

# TrusteeSecure™

## TRUSTEES PROFESSIONAL LIABILITY INSURANCE POLICY

In consideration of the payment of the premium, in reliance upon the statements in the application attached hereto and made a part hereof, and subject to all the terms of this insurance, the Company agrees with the Named Insured as follows:

### THE INSURED

1. **The Insured:** The unqualified word "Insured" whenever used in this policy, means:
  - (a) the Named Insured, defined herein as the individual(s), partnership(s) and corporation(s) designated in Item 1 of the Declarations;
  - (b) any present or former partner, executive officer, director, stockholder or employee of any entity designated in Item 1 of the Declarations or predecessor firm(s) thereof solely while performing professional services on behalf of said entity(ies) and/or firm(s);
  - (c) solely as respects the liability of each Insured as is otherwise covered herein, the heirs, executors, administrators, assigns and legal representatives of each Insured above in the event of death, incapacity or bankruptcy.
2. **Firm Changes:** Any changes among the partners or stockholders of the Named Insured during the policy period, even though it results in changes in the name of the firm, shall not affect this insurance.

### THE COVERAGE

1. **Professional Liability and Claims Made Clause:** To pay on behalf of the Insured all sums in excess of the deductible amount stated in the Declarations which the Insured shall become legally obligated to pay as damages as a result of CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD by reason of any neglect or breach of responsibility, obligation or duty in professional services rendered or that should have been rendered by the Insured or by any person for whose acts the Insured is legally responsible;

PROVIDED ALWAYS THAT such neglect or breach of responsibility, obligation or duty happens:

- (a) during the policy period, or
- (b) subsequent to the Retroactive Date specified in the Declarations, provided that prior to the effective date of this policy the Insured had no knowledge of circumstances involving such neglect or breach of responsibility, obligation or duty, which may result in a claim under this policy.

**Claim** means, whenever used in this policy, a demand received by the Insured for compensation for damages, including the service of suit or institution of arbitration proceedings against the Insured.

**Damages** means, whenever used in this policy, a monetary judgment, award or settlement and does not include fines, statutory penalties, tax penalties, the restitution of consideration and expenses paid to the Insured for services or goods, or judgments or awards arising from acts deemed uninsurable by law.

**Policy period** means, whenever used in this policy, the period from the inception date of this policy to the policy expiration date as set forth in the Declarations or its earlier termination date, if any.

**Professional services** means, whenever used in this policy, the services of the Insured as a trustee of the trust(s) identified in the Declarations.

2. **Defense, Settlement:** With respect to the insurance afforded by this policy, the Company shall defend any claim against the Insured seeking damages to which this insurance applies even if any of the allegations of the suit are groundless, false or fraudulent. It is further agreed that the Company may make such investigation and settlement of any claim as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend or to continue to defend any claim after the limits of the Company's liability have been exhausted.
3. **Discovery Clause:** If during the policy period or any purchased Extension Period hereunder the Insured first becomes aware that an Insured has committed a specific neglect or breach of responsibility, obligation or duty in professional services for which coverage is otherwise provided hereunder, and if the Insured shall during the policy period or the Extension Period if purchased hereunder, give written notice to the Company of:
- (a) the specific neglect or breach of responsibility, obligation or duty; and
  - (b) the damage which has or may result from such neglect or breach of responsibility, obligation or duty; and
  - (c) the circumstances by which the Insured first became aware of such neglect or breach of responsibility, obligation or duty.

then any claim that may subsequently be made against the Insured arising out of such neglect or breach of responsibility, obligation or duty shall be deemed for the purposes of this insurance to have been made during the policy period or the Extension Period purchased hereunder.

4. **Optional Extension Period:** If the Company shall cancel this policy or terminate it by refusing to renew, for reasons other than the non-payment of premium and/or deductible amount or non-compliance with the terms and conditions of this policy, then the Authorized Trustee upon payment of an additional premium calculated at that percentage shown in the Declarations of the full annual premium for this policy shall extend on behalf of all Insureds the claims reporting period, subject otherwise to the terms and conditions of the policy, to apply to CLAIMS FIRST MADE AGAINST THE INSURED DURING THE NUMBER OF CALENDAR MONTHS as stated in Item 10 of the Declarations following immediately upon the effective date of such cancellation or non-renewal, but only by reason of any neglect or breach or responsibility, obligation or duty in professional services rendered before such applicable termination or expiration date and otherwise covered by this insurance.

This interval shall be herein referred to as the EXTENSION PERIOD. If, however, this policy is succeeded within thirty (30) days by similar CLAIMS MADE insurance coverage, the succeeding insurance shall be deemed to be a renewal hereof, and in consequence, the Authorized Trustee shall have no right to purchase an Extension Period.

The quotation of a different premium and/or deductible and/or limit of liability for renewal does not constitute a cancellation or refusal to renew for the purposes of this provision.

As a condition precedent to the right to purchase the Extension Period, the full annual premium of this policy and any deductibles that are due must have been paid.

The right to purchase the Extension Period must be exercised by notice in writing not later than thirty days after the cancellation or termination date of this policy AND MUST INCLUDE PAYMENT OF PREMIUM FOR THE EXTENSION PERIOD.

