

Financial Institutions Risk Protector[®]

BANKERS PROFESSIONAL LIABILITY COVERAGE SECTION FOUR ("BPL COVERAGE SECTION")

Notice: Pursuant to Clause 1 of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, made a part of, and are expressly applicable to this Coverage Section, unless otherwise explicitly stated to the contrary in either the General Terms and Conditions or in this Coverage Section.

In consideration of the payment of the premium, and in reliance upon the statements made to the **Insurer** by application, including its attachments and the material incorporated therein, which form a part of this policy, the Insurer agrees as follows:

1. INSURING AGREEMENT

This policy shall pay the **Loss** of each and every **Insured** arising from a **Claim** first made against such **Insured** during the **Policy Period** or **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any **Wrongful Act** of the **Insured** in the rendering of or failure to render **Professional Services**. The **Insurer** shall, in accordance with Clause 4 of this **Coverage Section**, advance **Defense Costs** of such **Claim** prior to its final disposition.

2. DEFINITIONS

(a) "**Claim**" means:

- (1) a written demand for monetary or non-monetary relief (including any request to toll or waive any statute of limitations); or
- (2) a civil, administrative or arbitration proceeding for monetary or non-monetary relief which is commenced by:
 - (i) service of a complaint or similar pleading; or
 - (ii) receipt or filing of a notice of charges.

(b) "**Individual Insured**" means any **Director or Officer** or **Employee** of the **Company**.

(c) "**Insured**" means:

- (i) any **Individual Insured**; and
- (ii) the **Company**.

(d) "**Investment Banking**" means, but is not limited to, the underwriting, syndicating or promotion of any debt or equity security; any actual, alleged or threatened merger, acquisition, divestiture, tender offer, proxy contest, leveraged buy-out, going private transaction, reorganization (voluntary or involuntary), capital restructuring,

recapitalization, spin-offs, primary or secondary offerings of securities (regardless of whether the offering is a public offering or a private placement), dissolution or sale of all or substantially all of the assets or stock of a business entity or any effort to raise or furnish capital or financing for any enterprise or entity, or any acquisition or sale of securities by the **Company** for its own account or any disclosure requirements in connection with any of the foregoing. **Investment Banking** also includes the rendering of any advice or recommendations or the rendering of a fairness opinion in connection with any of the foregoing.

- (e) **"Lending Act"** means any act performed by an **Insured** for a customer or client of the **Company** arising from the extending or refusing to extend credit or the granting or refusing to grant a loan.
- (f) **"Loan Servicing"** means the servicing of any loan, lease or extension of credit (whether consumer, commercial, mortgage banking or otherwise, but not including merger or acquisition activities, or leveraged or management buyouts). **Loan Servicing** includes, but is not limited to, the following servicing activities: record keeping, billing and disbursements of principal or interest, receipt or payment of insurance premiums and taxes, credit reporting or statements of a customer's creditworthiness, determination of the depreciation amount of property (but not projections of or an appraisal for residual or future value of property). **Loan Servicing** shall not include any **Lending Acts**.
- (g) **"Loss"** means damages, judgments (including pre-judgment and post-judgment interest on that part of any judgment paid under this **Coverage Section**), settlements and any **Defense Costs**; provided, however, that **Loss** (other than **Defense Costs**) shall not include: (1) civil fines or penalties; (2) taxes; (3) punitive or exemplary damages; (4) the multiplied portion of multiplied damages; (5) any liability or cost incurred by any **Insured** in complying with any judgment, award or settlement for non-monetary relief; (6) loss of, or diminution in value of, money, securities, property or other items of value in the custody or control of the **Insured**, or its agents, or in transit; (7) any amount for which an **Insured** is not financially liable or which is without legal recourse to the **Insured**; or (8) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Notwithstanding the foregoing paragraph, **Loss** shall specifically include (subject to this policy's other terms, conditions and limitations, including but not limited to Exclusions (a) and (b) of this **Coverage Section** and Exclusion (a) of the General Terms and Conditions) awards of punitive or exemplary damages in an amount not greater than two times the amount of compensatory damages awarded. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such punitive and exemplary damages. For purposes of such coverage, "applicable law" includes, but is not limited to, the following jurisdictions: (a) where the **Wrongful Act** actually or allegedly took place; (b) where the damages are awarded; (c) where the **Named Entity** resides, is incorporated or has its principal place of business; and (d) where the **Insurer** is incorporated or has its principal place of business.

