

# Private Equity Partnership Liability Insurance

Declarations



**Steadfast Insurance Company**  
Dover, Delaware  
Administration Offices - 1400 American Lane, Schaumburg, Illinois, 60196-1056

Policy No: \_\_\_\_\_

Renewal No: \_\_\_\_\_

Item 1. **Parent Company:**

Item 2. **Policy Period:**

From: \_\_\_\_\_ To: \_\_\_\_\_  
12:01 a.m. Local Time at the Principal Address stated in Item 1.

Item 3. **Limit of Liability:**

\$ \_\_\_\_\_ Aggregate for all **Loss**, combined, for the **Policy Period** (including **Defense Costs**).

Item 4. **Retention:**

A. **Non-Indemnifiable Loss:** \$  
B. **Indemnifiable Loss:** \$

Item 5. **Premium:**

Item 6. **Additional Insureds:**

Item 7. **Extended Reporting Period:**

A. **Additional Premium:** 75% of annualized Policy Premium  
B. **Period:** 1 year

Item 8. **Prior and Pending Litigation Date:**

Item 9. **Endorsements attached at inception:**

THIS POLICY PROVIDES CLAIMS-MADE COVERAGE. **CLAIMS** MUST FIRST BE MADE AGAINST THE **INSURED** DURING THE **POLICY PERIOD** OR THE EXTENDED REPORTING PERIOD, IF PURCHASED.

THE PAYMENT OF **DEFENSE COSTS** REDUCES THE LIMIT OF LIABILITY.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

In witness whereof, the Insurer issuing this Policy has caused this Policy to be signed by its authorized officers, but it shall not be valid unless also signed by the duly authorized representative of the Insurer.

STEADFAST INSURANCE COMPANY

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

\_\_\_\_\_  
DATE

# Private Equity Partnership Liability Insurance



Various provisions in the Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

Words and phrases that appear in bold have special meaning. Refer to Section IV. Definitions.

In consideration of the payment of the premium by the **Insureds** and in reliance upon the statements by **Insureds** in the **Application**, which is made a part hereof, the company providing this insurance (herein called the Insurer) agrees with the **Insureds**, subject to the Declarations and the limitations, conditions, provisions and terms of this Policy (including any endorsements hereto), as follows:

## I. INSURING AGREEMENTS

### COVERAGE A: DIRECTORS, OFFICERS, GENERAL PARTNERS AND OUTSIDE POSITION LIABILITY

1. The Insurer shall pay on behalf of the **Insured Persons** all **Loss** resulting from any **Claim** first made against them during the **Policy Period** or the Extended Reporting Period (if applicable) for a **Wrongful Act** occurring prior to the end of the **Policy Period**, including a **Wrongful Act** resulting from service in an **Outside Position** as described in Section IV.H.6. below.
2. The Insurer shall pay on behalf of the **Company** and any entity general partner of the **Company** all **Loss** which the **Company** or any entity general partner of the **Company** pays as indemnification to any of the **Insured Persons** resulting from any **Claim** first made against the **Insured Persons** during the **Policy Period** or the Extended Reporting Period (if applicable) for a **Wrongful Act** occurring prior to the end of the **Policy Period**, including a **Wrongful Act** resulting from service in an **Outside Position** as described in Section IV.H.6. below.

### COVERAGE B: COMPANY LIABILITY

The Insurer shall:

1. pay on behalf of any **Private Company** all **Loss** resulting from any **Claim**, and
2. pay on behalf of any **Public Company** all **Loss** resulting from any **Professional Liability Claim, Securities Claim** or **Employment Practices Claim**,

first made against the **Company** during the **Policy Period** or the Extended Reporting Period (if applicable) for a **Wrongful Act** occurring prior to the end of the **Policy Period**.

## II. DEFENSE AND SETTLEMENT

It shall be the duty of the **Insureds** and not the duty of the Insurer to defend any **Claim**.

The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs**, or otherwise assume any contractual obligation, or admit any liability with respect to any **Claim**, without the Insurer's written consent. The Insurer shall not be liable for any settlement, **Defense Costs**, assumed obligation, or admission to which it has not consented. The **Insureds** shall promptly send to the Insurer all settlement demands or offers received by the **Insureds** from the claimant(s).

The Insurer shall have the right and shall be given the opportunity to effectively associate with the **Insureds** with respect to any **Claim** submitted for coverage under this Policy.