After the commencement of any Extension Period, the entire premium therefor shall be deemed fully earned, and non-refundable.

The fact that this policy is extended by virtue of the Extension Period shall not in any way increase the limits of liability set forth in the Declarations.

## THE EXCLUSIONS

### This Policy Does Not Apply:

- (a) to any claim based upon or arising out of any dishonest, deliberately fraudulent, malicious or knowingly wrongful neglect or breach of responsibility, obligation or duty committed by or at the direction of the Insured. However, notwithstanding the foregoing and subject to LIMITS OF LIABILITY 1. through 4., the Company will provide a defense for any such claims without any liability on the part of the Company to pay such sums as the Insured shall become legally obligated to pay as damages;
- (b) to liability arising out of the Insured's services and/or capacity as:
  - 1. an officer, director, partner, trustee, or employee of a business enterprise and/or trust not named in the Declarations;
  - 2. an officer, director, partner, trustee, or employee of a charitable organization or pension, welfare, profit sharing, mutual or investment fund;
  - 3. a fiduciary under the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto; or any other employee benefit plan;
- (c) to any claim made based upon, arising out of or in any way involving any business enterprise which is operated or managed or owned in whole or in part, by the Named Insured or parent company or any affiliated, subsidiary or associated company;
- (d) to any claim for bodily injury, sickness, disease or death of any person, or injury to or destruction of any tangible property or loss of use resulting therefrom;
- (e) to any claim arising out of the false arrest, humiliation, detention or imprisonment, wrongful entry or eviction or other invasion of private occupancy, or malicious prosecution, libel, slander or other defamatory or disparaging material, or a publication or an utterance in violation of an individual's right of privacy, except that this exclusion does not apply to claims based upon or arising out of the Professional Services of the Insured's service as a Trustee of the Trust(s) described under Item 3 of the Declarations.
- (f) to any claim based upon or arising out of discrimination by the Insured on the basis of age, color, race, sex, creed, national origin, or marital status;
- (g) to any loss or claim based upon arising out of a violation or alleged violation of the Securities Act of 1933 as amended or the Securities Exchange Act of 1934 as amended or any state Blue Sky or securities law or similar state or federal statute and any regulation or order issued pursuant to any of the foregoing statutes, unless endorsed hereon;

- (h) to the liability of others assumed by the Insured under any contract or agreement unless such liability would have attached to the Insured even in the absence of such agreement;
- (i) to any claim arising out of bankruptcy or insolvency of the Insured;
- (j) to any claim based upon or attributable to the Insured gaining in fact any profit or advantage to which they were not legally entitled;
- (k) to any claim based upon, arising out of or in any way involving the failure to effect or maintain or to advise of the need to effect or maintain insurance, suretyship or bond including advice as to type(s) and/or amount(s);
- (l) to any claim arising out of express warranties or guarantees made in connection with any purchase or sale of securities or commodities;
- (m) to any claim against the Insured by or in the right of any other person defined herein as Insured, provided this exclusion shall not apply to any such claim made by or in the right of any such person solely as a beneficiary; in no event, however, shall the Company be obligated to pay any such sums which the Insured shall become legally obligated to pay as damages to any beneficiary who is also insured hereunder as a result of the neglect or breach of responsibility, obligation or duty of such insured beneficiary.

#### TERRITORY

The insurance afforded applies worldwide, provided that suit is brought or claim is made within the United States, its territories and possessions or Canada.

#### LIMITS OF LIABILITY

1. **Limit of Liability-Each Claim:** The liability of the Company for each claim FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD or any purchased Extension Period shall not exceed the amount stated in the Declarations for "each claim" and shall include loss payments and claim expenses.
2. **Limit of Liability-Policy Aggregate:** Subject to 1. Limit of Liability-Each Claim, the liability of the Company shall not exceed the amount stated in the Declarations as "aggregate" as a result of all CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD or any purchased Extension Period and shall include loss payments and claim expenses.
3. **Deductible:** The deductible amount stated in the Declarations shall be paid by the Authorized Trustee and shall be applicable to each claim and shall include damages and claim expenses, whether or not loss payment is made.

Such amounts shall, upon written demand by the Company, be paid by the Authorized Trustee within thirty (30) days. The total deductible payments requested from the Authorized Trustee in respect of each claim shall not exceed the deductible amount stated in the Declarations.

The determination of the Company as to the reasonableness of the claim expenses shall be conclusive on the Named Insured.

4. **Multiple Insureds, Claims and Claimants:** The inclusion herein of more than one Insured or the making of claims or the bringing of suits by more than one person or organization shall not operate to increase the Company's limit of liability. Two or more claims arising out of a single neglect or breach of responsibility, obligation or duty or a series of related neglects or breaches of responsibility, obligation or duty shall be treated as a single claim. All such claims, whenever made, shall be considered first made on the date on which the earliest claim arising out of such

neglect or breach of responsibility, obligation or duty was first made, and all such claims shall be subject to the same limit of liability.