- (h) **"Professional Services"** means those services, including online banking services, of the **Company** as set forth in an endorsement to this policy by the **Insurer**, which services are permitted by law or regulation, to be rendered by an **Insured** pursuant to a written agreement with the customer or client as long as such service is rendered for or on behalf of a customer or client of the **Company**: (i) in return for a fee, commission or

other compensation ("**Compensation**"), or (ii) without **Compensation** as long as such non-compensated services are rendered in conjunction with services rendered for **Compensation**.

(i) "**Retroactive Date**" means the date set forth as such in Item 3 of the Declarations.

(j) "**Wrongful Act**" means:

(1) with respect to **Directors or Officers** and **Employees**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Insureds** in their respective capacities as such, or any matter claimed against such **Insured** solely by reason of their status as **Directors or Officers** or **Employees**; or

(2) with respect to the **Company**, any actual or alleged breach of duty, neglect, error, misstatement, omission or act by the **Company**.

3. EXCLUSIONS

In addition to the exclusions set forth in Clause 4 of the General Terms and Conditions, the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

(a) alleging, arising out of, based upon or attributable to any criminal, malicious, dishonest or fraudulent act, error or omission of any **Insured** or any other person for whose actions an **Insured** is legally responsible; or arising out of or alleging any conflict of interest, acting in bad faith or gaining of any profit or advantage to which an **Insured** (or any other person for whose actions an **Insured** is legally responsible) was not legally entitled; however, if such allegations are subsequently disproven by a final adjudication favorable to the **Insured** or such other person then the **Insurer** shall reimburse the **Insured** for all **Defense Costs** reasonably incurred by the **Insured** in connection therewith for which the **Insured** is entitled under the terms, conditions and exclusions of this policy;

(b) arising out of, based upon or attributable to any **Wrongful Act** committed by an **Insured** or by any other person for whose actions an **Insured** is legally responsible with knowledge that it was wrongful;

(c) alleging, arising out of, based upon or attributable to, directly or indirectly, a **Wrongful Act** which occurred prior to the **Retroactive Date** or after the end of the **Policy Period**. **Loss(es)** arising out of the same or **Related Wrongful Act(s)** shall be deemed to arise from the first such same or **Related Wrongful Act**;

(d) alleging, arising out of, based upon or attributable to, directly or indirectly, the bankruptcy of, or suspension of payment by, any broker or dealer in securities or commodities, or any bank or banking firm other than the **Company**;

(e) alleging, arising out of, based upon or attributable to, directly or indirectly, emotional distress or mental anguish of any person;

(f) alleging, arising out of, based upon or attributable to, directly or indirectly, the publication, utterance or conveyance of a libel or slander, or other defamatory or disparaging material, or discrimination, or the wrongful entry or eviction or other invasion of the right of privacy;

