

# FINANCIAL INSTITUTIONS PROFESSIONAL LIABILITY INSURANCE POLICY

In consideration of, and subject to, the payment of the premium, and in reliance upon the particulars, statements, attachments and exhibits contained in and submitted with the Proposal, which has been received by the Insurer and which shall be the basis of this Policy and shall be deemed to be incorporated herein, and subject to all the terms, conditions, limitations and any endorsements to this Policy, the Insurer and the INSUREDS agree as set forth below:

## I. INSURING AGREEMENT

The Insurer will pay on behalf of the INSUREDS all LOSS which results from any CLAIM first made during the POLICY PERIOD or the EXTENDED REPORTING PERIOD, if applicable, against the INSUREDS for a WRONGFUL ACT in the performance of PROFESSIONAL SERVICES, provided that such CLAIM is reported to the Insurer, as soon as practicable, but in no event later than sixty (60) days after the POLICY EXPIRATION DATE or the end of the EXTENDED REPORTING PERIOD, if applicable.

## II. DEFINITIONS

The following terms wherever used in UPPERCASE TYPE shall have the meaning indicated:

### A. CLAIM shall mean:

1. any judicial or other proceeding initiated against any of the INSUREDS for a WRONGFUL ACT in which any of the INSUREDS may be subject to a binding adjudication of liability for compensatory money damages or other civil relief; or
2. a written demand from one or more parties alleging that any of the INSUREDS should have liability to such parties for compensatory money damages or other civil relief for a WRONGFUL ACT.

A CLAIM shall be deemed to have been first made on the date that a summons or similar document is first served upon any of the INSUREDS, or on the date that any of the INSUREDS first receives a written demand, as defined herein, whichever date first occurs.

### B. CORPORATE REORGANIZATION shall mean:

1. the NAMED INSURED merging into or consolidating with another entity; or
2. the NAMED INSURED selling or transferring more than fifty percent (50%) of its securities or its assets to another entity.

C. DEFENSE EXPENSES shall mean reasonable and necessary costs, charges, fees (including attorneys' fees and experts' fees) and expenses incurred in the defense of a CLAIM and the premium for appeal, attachment or similar bonds, but shall not include the wages, salaries, or overhead expenses of any of the INSUREDS.

D. EXTENDED REPORTING PERIOD shall mean that period described in Section IV., General Conditions, B., of this Policy and Item 3 of the Declarations.

E. INSUREDS shall mean the NAMED INSURED, any SUBSIDIARY, and any of the directors, officers and employees of the NAMED INSURED and of any SUBSIDIARY, but only while acting within the scope of their duties as such.

- F. INTERRELATED WRONGFUL ACTS shall mean WRONGFUL ACTS that have as a common nexus any fact, circumstance, situation, event, transaction, or series of causally connected facts, circumstances, situations, events or transactions.
- G. LOSS shall mean compensatory money damages, judgments, settlement amounts, and DEFENSE EXPENSES that any of the INSUREDS are legally obligated to pay, but LOSS shall not include wages, salaries, or overhead expenses of any of the INSUREDS, or fines or penalties imposed by law, or punitive or exemplary damages, or the multiplied portion of any multiple damages award, or matters which are uninsurable under the law pursuant to which this Policy shall be construed.
- H. NAMED INSURED shall mean the corporation set forth in Item 1 of the Declarations.
- I. POLICY EXPIRATION DATE shall mean the earliest of the following:
1. the date set forth in Item 2 of the Declarations;
  2. the date of cancellation of this Policy; or
  3. the date of the exhaustion of the Aggregate Limit of Liability set forth in Item 5 of the Declarations.
- J. POLICY INCEPTION DATE shall mean the date set forth in Item 2 of the Declarations.
- K. POLICY PERIOD shall mean the period between the POLICY INCEPTION DATE and the POLICY EXPIRATION DATE.
- L. PROFESSIONAL SERVICES shall mean the activities of any of the INSUREDS performed for, or on behalf of, any client or customer of the NAMED INSURED or any SUBSIDIARY for a fee.
- M. SUBSIDIARY shall mean any corporation which is both:
1. named in the Proposal; and
  2. has more than fifty percent (50%) of its voting stock owned by the NAMED INSURED, either directly or through one or more of its SUBSIDIARIES, but only with respect to WRONGFUL ACTS which occur after the time such corporation became more than fifty percent (50%) owned by the NAMED INSURED.
- N. WRONGFUL ACT shall mean any actual or alleged error, omission, misstatement, misleading statement, act, omission, negligence, or breach of duty by any of the INSUREDS which takes place prior to the POLICY EXPIRATION DATE in the performance of PROFESSIONAL SERVICES.

