



# Asset Investment Managers Insurance

Policy Wording



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# Welcome to Zurich

## About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ACN 000 296 640, an overseas registered company incorporated in Australia) (ZAIL), trading as Zurich New Zealand. In this policy wording, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurer that serves its customers in global and local markets. Zurich provides a wide range of general insurance and life insurance products and services in more than 210 countries and territories. Zurich's customers include individuals, small businesses, mid-sized and large companies, including multinational corporations.

## Important information

This is a 'Claims Made and Notified' insurance policy. It only provides cover if:

1. A *claim* is made against the *insured*, by some other person and notified to us, during the period when the policy is in force; and
2. The *claim* arises out of an occurrence which takes place after the *continuity date* stipulated in the policy *schedule*.

## Duty of Disclosure

Before you enter into a contract of general insurance with us, you have a duty to disclose to us every matter you know, or could reasonably be expected to know, that a prudent insurer would want to take into account in deciding whether to insure you and, if so, on what terms. This applies to all persons to be covered under this contract of insurance.

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate a contract of general insurance. Your duty however, does not require disclosure of a matter:

- that diminishes the risk to be insured;
- that is of common knowledge;
- that we know or in the ordinary course of our business we ought to know; or
- that we indicate to you that we do not want to know.

## Non-disclosure or Misrepresentation

If you make a material misrepresentation to us, or if you do not comply with your duty of disclosure, we may treat your policy as if it never existed.

## Our contract with you

This Policy is a contract of insurance between the *policyholder* and Zurich and contains all the details of the cover that we provide.

The Policy is made up of:

- the Policy Wording. It tells you what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the *proposal* which is the information provided to us when applying for insurance cover;
- the most current Policy Schedule issued by us. The *schedule* is a separate document unique to you, which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in the Policy Schedule are insured.

This document is used for any offer of renewal we may make, unless we tell you otherwise. Please keep your policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

# Asset Investment Managers Insurance Policy Wording

In consideration of the payment of the premium, and in reliance upon the statements made in the *proposal*, and subject to the terms of this Policy (including any endorsement hereto), coverage under this Policy is afforded solely for (A) *financial loss* resulting directly from *claims* first made against the *insured* or *pre-claim events* or other Extensions of Cover first occurring during the *period of insurance* or the *extended reporting period* (if applicable) and (B) *financial loss* first sustained by the *company* and where *discovery* first occurs during the *period of insurance* or the *extended reporting period* (if applicable), and provided such *claim* or *financial loss* is notified to us as required by Section 6 of this Policy.

## 1. Insurance Clauses

### 1.1 Directors & Officers Liability

#### 1.1 a Insured Person Liability

We will pay to or on behalf of an *insured person* the *financial loss* that arises from a *claim* made against such *insured person* for a *wrongful managerial act*, except to the extent that it is *indemnifiable financial loss* by the *company*.

#### 1.1 b Company Reimbursement

We will pay to or on behalf of the *company* that portion of the *financial loss* that constitutes *indemnifiable financial loss*, and results from a *claim* made against an *insured person* for a *wrongful managerial act*.

### 1.2 Professional Liability

We shall indemnify the *insured* for *financial loss* resulting directly from a *claim* made against the *insured* by, on behalf of or for the benefit of a third party client of an *insured* seeking compensation for a *wrongful professional act*, occurring on or after the *retroactive date*, in the rendering of or failure to render *investment management services*.

### 1.3 Crime

We shall indemnify the *insured* for *financial loss* which results directly from a *wrongful dishonest act* of an *employee*, including any person acting in collusion with such *employee*, or from a *wrongful criminal act* committed or caused by a third party.

## 2. Extensions of Cover

Subject to all the terms, conditions, exclusions and limitations of this Policy, cover is extended as follows:

### Extensions applicable to all Insurance Clauses

#### 2.1 Extended Reporting Period

##### 2.1.1 Non-Renewal

In the event this Policy is not renewed by either Zurich or the *policyholder*, the *policyholder* shall be entitled to an *extended reporting period* as follows:

- (a) automatically for ninety (90) days at no additional premium; or
- (b) for the period specified in the *schedule*, subject to the *policyholder* making a written request for such *extended reporting period* no later than thirty (30) days after the expiry of the *period of insurance* and duly paying the applicable required additional premium.