- (g) alleging, arising out of, based upon or attributable to, directly or indirectly, any **Lending Act**, including, but not limited to, any pattern or practice of discrimination by the **Insured** in refusing to make a loan, lending and/or financing for dwellings, or extending credit on the basis of race, marital status, national origin, age, religion, disability, receipt of public assistance, or postal zip codes, regardless of the applicant's credit record, with respect to persons or properties in specified geographic areas, including, but not limited to, any actual or alleged violations of the Fair Housing Act, the Equal Credit Opportunity Act, any regulations pursuant thereto, or any similar state law or regulation;
- (h) alleging, arising out of, based upon or attributable to, directly or indirectly, any dispute involving fees, commissions or other charges for any **Professional Service** rendered or required to be rendered by the **Insured**, or that portion of any settlement or award representing an amount equal to such fees, commissions or other compensations; provided, however, that this exclusion shall not apply to **Defense Costs** incurred in connection with a **Claim** alleging a **Wrongful Act**;
- (i) brought by, on the behalf of or in the right of any **Insured** or its successors or assigns, other than an **Employee** who is not a **Director or Officer**; or which is brought by any security holder or member of the **Company**, whether directly or derivatively, unless such security holder's or member's **Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any **Individual Insured** of the **Company** or the **Company**; or which is brought by or on the behalf of any business enterprise which is operated or managed or owned, directly or indirectly, in whole or in part by any **Insured**;
- (j) brought by or on behalf of any governmental, quasi-governmental or self-regulatory entity, whether directly or indirectly, and whether brought in its capacity as receiver, conservator, liquidator, security holder or assignee of the **Company**, its security holders, its depositors or its creditors or in any other capacity and whether brought in its own name or in the name of any other entity however, this exclusion shall not apply to any **Claim** by any such entity or bureau to enforce its rights as a direct customer or client of the **Insured**;
- (k) alleging, arising out of, based upon, or attributable to, directly or indirectly, employment of any individual or any employment practice (including but not limited to wrongful dismissal, discharge or termination, discrimination, harassment, retaliation or other employment-related claim);
- (l) alleging, arising out of, based upon or attributable to, directly or indirectly, any employee benefit plan sponsored or established by the **Company**;
- (m) alleging, arising out of, based up or attributable to, directly or indirectly, **Investment Banking**;
- (n) alleging, arising out of, based upon or attributable to, directly or indirectly, any use by any **Insured** of, or actual or alleged aiding or abetting by any **Insured** in the use of, or actual or alleged participation after the fact by any **Insured** in the use of, non-public information in a manner prohibited by the laws of the United States including but not limited to the Insider Trading and Securities Fraud Enforcement Act of 1988 (as amended), Section 10(b) of the Securities Exchange Act of 1934 (as amended) and Rule

10(b)(5) thereunder, any state, commonwealth, territory or subdivision thereof, or the laws of any other jurisdiction, or any rules or regulations promulgated under any of the foregoing;

- (o) alleging, arising out of, based upon or attributable to, directly or indirectly, the **Company** making, on behalf of a client or customer, an investment in 5% or more of the stock or ownership rights or interests of any one corporation or entity; provided, however, this exclusion shall not apply: (1) so long as such investment was at the specific written instruction of a client or customer to whom a trust agreement has granted power to direct the **Company** with respect to such investment; and (2) so long as the **Company** has no discretion with respect to such investment.

- (p) alleging, arising out of, based upon or attributable to, directly or indirectly, activities in connection with any equity security priced under \$5.00; however, this exclusion, shall not apply if the security is:
 - (1) registered, or approved for registration upon notice of issuance, on a national securities exchange;
 - (2) authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system; or
 - (3) issued by an investment company registered under the Investment Company Act of 1940 (as amended);

- (q) alleging, arising out of, based upon or attributable to, directly or indirectly:
 - (1) any inability or failure to pay, collect or safeguard funds;
 - (2) any defective title or deed;
 - (3) the failure of any real or personal property to have at any point in time any projected, estimated, represented, warranted or guaranteed economic value;
 - (4) any loans that are owned by the **Insured** for more than 12 months. Mortgages held in the name of the **Insured** under mortgage-backed security pools shall be deemed to be not owned by the **Insured**,
 - (5) any transaction in which any **Insured** has a financial interest as a buyer or seller of real property;
 - (6) the performance or failure to perform services for any person or entity:
 - (i) which is owned by or controlled by any **Insured**;
 - (ii) which owns or controls any **Insured**;
 - (iii) which is affiliated with any **Insured** through any common ownership or control; or
 - (iv) in which any **Insured** is a **Director or Officer**, partner or principal stockholder;

- (r) alleging, arising out of, based upon or attributable to, directly or indirectly, any mechanical, electrical, or electronic failure, breakdown, or malfunction of any machine or system with respect to machines. For purposes of this exclusion, "system" shall include, but not be limited to, all hardware, software and power supplies;

