellation and Termination of Coverage

- (1) By acceptance of this Certificate, the **Insureds** hereby confer the exclusive power and authority to cancel this Certificate on their behalf to the entity identified in Item A. of the Declarations of this Certificate. Such entity may cancel this Certificate by surrender thereof to Underwriters, or by mailing to Underwriters written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Certificate Period**. Delivery of such written notice shall be equivalent to mailing.
- (2) Underwriters may cancel this Certificate only for nonpayment of premium by mailing to the entity identified in Item A. of the Declarations of this Certificate written notice stating when, not less than 10 days thereafter, such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall

become the end of the **Certificate Period**. Delivery of such written notice by Underwriters shall be equivalent to mailing. If the foregoing notice period is in conflict with any governing law or regulation, then such period shall be amended to afford the minimum notice period permitted thereunder.

- (3) If this Certificate is cancelled pursuant to (1) hereinabove, Underwriters shall retain the customary short rate proportion of the premium hereon. If this Certificate is cancelled pursuant to (2). hereinabove, Underwriters shall retain the pro rata proportion of the premium hereon. Payment or tender of any unearned premium by Underwriters shall not be a condition precedent to the effectiveness of cancellation.
- (4) In the event of a **Change in Control** after the inception date of this Certificate, the coverage provided by this Certificate, subject to its terms, shall apply to any of the **Insureds** with respect to **Claims** made during the **Certificate Period** only for **Wrongful Acts** committed or allegedly committed prior to such **Change in Control**.

E. **Insured Organization** Authorization Clause

By acceptance of this Certificate, the **Insureds** agree that the entity identified in Item A. of the Declarations will act on their behalf with respect to the giving of all notices to Underwriters, the receiving of notices from Underwriters, the payment of the premium and the receipt of any return premium.

F. Territory

This Certificate extends to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

## **XI. OPTIONAL EXTENSION PERIOD**

- A. If this Certificate is not renewed by the **Insured Organization** or by Underwriters, then the **Insured Organization** shall have the right, upon payment of an additional premium calculated at the percentage(s) shown in Item H. (1) of the Declarations of the total annual premium for this Certificate, to an extension of the coverage granted by this Certificate with respect to any **Claim** first made during the period of time set forth in Item H. (2) of the Declarations after the effective date of such cancellation or, in the event of such refusal to renew, after the Certificate expiration date, but only with respect to any **Wrongful Act** committed before such date.
- B. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for this Certificate must have been paid. The right to purchase the **Optional Extension Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** is given to Underwriters within 30 days prior to the end of the **Certificate Period** or, in the event of a refusal to renew, within 30 days after the Certificate expiration date. If such notice and premium payment is not timely given to Underwriters, there shall be no right to purchase the **Optional Extension Period**.
- C. In the event of the purchase of the **Optional Extension Period**, the entire premium therefore shall be deemed earned at its commencement.

- D. The exercise of the **Optional Extension Period** shall not in any way increase the Limit of Liability of Underwriters.

## **XII. PORTFOLIO COMPANY OUTSIDE DIRECTORSHIP RUN-OFF COVERAGE**

If during the **Certificate Period**, an **Insured Person** ceases serving as a director of a **Portfolio Company**, coverage under Insuring Agreement B of this Certificate shall continue with respect to such **Insured Person** in such capacity but only with respect to a **Claim** for **Wrongful Acts** occurring prior to the time such **Insured Person** ceased serving in such capacity.

## **XIII. ASSISTANCE, COOPERATION, SUBROGATION AND RECOVERIES**

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

## **XIV. ASSIGNMENTS AND ACTION AGAINST UNDERWRITERS**

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

**XV. ENTIRE AGREEMENT**

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

**XVI. SERVICE OF SUIT**

It is agreed that in the event of the failure of Underwriters to pay any amount claimed to be due hereunder, Underwriters, at the request of the **Insureds**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any State in the United States. It is further agreed that services of process in such suit may be made upon Duane, Morris & Heckscher, LLP, 555 Pleasantville Road, North Building, Suite 200, Briarcliff, New York 10510, and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such court or of any appellate court in the event of an appeal.

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

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, Underwriters hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or such individual's successor or successors in office, as its 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.

WCH\4821.1