The **Insureds** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests and agree that in the event of a **Claim** the **Insureds** will do nothing that shall prejudice the Insurer's position or its potential or actual rights of recovery. The Insurer may make any investigation it deems necessary.

The Insurer shall advance covered **Defense Costs**, on a current basis, prior to disposition of the respective **Claim**, provided that to the extent it is finally established that any such **Defense Costs** are not covered under this Policy, the **Insureds**, severally according to their interests, agree to repay the Insurer such **Defense Costs**.

The Insurer and the **Insureds** shall not unreasonably withhold any consent referenced in this section.

### III. LIMIT OF LIABILITY AND RETENTIONS

- A. 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, regardless of whether such times are 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 the paragraph below.
- No **Employment Practices Claim** otherwise covered under this Policy shall be excluded from coverage solely because such **Claim** is based upon, arises from, or relates to any fact, circumstance, situation or **Wrongful Act** underlying or alleged in any investigative or adjudicatory proceeding before the Equal Employment Opportunity Commission or similar federal, state or local governmental body (EEOC Proceeding) if the EEOC Proceeding (a) is brought by any person(s) who did not bring the covered **Claim**, and (b) is brought before inception of the **Policy Period**.
- B. The amount shown in Item 3. of the Declarations shall be the maximum aggregate liability of the Insurer for all **Loss** resulting from all **Claims** first made during the **Policy Period**, whether covered under one or more Insuring Agreements.
- C. The Insurer's liability with respect to **Loss** arising from each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention set forth in Item 4. of the Declarations, and such Retention shall be borne by the **Insureds** uninsured and at their own risk.
- D. The Retention for Non-Indemnifiable **Loss**, as set forth in Item 4.A. of the Declarations shall apply to **Loss** incurred by natural person **Insureds** for which the **Company** is neither permitted nor required by common or statutory law to indemnify, or for which the **Company** fails to indemnify by reason of its insolvency. The Retention for Indemnifiable **Loss**, as set forth in Item 4.B. of the Declarations, shall apply to all other **Loss**.
- E. With respect to each **Loss** on account of **Securities Claims**, the Retention applies only to **Defense Costs**, not damages, judgments, settlements, or other **Loss**; provided, however, that if the **Securities Claim** is fully and finally resolved with prejudice with respect to the **Insureds** without any **Insured** becoming legally obligated to pay any monetary damages or settlement or judgment amounts on account of the **Securities Claim**, no Retention shall apply with respect to any **Loss** (including **Defense Costs**) on account of the **Securities Claim**.
- F. Payments by the Insurer of any **Loss**, including without limitation **Defense Costs**, shall reduce the Limit of Liability.

### IV. DEFINITIONS

For purposes of this Policy:

- A. **Application** means:
1. the application for this Policy or for any policy issued by the Insurer of which this Policy is a renewal, and;
  2. any attachments and materials submitted therewith, which shall be retained on file by the Insurer.
- B. **Additional Insureds** means any entity listed or otherwise referred to in Item 6. of the Declarations or an entity listed or otherwise scheduled by endorsement to this Policy.
- C. **Claim(s)** means:
1. a written demand for monetary, non-monetary or injunctive relief;
  2. a civil proceeding commenced by the service of a complaint or similar proceeding;
  3. a criminal proceeding commenced by the return of an indictment;
  4. a formal or informal (a) administrative or regulatory proceeding, or (b) civil, criminal, administrative or regulatory investigation (including without limitation any proceeding before, or investigation by, the Equal Employment Opportunity Commission, the Securities and Exchange Commission or a Grand Jury); or
  5. an arbitration proceeding;

against any of the **Insured Persons** or, with respect to Coverage B against any **Company**, for a **Wrongful Act**, including any appeal therefrom.

D. **Company** means:

1. the **Parent Company**;
2. any **Portfolio Company**;
3. any **Subsidiary**; and
4. any investment fund while directly or indirectly owned or controlled by the **Parent Company**, whether created before or during the **Policy Period**;

including any such entity as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.

E. **Defense Costs** means that part of **Loss** consisting of reasonable and necessary costs, charges, fees (including but not limited to attorney's fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers, or employees of the **Company**) incurred in defending or investigating **Claims** and the premium for appeal, attachment, or similar bonds; provided, however, the Insurer has no obligation to apply for or to furnish any such bond.