- (s) alleging, arising out of, based upon or attributable to, directly or indirectly, (i) any failure or inability of the **Security** of the **Insured's** computer system to mitigate loss from or prevent a computer attack; (ii) the physical theft of hardware or firmware controlled by the **Insured** (or components thereof) on which electronic data is stored, by a person other than an **Insured**, from a premises occupied and controlled by the **Insured**; or (iii) any failure or inability described in (i) or (ii), resulting from the theft of a password or

access code by non-electronic means in direct violation of the **Insured's** specific written **Security** policies or procedures. "**Security**" means hardware, software or firmware whose function or purpose is to mitigate loss from or prevent a computer attack. **Security** includes, without limitation, firewalls, filters, DMZ's, computer virus protection software, intrusion detection, the electronic use of passwords or similar identification of authorized users. **Security** also includes the **Insured's** specific written policies or procedures intended to directly prevent the theft of a password or access code by non-electronic means;

- (t) with respect to **Loan Servicing**, alleging, arising out of, based upon or attributable to, directly or indirectly, any willful or intentional non-compliance with any statute or regulation; or
- (u) for any actual or alleged violation of any law, whether statutory, regulatory or common law, with respect to any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships; provided, however, this exclusion shall not apply to any **Non-Indemnifiable Loss**.

For the purpose of determining the applicability of the foregoing Exclusions 3(a) and 3(b): (1) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any other **Individual Insured**; and (2) facts pertaining to and knowledge possessed by any **Individual Insured** shall be imputed only to the **Company**.

4. **DEFENSE COSTS, SETTLEMENTS AND JUDGMENTS (INCLUDING ADVANCEMENT OF DEFENSE COSTS)**

- (1) The **Insurer** does not assume any duty to defend. The **Insureds** shall defend and contest any **Claim** made against them.

Notwithstanding the foregoing, the **Insurer** may, in its absolute discretion, assume the defense and/or investigation of any **Claim** for which reasonable grounds exist for possible involvement of the **Insurer**. In such an event, the **Insured** shall promptly reimburse the **Insurer** for those **Defense Costs** incurred by the **Insurer** to the extent of the Retention amount, or which the **Insureds** are not otherwise entitled under the terms and conditions of this policy to payment of such **Loss**. In no event will the **Insurer** have the obligation to continue to defend any **Claim** (if it has assumed the defense pursuant to this paragraph) once the **Policy Aggregate Limit of Liability** stated in Item 5(a) of the Declarations or any **Separate Limit of Liability** or **Shared Limit of Liability** stated in Item 3 of the Declarations has been exhausted.

When the **Insurer** has not assumed the defense of a **Claim** pursuant to this Clause 4, the **Insurer** shall advance nevertheless, at the written request of the **Insured**, **Defense Costs** prior to the final disposition of a **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds** or the **Company**, severally according to their respective interests, in the event and to the extent that the **Insureds** or the **Company** shall not be entitled under the terms and conditions of this policy to payment of such **Loss**.

- (2) In the event that the **Insurer** does not assume the defense and/or investigation of a **Claim** pursuant to paragraph (1) above, it shall nevertheless have the right to fully and effectively associate with the **Insured** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including but not limited to negotiating a settlement. The **Insured** shall give the **Insurer** full cooperation and such information as it may reasonably require.
- (3) Neither the **Insurer** nor the **Insured** shall admit or assume any liability, enter into any settlement, stipulate to any judgment or incur any **Defense Costs** without the prior written consent of the other; however, if the **Insurer** recommends settlement of a **Claim** which is agreeable to the claimant and the **Insured** refuses, then the **Insurer's** liability for **Loss** shall be fixed at the amount so recommended together with such **Defense Costs** incurred as of the date the recommendation was made, and shall withdraw from the defense of the **Claim** (if it has assumed the **Insured's** defense). Only those settlements, stipulated judgments and **Defense Costs**, which have been consented to by the **Insurer**, in writing, shall be recoverable as **Loss** under the terms of this policy. The **Insurer's** consent shall not be unreasonably withheld, provided that the **Insurer**, when it has not assumed the defense of a Claim pursuant to this Clause 4, shall be entitled to fully and effectively associate in the defense and negotiation of any settlement of any **Claim**, and provided further that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such loss is not covered under the terms of this policy.

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