### III. EXCLUSIONS

The Insurer shall not be liable to make any payment for LOSS in connection with any CLAIM made against any of the INSUREDS:

- A. based upon, or arising out of, any dishonest, fraudulent, or criminal act or omission, or willful violation of any statute, regulation, rule, or law by any of the INSUREDS if such act, omission or violation is established in fact;
- B. based upon, or arising out of, any conflict of interest of any of the INSUREDS established in fact or the gaining in fact of any profit or advantage by any of the INSUREDS to which they are not legally entitled;
- C. based upon, or arising out of, any WRONGFUL ACT or any fact, circumstance, or situation which has been the subject of any notice given prior to the POLICY INCEPTION DATE under any insurance policy for any of the INSUREDS, or any other WRONGFUL ACT whenever occurring, which, together with a WRONGFUL ACT, has been the subject of such notice, would constitute INTERRELATED WRONGFUL ACTS;

- D. based upon, or arising out of, the mechanical or electronic non-function or malfunction of business machines or systems;
- E. based upon, or arising out of, the bankruptcy of, insolvency of, or suspension of payments by any bank or banking firm, any broker or dealer in securities or commodities, or any other financial institution;
- F. based upon, arising out of, directly or indirectly resulting from, in consequence of, attributable to, or in any manner relating to any actual or alleged:
1. bodily injury, sickness, disease, or death of any person;
  2. damage to, or destruction of, any tangible or intangible, real or personal property (including loss of use thereof), including, but not limited to, property represented by securities, documents, or other written instruments, whether owned or held in any capacity by the NAMED INSURED and/or any SUBSIDIARY or for which the NAMED INSURED and/or any SUBSIDIARY may be liable;
  3. invasion of privacy, assault, battery, wrongful entry, eviction, discrimination, false arrest, false imprisonment, malicious prosecution, mental anguish, emotional distress, or loss of consortium; or
  4. libel, slander, or defamation;
- G. based upon, or arising out of, the Employee Retirement Income Security Act of 1974 (or any regulations promulgated thereunder) or similar provisions of any federal, state, or local statutory law or common law with respect to any of the INSUREDS' activities as fiduciary or trustee under any pension, profit sharing, health and welfare or other employee benefit plan or trust sponsored, established, or maintained in whole or in part for the benefit of any of the INSUREDS' employees;
- H. for any liability arising from, or contributing to, any failure to provide insurance of any kind, whether such failure concerns the amount, existence or adequacy of such insurance; provided, however, that this exclusion shall not apply to any LOSS due solely to negligence on the part of an officer or employee of any of the INSUREDS in failing to provide insurance in accordance with the specific prior instructions of a customer or client of such INSUREDS;
- I. brought by, on behalf of, or at the behest of any of the INSUREDS or its successors or assigns; or brought by, on behalf of, or at the behest of any business enterprise which is operated or managed or owned, directly or indirectly, in whole or in part, by any of the INSUREDS;
- J. brought by, on behalf of, or at the behest of any state or federal government, or any regulatory or administrative agency, or any other governmental body in any capacity except to the extent such CLAIM is brought:
1. to enforce the rights of the party bringing such CLAIM as a client or customer of any of the INSUREDS or;
  2. to enforce the rights of another as a client or customer of any of the INSUREDS;
- K. based upon, arising out of, directly or indirectly, resulting from, in consequence of, attributable to, or in any manner relating to disputed fees or other amounts charged by any of the INSUREDS;
- L. based upon, or arising out of, the actual or alleged depreciation of an investment or failure of an investment to appreciate in value, or any actual or alleged representation, guarantee, or warranty regarding the performance of an investment by, or on behalf of, any of the INSUREDS;
- M. brought by, on behalf of, or at the behest of any security holder of any of the INSUREDS when such CLAIM is based on or arises from any interest in such security, including, but not limited to, the decline in value of such security;