F. **Employment Practices Claim** means a **Claim** which, in whole or in part, is by or on behalf of any past, present or prospective employee of the **Company** for any actual, alleged or constructive wrongful dismissal, discharge, or termination of employment; employment-related misrepresentations or omissions; violation of any federal, state or local statute, regulation, ordinance, common law, or public policy concerning employment or discrimination in employment; sexual or other illegal workplace harassment in the workplace (including without limitation offensive, intimidating, coercive or unwelcome conduct, advances, contact, or communications); wrongful deprivation of career opportunity, employment or promotion, including without limitation failure to make partner or principal; failure to grant tenure; wrongful discipline or evaluation; failure to adopt adequate employment or workplace policies and procedures; wrongful demotion or adverse change in the terms, conditions or status of employment; illegal retaliation against employees; employment-related libel, slander, defamation, or invasion of privacy; wrongful reference; employment-related wrongful infliction of emotional distress, mental anguish or humiliation; negligent hiring, supervision, or retention of employees; or other employment-related torts.

G. **Executive Officer** means, with respect to a **Company**, its natural person general partners, managing partners, chairperson, chief executive officer, president, managing members, chief financial officer, in-house general counsel, and any other equivalent executives.

H. **Insured Person(s)** means:

1. with respect to any **Company** that is a corporation, all natural persons who were, now are, or shall become duly elected or appointed directors, officers, advisory board members, principals, or operating executives of such **Company**;
2. with respect to any **Company** that is a partnership: (a) all natural persons or entities who were, now are, or shall become, general partners of such **Company**; (b) all natural persons who were, now are, or shall become, appointed or elected to a management position with such **Company** in accordance with such **Company's** partnership agreement; and (c) all duly elected or appointed directors, officers, and general partners of any entity that was, now is, or shall become, a general partner of such **Company**, but only with respect to such entity's activities as a general partner of the **Company**;
3. with respect to any **Company** that is a limited liability company, all persons who were, now are, or shall become, duly elected, appointed, or selected directors, officers, managing members, managers, or members of the Board of Managers of such **Company** or equivalent executive; and
4. with respect to any **Claim** involving a (a) **Private Company**, or (b) **Securities Claim, Professional Liability Claim and Employment Practices Claim** involving a **Public Company**, all natural persons who were, now are, or shall become, employees thereof, provided such persons shall not be considered **Insureds** or **Insured Persons** for purposes of Section V.A.4. below;
5. with respect to any **Company** formed outside the United States, the functional equivalent of any position described in Section IV.H.1. through IV.H.4. above; and
6. with respect to **Outside Position** coverage, any natural person described in Section IV.H.1. through IV.H.3. above in an **Outside Position**, provided such person is an **Insured Person** of the **Parent Company** or a **Subsidiary** that is not a **Portfolio Company**.

- I. **Insured(s)** means:
1. the **Company**; and
  2. **Insured Person(s)**.
- J. **Interrelated Wrongful Acts** means **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction, or series of causally connected facts, circumstances, situations, events, or transactions.
- K. **Loss** means the amount which the **Insureds** become legally obligated to pay on account of any covered **Claim**, including without limitation damages, judgments, pre-judgment and post-judgment interest, back pay and front pay, settlements and **Defense Costs**, but shall not include:
1. taxes or criminal or civil fines or penalties imposed by law;
  2. the cost of any non-monetary relief including without limitation any costs associated with compliance with any injunctive relief of any kind or nature imposed by a judgment or settlement, and the cost to provide reasonable accommodations pursuant to the Americans with Disabilities Act, as amended;
  3. any amount not indemnified by the **Company** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
  4. matters deemed uninsurable under the law pursuant to which this Policy shall be construed.
- Loss** shall also include punitive, exemplary or multiple damages or liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act, to the extent such damages are insurable under the law of any jurisdiction that has a substantial relationship to the **Insureds**, the Insurer, the **Claim** or the **Wrongful Acts** alleged therein.
- L. **Outside Entity** means:
1. any non-profit entity that is not a **Company**; and
  2. any for-profit entity specifically included as an **Outside Entity** by endorsement to this Policy.
- M. **Outside Position** means the position of director, officer, trustee, general partner, managing member, or equivalent position in any **Outside Entity** held by any natural person as described in Section IV.H.6., provided and so long as such service is part of such person's regularly assigned duties with the **Company** or is at the specific written request or direction of the **Company**.
- N. **Parent Company** means the entity named in Item 1. of the Declarations.
- O. **Policy Period** means the period from the effective date and hour of this Policy to the Policy expiration date and hour as set forth in Item 2. of the Declarations, or its earlier termination date and hour, if any.
- P. **Pollutants** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on, a list of hazardous substances issued by, the United States Environmental Protection Agency, or any state, county, municipality or locality counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals, or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, or noise.
- Q. **Portfolio Company** means:  
any entity while the **Parent Company** directly or indirectly, individually or collectively (1) owns at least a 10% equity interest in such entity solely for investment purposes consistent with the **Parent Company's** standard investment guidelines, and (2) controls the operation or management of such entity by reason of a contract with or ownership of equity interest in such entity; provided the value of the **Parent Company's** direct and indirect investment in any such entity is less than 20% of the **Parent Company's** total equity as of the inception of the **Policy Period**.
- R. **Private Company** means any **Company** that is not a **Public Company** as defined under Section IV.U.
- S. **Professional Liability Claim** means a **Claim** which, in whole or in part, is based upon, arises from or relates to:
1. a **Wrongful Act** in the rendering or failure to render **Professional Services** for others for compensation; or
  2. the **Parent Company** or any **Subsidiary** owning, controlling, managing, operating, investing in, or otherwise transacting business with a **Portfolio Company**.