If our offer of renewal cover are on terms which differ from the ones contained in the expiring Policy, including but not limited to the *limit of liability* and *retention*, this does not constitute non-renewal.

### 2.1.2 Change in Control

In the event of a *change in control*, the *policyholder* does not have the right to automatically elect an *extended reporting period* as set out under 2.1.1 above but shall be entitled to request an offer from us for an *extended reporting period*, subject to the *policyholder* making a request for such *extended reporting period* no later than thirty (30) days after the *change in control*, unless a period extension is otherwise granted through a different provision of this Policy, and duly paying the applicable additional premium.

With respect to the foregoing clauses 2.1.1 and 2.1.2, cover during the *extended reporting period* is provided up to the amount of the remaining unexhausted *limit of liability* available for this Policy.

Any *extended reporting period* under 2.1.1 or 2.1.2 above shall terminate immediately upon its expiry or the effective date of either of the following events (whichever occurs first):

- (i) the renewal of this Policy by us; or
- (ii) the replacement of this Policy by any other insurance policy, issued by us or any other insurance company, covering wholly or substantially or partially the same risk.

The additional premium for any *extended reporting period* shall be deemed fully earned at the inception of the *extended reporting period*.

This Extension of cover shall not apply to *mitigation costs* or *correction costs* or *costs of NAV correction*.

## 2.2 Loss Mitigation

We will pay to or on behalf of an *insured person* any *mitigation costs* incurred during the *period of insurance* provided that:

- 2.2.1 as a condition precedent to our liability under the Policy for *mitigation costs* notification of the relevant *wrongful managerial act*, *wrongful professional act*, or peril, fraud, act, event or omission is made to and accepted by us in accordance with Section 6 of this Policy;
- 2.2.2 if such *wrongful managerial act* or *wrongful professional act* were to give rise to a *claim*, or if such peril, fraud, act, event or omission were to give rise to direct financial loss of the *company*, such *claim* would be covered under Insurance Clause 1.1 or 1.2 of this Policy, or such loss would constitute *financial loss* covered under Insurance Clause 1.3 of this Policy;
- 2.2.3 as a condition precedent to our liability under the Policy for *mitigation costs* and before incurring any *mitigation costs*, the *insured* demonstrates to us the reasonableness and necessity of the proposed actions and costs to mitigate or avoid a covered *claim* or *financial loss*, and we provide our express prior consent for such *mitigation costs*, except as provided for in Extension 2.3; and
- 2.2.4 as a condition precedent to our liability under this Policy for *mitigation costs*, we shall be entitled to associate fully with the *insured* in relation to the proposed actions before they are undertaken and shall be kept fully updated on the potential *claim* or direct financial loss.

The burden of proving that the potential *claim* would be covered under this Policy or that the potential direct financial loss would constitute *financial loss* that would be covered under this Policy shall rest with the *insured*.

The cover provided under this Extension shall be subject to the applicable *sub-limit of liability* specified in the *schedule*.

Cover under this Extension shall not extend to any fact or circumstance based upon, arising from or in consequence of any *wrongful managerial act* or *wrongful professional act* where all or any part of such acts or conduct occurred prior to the inception date of this Policy, or any fact or circumstance which any *insured* had knowledge as of the inception date of this Policy.

### 2.3 Emergency Costs

We shall indemnify the *emergency costs* incurred by an *insured*.

The cover provided under this Extension shall be subject to the applicable *retention* (whenever applicable) and the *sub-limit of liability* as specified in the *schedule*.

### Extensions applicable to Insurance Clauses 1.1 and 1.2

#### 2.4 Investigations

We will pay the *investigation costs* of an *insured person* resulting from an *investigation*.