- N. based upon, or arising out of, any form of option contracts, swaps, futures contracts, interests in partnerships, or derivatives;
- O. based upon, or arising out of, liability of others assumed by any of the INSUREDS under the terms, conditions or warranties of any contract or agreement, either oral or written, or by virtue of any waiver or release from liability of any third party, except to the extent that such INSUREDS would have been liable in the absence of the contract, agreement, waiver, or release;
- P. based upon, arising out of, directly or indirectly, resulting from, in consequence of, or in any manner relating to:
  1. the actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or
  2. any direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, nuclear material or nuclear waste,

including, but not limited to, claims alleging damage to the Company or its shareholders, other security holders, creditors or other shareholders, based upon subparagraph 1. or 2. of this exclusion.

Pollutants include, but are not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, and waste. Waste includes (but is not limited to) material to be recycled, reconditioned or reclaimed;

- Q. based upon, or arising out of, any actual or alleged **WRONGFUL ACT** in discharging duties as directors, officers, or employees of an entity other than the NAMED INSURED or any SUBSIDIARY, regardless of whether the services were provided at the direction or behest of the NAMED INSURED or any SUBSIDIARY;
- R. based upon, arising out of, directly or indirectly, resulting from, in consequence of, attributable to, or in any manner relating to the purchase, sale, participation, grant, commitment, restructure, termination, transfer, foreclosure, or administration of any loan, lease, or extension of credit, or any repossession, or any failure to perform, or the rendering of advice in connection with any of the foregoing; or
- S. based upon, arising out of, directly or indirectly, resulting from, in consequence of, attributable to, or in any manner relating to any **WRONGFUL ACT** actually or allegedly committed subsequent to a **CORPORATE REORGANIZATION**.

Notwithstanding the foregoing, the Insurer shall pay the **DEFENSE EXPENSES** incurred in connection with a legal action in the event of a favorable judgment on the merits of any **CLAIM** which would otherwise be excluded under Section III., Exclusions, A. or B.

#### **IV. GENERAL CONDITIONS**

##### **A. LIMIT OF LIABILITY AND RETENTION**

1. The Insurer shall pay one hundred percent (100%) of any **LOSS** in excess of the Retention set forth in Item 6 of the Declarations up to the Aggregate Limit of Liability set forth in Item 5 of the Declarations. One Retention shall apply to each and every **CLAIM**.
2. The Aggregate Limit of Liability available to pay judgments or settlements shall be reduced by **DEFENSE EXPENSES**.
3. The Insurer's maximum liability under this Policy shall be the Aggregate Limit of Liability set forth in Item 5 of the Declarations, regardless of the number of **CLAIMS** made during the **POLICY PERIOD**.
4. All **CLAIMS** based upon, or arising out of, the same **WRONGFUL ACT** or **INTERRELATED WRONGFUL ACTS** shall be considered a single **CLAIM** for all purposes (including, but not limited to, the applicability of

a single Aggregate Limit of Liability and Retention) under this Policy, which shall be deemed first made at the time the earliest of all such CLAIMS was first made.

**B. EXTENDED REPORTING PERIOD**

1. If the Insurer cancels or refuses to renew the Policy pursuant to Section IV., General Conditions, F., the INSUREDS shall have the right, upon payment of the additional premium set forth in Item 3 of the Declarations, to an extension of the coverage granted by this Policy with respect to any CLAIM made during the period set forth in Item 3 of the Declarations after the POLICY EXPIRATION DATE, but only with respect to any WRONGFUL ACT committed before the POLICY EXPIRATION DATE. Written request for this extension and payment of the appropriate premium must be made within thirty (30) days after the POLICY EXPIRATION DATE.
2. The EXTENDED REPORTING PERIOD may not be purchased if:
  - a. this Policy is canceled by the Insurer for non-payment of premium; or
  - b. this Policy is succeeded immediately with a claims-made policy providing the INSUREDS with similar coverage.
3. With respect to this Section IV., General Conditions, B., a cancellation or refusal to renew shall not include:
  - a. non-material changes in the terms, conditions, and limitations of this Policy;
  - b. an increase in the Retention set forth in Item 6 of the Declarations;
  - c. an increase in the Premium set forth in Item 4 of the Declarations; or
  - d. a reduction in the Aggregate Limit of Liability set forth in Item 5 of the Declarations.
4. The purchase of the EXTENDED REPORTING PERIOD shall not increase the Aggregate Limit of Liability set forth in Item 5 of the Declarations.