- T. **Professional Services** means financial, economic, investment consulting, administrative, or management services, which are rendered by or on behalf of the **Company** for compensation.
- U. **Public Company** means any **Company** having equity or debt securities issued by the **Company**: (1) are listed or publicly traded on any securities exchange, NASDAQ or other organized securities quotation system; (2) are registered securities under the Securities Act of 1933, as amended; or (3) are directly or beneficially owned by 200 or more persons or entities.
- V. **Securities Claim** means a **Claim** which, in whole or in part: (1) alleges or investigates a possible violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the securities laws of any state, or any rules or regulations promulgated thereunder; (2) alleges or investigates a possible **Wrongful Act** in connection with the purchase or sale of, or offer to purchase or sell, any securities issued by the **Company**, whether such purchase, sale or offer occurs with respect to the **Company's** issuance of securities or in the after-market; or (3) is brought by a securityholder of the **Company** in his, her, or its capacity as such, whether directly, as a class action or as a derivative action on behalf of the **Company**.
- W. **Subsidiary** means any entity in which, at any time during the **Policy Period** greater than 50% of the outstanding voting securities or voting rights representing the present right to vote for the election of or to select such entity's directors, general partners, managers or equivalent position are owned or controlled, directly or indirectly, individually or collectively, by the **Parent Company**.
- X. **Takeover** means:
1. the acquisition by any person or entity or group of persons or entities acting in concert of securities which result in ownership or voting control by such person(s) or entity(ies) of greater than 50% of the outstanding securities of the **Parent Company** representing the present right to vote for the election of directors;
  2. the merger or consolidation of the **Parent Company** into another entity such that the **Parent Company** is not the surviving entity;
  3. the acquisition of substantially all of the assets of the **Parent Company** by another entity; or
  4. the appointment of a trustee (other than a debtor in possession), conservator, receiver, or administrator to manage the affairs of the **Parent Company**;
- provided **Takeover** shall not include any direct or indirect reincorporation of the **Parent Company** in another jurisdiction.
- Y. **Wrongful Act** means any actual or alleged error, omission, misstatement, misleading statement, neglect, breach of duty, or negligent act (1) by any of the **Insured Persons** while acting in their capacity as such, and (2) solely with respect to Coverage B, by the **Company**.

## V. EXCLUSIONS

### A. Claims Against Any Insured

The Insurer shall not be liable under this Policy to make any payment in connection with any **Claim** against any **Insured**:

1. for actual or alleged bodily injury, emotional distress, mental anguish, sickness, disease or death, or damage to or destruction of tangible property, including loss of use thereof; provided this exclusion shall not apply to emotional distress or mental anguish in an **Employment Practices Claim**;
2. for:
  - a. any **Wrongful Act** or any fact, circumstance or situation which has been the subject of any written notice given prior to the **Policy Period** under any other policy; or
  - b. any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** that has been the subject of such written notice, would constitute **Interrelated Wrongful Acts**;
3. for violation of the responsibilities, obligations, or duties imposed by the Employee Retirement Income Security Act of 1974 as amended (ERISA) or any regulations promulgated thereunder, upon fiduciaries of any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to employees of the **Company**; however, this exclusion shall not apply to any **Claim** for an actual or alleged violation of section 510 of ERISA;
4. by, on behalf of, or at the direction of any of the **Insureds**, in any capacity, except where such **Claim** is:
  - a. brought derivatively by a security holder of the **Company** who, when such **Claim** is first made, is acting independently of all of the **Insureds**;