#### 2.5 Civil and Administrative Fines and Penalties

We will pay *civil fines and penalties* imposed on an *insured person* or *employee* that arise from a covered *claim* or *investigation* made against such *insured person* or *employee*, but only to the extent that such *civil fines and penalties* are insurable under both the law applicable to this Policy and the jurisdiction in which such *civil fines and penalties* are imposed or levied. Coverage under this Extension applies only once such insurability is determined by final adjudication, or final regulatory enforcement or proceeding.

The cover provided under this Extension shall be subject to the applicable *sub-limit of liability* specified in the *schedule*.

#### 2.6 Heirs, Estates, Legal Representatives and Domestic Partners

The heirs, estates, legal representatives, assigns, spouses and natural person qualifying as a domestic partner of an *insured person* or *employee* under the provisions of any applicable law, shall be considered an *insured person* or *employee* under this Extension, but only for a *claim* solely arising out of their status as such and resulting from a *wrongful managerial act* of an *insured person* or a *wrongful professional act* of an *employee*, and in the case of a spouse or domestic partner, where such *claim* seeks damages from marital community property, jointly held property or property transferred from the *insured person* or *employee* to the spouse or domestic partner.

No coverage is provided for any wrongful act or omission of an estate, heir, legal representative, assign, spouse or domestic partner. All terms and conditions of this Policy applicable to *financial loss* incurred by the *insured* shall also apply to loss incurred by such estates, heirs, legal representatives, assigns, spouses and domestic partner.

### Extensions applicable to Insurance Clauses 1.1 and 1.3

#### 2.7 Continuous Cover

Notwithstanding Exclusion 5.1 'Prior Knowledge, Claims or Notifications and Prior Discovery', we will pay *financial loss* which arises from any *claim* first made against an *insured* during the *period of insurance* arising from a *prior known fact*, provided always that:

- 2.7.1 the *insured* has maintained without interruption, asset investment managers insurance policy or similar insurance policy with an insurer from the time the *insured* first became aware of such *prior known fact* until the commencement of the *period of insurance*;
- 2.7.2 the *insured* would have been indemnified under the asset investment managers insurance policy or similar insurance policy in force at the relevant time if the *prior known fact* had been notified to the applicable insurer when the *insured* first became aware of it; and
- 2.7.3 neither the *claim* nor the *prior known fact* has been notified to us earlier or to any other insurer under any policy at any time; and
- 2.7.4 there has been no fraudulent non-disclosure or misrepresentation to us in respect of the *prior known fact*; and
- 2.7.5 cover under this Extension will be pursuant to the terms, conditions, exclusions and limitations of the policy in force at the time the *insured* first became aware of the *prior known fact*, but only where such earlier policy affords no broader, greater or wider cover in respect of the *claim* than the provisions of this Policy.

## Extensions applicable to all Insurance Clauses 1.1 a and b (Directors & Officers Liability)

### 2.8 Assets and Liberty Protection Cover

We will pay to or on behalf of an *insured person*, the:

2.8.1 *civil or bail bond fees*;

2.8.2 *prosecution costs*; and

2.8.3 *assets and liberty protection costs*,

incurred by the *insured person*, with our prior consent (such consent not to be unreasonably withheld or delayed), in relation to a *deprivation of asset and liberty proceeding* against such *insured person*.

The cover provided under this Extension shall be subject to the applicable *sub-limit of liability* specified in the *schedule*.

### 2.9 Non-Executive Director Additional Protection

We will pay the *excess limit of liability* for that portion of the *financial loss* of a *non-executive director* that arises from a *claim* made against such *non-executive director*.

The coverage provided under the *excess limit of liability* shall be available specifically excess of, and shall not drop down to be primary insurance until the exhaustion of:

- (i) the *limit of liability* of this Policy;
- (ii) the limit of liability of all other applicable directors and officers/management liability insurance policies written as specific excess over this Policy, or otherwise; and
- (iii) any and all contractual or statutory entitlement to indemnification available to any *non-executive director* or *officer* from any source whatsoever.

This Extension of cover shall not apply to *indemnifiable financial loss*.