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**C. NOTICE OF CLAIMS**

As a condition precedent to their rights under this Policy, the INSUREDS shall give to the Insurer notice in writing of any CLAIM. The INSUREDS shall give the Insurer such information and cooperation as it may reasonably require, including furnishing copies of reports, investigations, pleadings, and all other papers in connection with such CLAIM.

**D. NOTICE OF POTENTIAL CLAIMS**

1. If prior to the POLICY EXPIRATION DATE any of the INSUREDS become aware of any WRONGFUL ACT which is likely to subsequently give rise to a CLAIM; and
2. if prior to the POLICY EXPIRATION DATE the INSUREDS shall give written notice thereof to the Insurer, as soon as practicable, with full particulars as to the nature and date of the WRONGFUL ACT, the alleged injuries or damages sustained, the names of potential claimants, the identity of any of the INSUREDS involved in the WRONGFUL ACT, and the manner in which the INSUREDS first became aware of the WRONGFUL ACT,

then any CLAIM which may potentially and subsequently be made against the INSUREDS arising out of such WRONGFUL ACT shall, for the purposes of this Policy, be treated as a CLAIM made during the POLICY PERIOD.

E. LEGAL FEES, OTHER COSTS OF DEFENSE AND SETTLEMENTS

1. The INSUREDS shall not admit liability for, settle, or incur DEFENSE EXPENSES in connection with any CLAIM or any matter to which reference is made in Section IV., General Conditions, D., without the Insurer's prior written consent, which shall not be unreasonably withheld. No DEFENSE EXPENSES incurred, or settlement agreed to, prior to receipt of the Insurer's consent thereto shall be covered hereunder.
2. The Insurer at all times shall have the right, but not the duty, to associate with the INSUREDS in the investigation, defense or settlement of any CLAIM or any matter to which reference is made in Section IV., General Conditions, D. Such association shall be at the Insurer's expense.
3. The Insurer, solely at its own option and upon request, may advance DEFENSE EXPENSES on behalf of the INSUREDS prior to final disposition of any CLAIM, provided always that in the event it is finally established that the Insurer has no liability for such DEFENSE EXPENSES, the INSUREDS agree to repay to the Insurer all DEFENSE EXPENSES advanced.

F. CANCELLATION AND NON-RENEWAL

1. This Policy may be canceled on behalf of the INSUREDS by the NAMED INSURED at any time by providing written notice of cancellation or by the surrender of this Policy to the Insurer. This Policy may also be canceled by, or on behalf of, the Insurer by delivering to the NAMED INSURED, or by mailing to the NAMED INSURED by certified mail or other first class mail, or by courier at the address as shown in Item 1 of the Declarations, written notice stating when not less than thirty (30) days thereafter, the cancellation shall be effective. The dispatch of such notice as herein described shall be sufficient proof of notice, and the POLICY EXPIRATION DATE shall be at the date and hour specified in such notice.
2. If this Policy shall be canceled on behalf of the INSUREDS, the Insurer shall retain the customary short rate portion of the premium, such short rate portion to be determined by the date on which the Insurer receives such request for cancellation. If this Policy shall be canceled by, or on behalf of, the Insurer, the Insurer shall retain the pro rata portion of the premium. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
3. The Insurer shall provide the INSUREDS with no less than thirty (30) days advance notice if the Insurer elects not to renew this Policy. If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended to be equal to the minimum period of limitation permitted by such law.