- b. an **Employment Practices Claim**;
  - c. brought by **Insured Persons** for contribution or indemnity, if the **Claim** directly results from another **Claim** covered under this Policy;
  - d. brought for the benefit of the bankruptcy estate of any **Company**, by any representative thereof, or brought by or on behalf of a bankruptcy or insolvency trustee, examiner, or receiver for any **Company**, or any assignee of such trustee, examiner or receiver;
  - e. brought by or on behalf of any **Subsidiary** or **Portfolio Company** after the date such entity ceased being a **Subsidiary** or **Portfolio Company** as defined in Section IV. above, if the **Claim** is brought without the participation or assistance of any **Insured Person** of the **Parent Company**, or of any other **Company**; or
  - f. brought by any **Insured Person** of any **Portfolio Company** if the **Claim** is brought without the participation or assistance of any **Insured Person** of the **Company** other than such **Portfolio Company**;
5. for any deliberately fraudulent act or omission or any **Wrongful Act** committed with actual knowledge of its wrongful nature or with intent to cause damage, if a final judgment or adjudication adverse to such **Insured** expressly establishes such a deliberately fraudulent act or omission or such a **Wrongful Act**; however, this exclusion shall not apply to **Defense Costs** incurred in connection with any such **Claim**;
  6. for any **Insured** gaining in fact any profit, remuneration, or pecuniary advantage to which such **Insured** was not legally entitled; however, this exclusion shall not apply to any **Defense Costs** incurred in connection with any such **Claim**;
  7. for services as directors, officers, general partners, employees or equivalent executive of any entity other than the **Company**; however, this exclusion shall not apply to coverage specifically granted herein for any **Outside Position**;
  8. for an accounting of profits in fact made from the purchase or sale by such **Insured Person** of securities of the **Company** within the meaning of Section 16(b) of the Securities Exchange Act of 1934 or amendments thereto, or similar provisions of any federal, state, or local statutory law or common law;
  9. for the payment by a **Company** of allegedly inadequate consideration in connection with such **Company's** purchase of securities issued by any **Company**; however, this exclusion shall not apply to (a) Coverage A, or (b) **Defense Costs** under Coverage B incurred in connection with such **Claim**;
  10. based upon, arising from, or relating to (a) the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape, or disposal of **Pollutants** into or on real or personal property, water, or the atmosphere; or (b) any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **Pollutants**, or any voluntary decision to do so; including but not limited to any **Claim** for financial loss to any **Company**, its security holders or its creditors based upon, arising from, or relating to the matters described in (a) or (b) of this exclusion; however, this exclusion shall not apply to any **Employment Practice Claim** for retaliation in connection with an **Insured Person's** actual or threatened disclosure of the matters described in (a) or (b) of this exclusion;
  11. based upon, arising from, or relating to any litigation pending, or order, decree or judgment entered for or against any **Insured** on or prior to the Prior and Pending Litigation Date set forth in Item 8. of the Declarations, or the same or any substantially similar fact, circumstance or situation underlying or alleged therein; or
  12. for **Wrongful Acts** of any **Subsidiary** or **Portfolio Company** or their **Insured Persons** occurring at a time when such entity was not a **Subsidiary** or **Portfolio Company**.

**B. Claims Against the Company**

The Insurer shall not be liable under this Policy to make any payment of **Loss** incurred by the **Company** in connection with any **Claim** against the **Company**:

1. for any actual or alleged violation of (a) any law governing workers' compensation, unemployment insurance, social security, disability, or similar law, (b) the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), (c) the Fair Labor Standards Act (except the Equal Pay Act), (d) the National Labor Relations Act, (e) the Occupational Safety and Health Act of 1970 (OSHA), or (f) the Workers' Adjustment and Retraining Notification Act (WARN), or (g) any similar federal, state or local law; however, this exclusion shall not apply to any **Employment Practices Claim** based upon a claimant's exercise of a right pursuant to any such laws;
2. for the insolvency or bankruptcy of any **Company**;