**Claim expenses**, whenever used in this policy, means:

- (a) fees charged by any lawyer designated by the Company;
- (b) all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a claim, if incurred by the Company;
- (c) fees charged by any lawyer designated by the Insured with the prior written consent of the Company.

However, "claim expenses" does not include salary charges of regular employees or of the officials or the Company or any supervisory counsel retained by the Company.

## CLAIMS

1. **Notice of Claims:** As a condition precedent to the right to the protection afforded by this insurance, the Insured shall, as soon as practicable, give to the Company written notice directed to **Shand Morahan & Company, Inc., Ten Parkway North, Deerfield, Illinois, 60015**, of any claim made against the Insured.

In the event suit is brought or arbitration is instituted against the Insured, the Insured shall immediately forward to the Company through Shand Morahan & Company, Inc., every demand, notice, summons or other process received directly or by the Insured's representatives.

2. **Assistance and Cooperation of the Insured:** The Insured shall give full assistance and cooperation to the Company as respects all claims made against the Insured at the Insured's expense. The Insured shall not, except at the Insured's own cost, make any payment, admit any liability, settle any claims, assume any obligation or incur any expense without the written consent of the Company.

3. **Subrogation:** In the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after the claim to prejudice such rights.

The Company shall not exercise any such rights against any persons, firms or corporations included in the definition of "Insured". Notwithstanding the foregoing, however, the Company reserves the right to exercise any rights of subrogation against an Insured in respect of any claim brought about or contributed to by the intentional, dishonest, fraudulent, criminal or malicious act or omission of such Insured.

Any amount so recovered shall be apportioned as follows:

Any recovery shall first be used for the repayment of expenses incurred toward subrogation; second, to any loss and expense payment by the Insured in excess of any deductible(s); third, to any loss and expense payments by any carrier on behalf of the Insured; and last, to repayment of the Insured's deductible.

4. **False or Fraudulent Claims:** If any Insured shall commit fraud in proffering any claim as regards amount or otherwise, this insurance shall become void as to such Insured from the date such fraudulent claim is proffered.

## OTHER CONDITIONS

1. **APPLICATION:** By acceptance of this policy, the Insured agrees that the statements in the application are personal representations, that they shall be deemed material and that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between the Insured and the Company, or any or its agents, relating to this insurance.
2. **Other Insurance:** This insurance shall be in excess of the amount of the applicable deductible of this policy and any other valid and collectible insurance available to the Insured whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the limits of liability provided in this policy.
3. **Changes:** Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Company shall not effect a waiver or a change in any part of this policy or estop the Company from asserting any right under the terms of the policy, nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.
4. **Assignment:** Assignment of interest under this policy shall not bind the Company unless its consent is endorsed hereon.
5. **Cancellations:** This policy may be cancelled by the Authorized Trustee on behalf of all Insureds by surrender thereof to the Company or to Shand Morahan & Company, Inc., Ten Parkway North, Deerfield, Illinois, 60015, or by mailing to the aforementioned written notice stating when thereafter such cancellation shall be effective. If cancelled by the Authorized Trustee, the Company shall retain the customary short rate proportion of the premium.

This policy may be cancelled by the Company or by Shand Morahan & Company, Inc. by mailing to the Authorized Trustee notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. However, if the Company cancels the policy because the Authorized Trustee has failed to pay a premium or deductible when due, this policy may be cancelled by the Company by mailing a written notice of cancellation to the Authorized Trustee stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The mailing of notice as aforementioned shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice by the Authorized Trustee, the Company, or Shand Morahan & Company, Inc. shall be equivalent to mailing. If cancelled by the Company or Shand Morahan & Company, Inc., earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter.

6. **Audit:** The Company may examine and audit the Insured's books and records at any time during the policy period and within three years after the final termination of this policy, as far as they relate to the subject matter of this policy.
7. **Premium Adjustment:** When requested by the Company, the Named Insured shall furnish the Company with a signed statement (directed to Shand Morahan & Company, Inc.) of the Insured's total gross receipts or other premium base as specified in the Declarations for the policy period.

The actual earned premium shall be computed thereon at the premium rate stipulated in the Declarations. If the actual earned premium is more than the deposit premium the Insured shall pay the difference to the Company; if less, the Company shall refund the difference to the Insured except that the Company shall be entitled to the minimum premium as stated in the Declarations.

When used as a premium base:

**GROSS RECEIPTS** means the gross amount of money charged by the Insured for services rendered during the policy period including taxes, other than those which the Insured collects as a separate item and remits directly to a governmental division.

8. **Authorization:** By acceptance of this policy, the Authorized Trustee named in the Declarations agrees to act on behalf of all Insureds with respect to the giving and receiving of notice(s) to and from the Company as respects payment of premium, payment of deductible, exercise of the Extension Period, cancellation, receipt of return premium(s) and other notices as required by the policy; and the Insureds agree that such Authorized Trustee shall act on their behalf.

#### DEFINITIONS - REFERENCE

Certain words are specifically defined for the policy and the definitions are to be found in the sections set forth below:

Claim, damages, policy period, professional services - See **The Coverage**  
Claim Expenses - See **Limits of Liability**  
Gross receipts - See **Other Conditions**