### 2.10 Pre-Claim Event

We will pay to or on behalf of an *insured person* the *pre-claim costs* incurred, with our prior consent, by such *insured person* in connection with a *pre-claim event*.

The cover provided under this Extension shall be subject to the applicable *sub-limit of liability* specified in the *schedule*.

### 2.11 Extradition

We will pay to or on behalf of an *insured person* the *extradition costs* arising from an *extradition claim* made against such *insured person*.

The cover provided under this Extension, in the aggregate for clauses defined under definition 4.40, shall be subject to the applicable *sub-limit of liability* specified in the *schedule*.

### 2.12 Personal Reputation Restoration

We will pay the *personal reputation restoration expenses* of an *insured person* (and of the *company* to the extent the *company* has indemnified such *insured person* for such *financial loss*) resulting directly from a *personal reputation crisis*.

The *personal reputation crisis* must first arise during the *period of insurance* and must relate to a *claim* or *investigation*. A *personal reputation crisis* shall be deemed to 'first' arise when such press release or publication was first released. A *personal reputation crisis* shall conclude once the public relations/crisis management consultant advises the *policyholder* or such *insured person* that such *personal reputation crisis* no longer exists or when the *sub-limit of liability* has been exhausted.

The cover provided under this Extension shall be subject to the applicable *sub-limit of liability* specified in the *schedule*.

### 2.13 Taxes and Social Security Contributions

We will pay to or on behalf of an *insured person* the unpaid corporate taxes and/or social security contributions owed by the *company* due to the *company's financial impairment* to the extent that:

- (i) it is determined by final legal adjudication that the *insured person* is personally liable for payment of such taxes and/or social security contributions in the jurisdiction in which the *claim* is made; and
- (ii) such taxes and/or social security contributions do not constitute *indemnifiable financial loss*; and
- (iii) such taxes and compensation are not owed as the result of any intentional, criminal or wilful act to breach any statutory or contractual duty governing the payment of such taxes or compensation by such *insured person*.

The cover provided under this Extension shall be subject to the applicable *sub-limit of liability* specified in the *schedule*.

### 2.14 Health and Safety

We will pay to or on behalf of an *insured person*:

2.14.1 *financial loss*, including *investigation costs*, arising directly from a *claim* made or *investigation* commenced against such *insured person*, by an *official body* in relation to any alleged breach of workplace health and safety laws; or

2.14.2 *defence costs* and/or *investigation costs* in relation to any *corporate manslaughter proceeding*.

The cover provided under this Extension shall be subject to the applicable *sub-limit of liability* specified in the *schedule*.

### 2.15 Environmental Claim

We will pay to or on behalf of an *insured person* or the *company*, where it has indemnified an *insured person*, the *financial loss* that arises from an *environmental claim* made against such *insured*.

The cover provided under this Extension, and any cover provided under this Policy for an *environmental claim* shall be subject to the applicable *retention* and the *sub-limit of liability* as specified in the *schedule*.

### 2.16 Cyber Event

#### 2.16.1 Education & Training

We will pay for all reasonable and necessary costs and expenses of the *company* that arise from a *cyber event* or a *privacy event* for educational or training programs for any *director or officer* in connection with a covered *claim* made against an *insured*.

#### 2.16.2 Loss of Data

We will pay for all reasonable and necessary costs and expenses of the *company* that arise following a *cyber event* or a *privacy event* for the hiring of an IT security consultant to review and revise existing data protection policies or develop an internal incident response plan in connection with a covered *claim* made against an *insured*.

The cover provided under this Extension shall be subject to the *retention* applicable for Insurance Clause 1.1 b and the *sub-limit of liability*, for clause 2.16.1 and 2.16.2 combined, as specified in the *schedule*.

### 2.17 Insured Person ERP Election

If the *policyholder* is entitled to but does not exercise an *extended reporting period* as described in clauses 2.1.1 or 2.1.2 above, and this Policy is neither renewed nor replaced with any other directors and officers liability policy, then any *insured person(s)* may request an *extended reporting period*.