3. for libel, slander, defamation, product or trade disparagement, violation of a person's right of privacy, false arrest, detention, imprisonment, wrongful entry, or eviction; however, this exclusion shall not apply to any **Employment Practices Claim**;
4. based upon, arising from, or relating to any oral or written promise or guarantee of the future value of any investment product; however, this exclusion shall not apply to any promise or guarantee of past performance;
5. for breach of any express oral or written contract or agreement; however, this exclusion shall not apply (a) to the extent the **Company** would have been liable in the absence of the contract or agreement, or (b) to any **Professional Liability Claim**;
6. to the extent such **Loss** in an **Employment Practices Claim** constitutes:
  - a. compensation earned by the claimant for actual work performed in the course of employment to the extent such compensation is owed to the claimant pursuant to an oral or written express, implied or quasi contract or promissory estoppel, but not paid by the **Company**, including any unpaid salary, bonus, hourly pay, overtime pay, stock options or similar securities, severance pay, retirement benefits, vacation days or sick days; however, this exclusion shall not apply to any back pay, front pay, or damages otherwise owed to the claimant;
  - b. medical or insurance benefits to which the claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of insurance;

however, this exclusion shall not apply to **Defense Costs**.

C. Severability

For the purpose of determining the applicability of any Exclusion set forth above:

1. the **Wrongful Act** of any of the natural person **Insureds** shall not be imputed to any of the other natural person **Insureds**; and
2. only the **Wrongful Act** of any **Executive Officer** shall be imputed to the **Company** or any entity **Insured Person**.

VI. NOTICE

The **Insureds** shall, as a condition precedent to their rights under this Policy, give to the Insurer written notice of any **Claim** made against the **Insureds** as soon as practicable after the earlier of any **Executive Officer**, or the **Company's** risk manager, or in-house general counsel first learns of such **Claim**, but in no event later than sixty (60) days after expiration of the **Policy Period** or during the Extended Reporting Period (if applicable).

If during the **Policy Period** or the Extended Reporting Period (if applicable) the **Insureds** first become aware of a specific **Wrongful Act** which may reasonably give rise to a future **Claim** covered under this Policy and during such **Policy Period** or Extended Reporting Period (if applicable), shall give written notice to the Insurer of:

- A. the names of the potential claimants and a description of the specific **Wrongful Act** which forms the basis of their potential **Claim**;
- B. the identity of the specific **Insureds** allegedly responsible for such specific **Wrongful Act**;
- C. the consequences which have resulted or may result from such specific **Wrongful Act**;
- D. the nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific **Wrongful Act**; and
- E. the circumstances by which the **Insureds** first became aware of such specific **Wrongful Act**;

then any **Claim** which arises out of such **Wrongful Act** shall be deemed to have been first made during the **Policy Period** in which such written notice was received by the Insurer. No coverage is provided for fees and expenses incurred prior to the time such notice results in a **Claim**.

All notices under any provision of this Policy shall be in writing and given by prepaid express courier, certified mail, or fax properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Parent Company** at the address as shown in Item 1. of the Declarations. Notice to the Insurer of any **Claim** or **Wrongful Act** shall be given to the Insurer at the following address:

Diversified Financial Institutions Claims

Attn: Claim Director  
Zurich U.S. – Specialties  
P.O. Box 307010  
Jamaica, New York 10006

All other notices to the Insurer under this Policy shall be given to the following address:

Diversified Financial Institutions  
One Liberty Plaza, 30<sup>th</sup> Floor  
New York, New York 10006

Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

## VII. EXTENDED REPORTING PERIOD

If either the Insurer or the **Parent Company** fails or refuses to renew this Policy, or if the **Parent Company** cancels this Policy, then any **Insured** shall have the right, upon payment of an additional premium calculated at the percent set forth in Item 7.A. of the Declarations of the annualized Policy premium as set forth in Item 5. of the Declarations, to extend the period of time, as set forth in Item 7.B. of the Declarations, during which any **Claim** made after cancellation or expiration of the **Policy Period** and during the Extended Reporting Period shall be considered made during the **Policy Period**, provided such **Claim** arises out of a **Wrongful Act** that takes place prior to the effective date of cancellation or the expiration of the **Policy Period**. The right to this Extended Reporting Period coverage shall lapse unless written notice of an election to purchase this coverage, and the additional premium due, is given by the **Parent Company** and received by the Insurer within thirty (30) days following the cancellation or nonrenewal of the Policy. If such written notice is not mailed to the Insurer within thirty (30) days or the premium is not paid when due, then the **Insured** shall not at a later date be entitled to purchase an Extended Reporting Period.