G. ACTION AGAINST THE INSURER

1. No action shall be taken against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of the Policy, and until the INSUREDS' obligation to pay shall have been finally determined either by an adjudication against the INSUREDS or by written agreement of the INSUREDS, the claimant and the Insurer.
2. No person or organization shall have any right under this Policy to join the Insurer as a party to any action against the INSUREDS, nor shall the Insurer be impleaded by the INSUREDS.

H. CORPORATE ACQUISITION, CREATION OR SALE

1. In the event of the creation or acquisition after the POLICY INCEPTION DATE of any corporation in which the NAMED INSURED owns more than fifty percent (50%) of the voting stock, either directly or through one or more of its SUBSIDIARIES, the coverage afforded under this Policy will continue in effect for ninety (90) days or until the POLICY EXPIRATION DATE, whichever occurs first, with respect to any

WRONGFUL ACT occurring subsequent to such creation or acquisition which involves such acquired or created corporation.

After the expiration of such period, no coverage will be afforded with respect to any WRONGFUL ACT which involves such acquired or created corporation unless during such period:

- a. written notice of such acquisition or creation is given to the Insurer by the INSUREDS;
- b. the INSUREDS provide the Insurer with such information in connection therewith as the Insurer deems necessary;
- c. the INSUREDS accept any special terms, conditions, exclusions or additional premium charge as may be required by the Insurer; and
- d. the Insurer, at its sole discretion, agrees by written endorsement to provide such coverage.

Nothing contained in this Section IV., General Conditions, H.1., or elsewhere within this Policy shall provide coverage for any CLAIM for any WRONGFUL ACT which involves such acquired or created corporation occurring prior to the effective date of such acquisition or creation.

2. In the event any corporation ceases to be a SUBSIDIARY after the POLICY INCEPTION DATE, or after the inception date of any policy issued by the Insurer of which this Policy is a renewal or replacement, this Policy shall continue to apply to such SUBSIDIARY with respect to any CLAIM first made during the POLICY PERIOD against such SUBSIDIARY for any WRONGFUL ACT committed or allegedly committed prior to the time such corporation ceased to be a SUBSIDIARY. There shall be no coverage for any CLAIM made against such SUBSIDIARY for any WRONGFUL ACT committed or allegedly committed after such corporation ceases to be a SUBSIDIARY.

#### I. ASSIGNMENT

In the event of any attempt by the INSUREDS to assign or transfer this Policy without the written consent of the Insurer, this Policy shall be void. This clause applies regardless of whether the purported assignment or transfer was voluntary or involuntary.

#### J. OTHER INSURANCE

If any CLAIM made against any of the INSUREDS is insured under any other policy, bond, or contract of indemnity, then this Policy shall apply to such CLAIM only in excess of the limits of liability duly paid pursuant to such other policy, bond, or contract of indemnity, unless such other policy, bond, or contract of indemnity is written solely as specific excess insurance over the Aggregate Limit of Liability of this Policy.

#### K. SUBROGATION

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all rights of recovery thereof against any person or organization, and the INSUREDS shall execute and deliver all documents required to secure and preserve such rights, including the execution and delivery of such documents that may be required to enable the Insurer to bring suit in its own name or in the name of any of the INSUREDS. The INSUREDS shall do nothing to prejudice such rights.

#### L. CONFORMITY TO STATUTE

The terms of this Policy which are in conflict with the terms of any applicable state statutes construing this Policy are hereby amended to conform to such statutes.

M. ACCEPTANCE

By acceptance of this Policy, the INSUREDS and the Insurer agree that this Policy (including the Proposal and materials submitted therewith) and any endorsements hereto shall constitute the contract between the parties.

N. REPRESENTATIVE OF INSUREDS

The NAMED INSURED shall act on behalf of all of the INSUREDS with respect to giving and receiving of notice of CLAIM or cancellation or any other notice required or permitted hereunder, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

O. DIRECTION OF NOTICE

Notice of CLAIM or cancellation or any other notice required or permitted hereunder shall be given to:

THE HARTFORD  
Hartford Plaza  
Hartford, CT 06115  
Attn: Financial Services Claims Department

This Policy shall not be valid unless countersigned on the Declarations by a duly authorized representative of the Insurer.

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