The election of the Extended Reporting Period shall not in any way reinstate or increase the Limit of Liability in Item 3. of the Declarations. The Limit of Liability applicable to the Extended Reporting Period shall be the Limit of Liability remaining under this Policy for the **Policy Period**.

If the **Insureds** invoke this Extended Reporting Period in accordance with the above, neither the Insurer nor the **Insureds** shall be entitled to cancel the Extended Reporting Period. The entire additional premium for the Extended Reporting Period shall be deemed fully earned and non-refundable as of the inception date of the Extended Reporting Period.

## VIII. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES

If a **Claim** against a natural person **Insured** includes a **Claim** against such **Insured's** lawful spouse solely by reason of (A) such spouse's legal status as a spouse of the **Insured**, or (B) such spouse's ownership interest in property which the claimant seeks as recovery for alleged **Wrongful Acts** of the **Insured**, all loss which such spouse becomes legally obligated to pay by reason of such **Claim** shall be treated for purposes of this Policy as **Loss** which the **Insured** becomes legally obligated to pay on account of the **Claims** made against the **Insured**. All terms and conditions of this Policy, including without limitation the Retention amount, applicable to **Loss** incurred by such **Insured** in the **Claim** shall also apply to such spousal loss. This coverage extension does not apply to the extent the **Claim** alleges any wrongful act or omission by the **Insured's** spouse.

This Policy shall afford coverage for **Claims** for the **Wrongful Acts** of any natural person **Insured** that are made against the estates, heirs, legal representatives, or assigns of such **Insured** who is deceased, incompetent, insolvent, or bankrupt to the extent that in the absence of such death, incompetence, insolvency, or bankruptcy, such **Claim** would have been covered by this Policy.

## IX. CONDITIONS

### A. Other Insurance and Indemnification

1. If any **Loss** is insured under any other valid and collectible policy, this Policy shall apply only to the extent the amount otherwise covered under this Policy exceeds the amount paid under such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent, or otherwise, unless such other insurance is written only as specific excess insurance over this Policy. Without limiting the foregoing, this Policy shall be specifically excess any similar insurance maintained by a **Portfolio Company** to the extent any amount is covered under both this Policy and such other similar insurance, whether such other similar insurance is stated to be primary, contributory, excess, contingent, or otherwise.
2. Coverage under this Policy for any **Claim** against **Insured Persons** in an **Outside Position** shall be specifically excess of any indemnification payment from any valid and collectible insurance provided by the **Outside Entity** with respect to

such **Claim**. Payment by the Insurer or any affiliate of the Insurer under another policy as a result of a **Claim** against an **Insured Person** in an **Outside Position** shall reduce, by the amount of such payment, the Insurer's Limit of Liability under this Policy with respect to such **Claim**.

B. Policy Termination

This Policy shall terminate:

1. upon expiration of the **Policy Period** as set forth in Item 2. of the Declarations; or
2. the effective date of termination specified in written prior notice by the **Parent Company** to the Insurer; or
3. 10 (ten) days after receipt by the **Parent Company** of a written notice of termination from the Insurer for failure to pay a premium when due.

The Insurer shall refund the unearned premium computed at customary short rates if the **Parent Company** terminates this Policy.

Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of termination.

C. Change in Exposure

1. In the event of a **Takeover** of the **Parent Company**, coverage under this Policy shall continue until this Policy is otherwise terminated, but only with respect to **Claims for Wrongful Acts** occurring prior to the effective date of the **Takeover**, unless the Insurer is notified in writing of the **Takeover** prior to the **Takeover** effective date, and agrees in writing to provide coverage for **Wrongful Acts** occurring on or after such effective date, and the **Parent Company** accepts any special terms, conditions, exclusions, or additional premium charge required by the Insurer.
2. If an entity ceases to be a **Subsidiary** or **Portfolio Company** before, during, or after the inception date of the **Policy Period**, coverage with respect to such entity and its **Insured Persons** shall continue until termination of the **Policy Period**, but only with respect to **Claims for Wrongful Acts** occurring before the date such entity ceased to be a **Subsidiary** or **Portfolio Company**.
3. If during the **Policy Period** the **Parent Company** directly or indirectly creates, acquires, or invests in an entity which as a result of such creation, acquisition, or investment becomes a **Portfolio Company**, the **Parent Company** shall give written notice with full particulars of such creation, acquisition, or investment to the Insurer as soon as practicable but in no event later than ninety (90) days thereafter.

D. Company Authorization Clause

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

E. Assistance, Cooperation and Subrogation

The **Insureds** agree to provide the Insurer with such information, assistance, and cooperation as the Insurer or its counsel may reasonably request, and agree that in the event of a **Claim**, the **Insureds** will do nothing that shall prejudice the Insurer's position or its potential or actual rights of recovery.

In the event of any payments under this Policy, the Insurer shall be subrogated to the **Insureds'** rights of recovery against any person or entity. The **Insureds** shall execute all papers required and shall do everything that may be reasonably necessary to secure and preserve such rights including the execution of such documents as are necessary to enable the Insurer effectively to bring suit in their name, and shall provide all other assistance and cooperation which the Insurer may reasonably require.

Any amounts recovered after payment hereunder, through subrogation or otherwise, shall be apportioned in the following order:

1. first, to any interest (including the **Insured**) who has paid any amount in excess of the Limit of Liability provided under this Policy;
2. next, to the Insurer; and
3. then to any interest (including the **Insured**) as are entitled to claim the remainder, if any.

The expenses of all recovery proceedings shall be apportioned among the recipients of the recovery in the ratio of their respective recoveries.

F. Assignments and Action Against the Insurer

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

G. Entire Agreement

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

H. Territory

This Policy extends to **Claims** made anywhere in the world.

I. **Application** Severability

In granting coverage under this Policy, the Insurer has relied upon the statements and representations in the **Application**. The **Insureds** represent that all such statements and representations are true and shall be deemed material to the acceptance of the risk or hazard assumed by the Insurer under this Policy.

The **Insureds** agree that in the event that any such statements and representations are untrue, this Policy shall not afford any coverage with respect to any of the following **Insureds**:

1. any natural person **Insured** who knew as of the effective date of such coverage the facts that were not truthfully disclosed in the **Application**;
2. any entity **Insured** to the extent it indemnifies any natural person **Insured** referenced in 1., above; and
3. any entity **Insured**, if any **Executive Officer** thereof knew as of the effective date of such coverage the facts that were not truthfully disclosed in the **Application**.

J. Valuation and Currency

All premiums, Limit of Liability, Retention, **Loss**, and other amounts under this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated, or another element of **Loss** under this Policy is stated in a currency other than United States of America dollars, payment under this Policy shall be made in United States of America dollars at the rate of exchange published in The Wall Street Journal on the date the final judgment is entered, the amount of the settlement is agreed upon, or the other element of **Loss** is due, respectively.

K. Bankruptcy

If a liquidation or reorganization proceeding is commenced by or against the **Company** pursuant to the United States Bankruptcy Code, as amended, or any similar state or local law, the **Insureds** hereby (1) waive and release any automatic stay or injunction which may apply in such proceeding to this Policy or its proceeds under such Bankruptcy Code or law, and (2) agree not to oppose or object to any efforts by the Insurer or any **Insured** to obtain relief from any such stay or injunction.

L. Payment Priority

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

1. First, the Insurer shall pay any such **Loss**, which is incurred by natural person **Insureds** and which is covered under Insuring Agreement I.A.1;

2. Second, only if and to the extent the payment under Paragraph 1. above does not exhaust the applicable Limit of Liability, the Insurer shall pay any such remaining **Loss** covered under this Policy.

Subject to the foregoing paragraph, the Insurer shall, upon receipt of a written request from the **Parent Company**, delay any payment of covered **Loss** otherwise due and owing under Insuring Agreement A.(2) or Insuring Agreement B., or solely with respect to **Insured Persons**, under Insuring Agreement I.A.1, until such time as the **Parent Company** designates, provided the Insurer's liability with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

M. Arbitration

Only if requested by the **Insureds**, the Insurer shall submit any dispute, controversy, or **Claim** arising out of or relating to this Policy or the breach, termination, or invalidity thereof, to final and binding arbitration pursuant to such rules and procedures as the parties may agree. If the parties cannot so agree, the American Arbitration Association, in accordance with its then prevailing commercial arbitration rules, shall administer the arbitration. The arbitration panel shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Insurer, and a third independent arbitrator selected by the first two arbitrators. In any such arbitration, each party will bear its own legal fees and expenses.

Specimens