If we consent to such *extended reporting period*, it shall also set the additional premium which shall be duly paid by such *insured person*. The *extended reporting period* will only apply to the *financial loss* of the specific *insured person(s)* who elected such *extended reporting period* arising from *claims* against such *insured person(s)*. Only one *extended reporting period* shall apply to all such *insured persons* (combined), in the aggregate.



The right of election under this Extension shall lapse unless notice of such election is given by the *insured person* to us within thirty (30) days after the *policyholder's* right to exercise the *extended reporting period* has expired.

This Extension shall not apply to *mitigation costs*.

#### **2.18 Retired Directors and Officers Protection**

We will provide unlimited *extended reporting period* under this Policy for any *director or officer* who has retired from their position(s) as *director or officer* with the *company* solely as a result of them being required to retire on account of any age limit or limit on length of service in any applicable service contract or policy of the *company* during:

- (a) the *period of insurance* of this Policy; or
- (b) the period of insurance of any other directors and officers' insurance policy issued by us to the *policyholder* of which this Policy is a continuous renewal,

to the extent that this Policy is not renewed or replaced or where such renewal or replacement does not specifically provide *extended reporting period* cover for such *directors or officers*.

This Extension shall not apply to that portion of *financial loss* indemnified by a *company* or to any *directors or officers* who retired from their positions with the *company* for any other reason, including (but not limited to) in connection with or after a *change in control*.

### **Extensions applicable to Insurance Clause 1.2 (Professional Liability)**

#### **2.19 Loss of Documents and Data**

We shall indemnify the *insured* for the reasonable and necessary fees, costs and expenses incurred, with our prior consent, in connection with replacing or restoring *documents* belonging to a third party for which the *insured* is legally liable for their custody and safekeeping and which during the *period of insurance* have been destroyed, damaged, lost, distorted, or erased provided that such loss or damage is sustained while the *documents* are in the custody of an *insured* or of any person to whom an *insured* has entrusted them in the course of rendering *investment management services*.

We shall not be liable under this Extension for any costs and expenses directly or indirectly arising out of or in connection with a *security event* or a *privacy event*, operational wear and tear, gradual deterioration, moth or vermin.

The burden of proof that the *documents* have been the subject of a diligent search shall remain with the *insured*.

The cover provided under this Extension shall be subject to both the applicable *retention* and the *sub-limit of liability* specified in the *schedule*.

#### **2.20 Defamation**

We shall indemnify the *insured* for *financial loss* resulting from a *claim* based upon libel, slander, offence or injurious falsehood committed unintentionally by an *insured* on or after the *retroactive date* and prior to the end of the *period of insurance* within the provision of *investment management services*.

The cover provided under this Extension shall be subject to both the applicable *retention* and the *sub-limit of liability* specified in the *schedule*.

#### **2.21 Vicarious Liability**

We shall indemnify the *insured* for *financial loss* resulting from any *claim* made against the *insured* but based upon a *wrongful professional act* of an *outside service provider* involved in the provision of or failure to provide *investment management services* of or on behalf of the *insured* and for whom the *insured* is held vicariously liable.

The cover provided under this Extension shall be subject to both the applicable *retention* and the *sub-limit of liability* specified in the *schedule*.

## 2.22 Correction Costs

We shall indemnify the *correction costs* and the *costs of NAV correction* incurred by the *insured* in taking action after discovery of a *correction event* or a NAV calculation error which would, in the absence of such action, lead to a *claim* and *financial loss* covered under this Policy.

The burden of proving that such *correction event* or a NAV calculation error would result in a covered *claim* under this Policy shall rest with the *insured*.

The cover provided under this Extension shall be subject to both the applicable *retention* and the *sub-limit of liability* specified in the *schedule*.

## Extensions applicable to Insurance Clause 1.3 (Crime)

### 2.23 Fraudulent Impersonation

We shall indemnify the *insured* for *financial loss* which results directly from the *insured* or an *outside service provider* having, in good faith, transferred money, *securities* or *property* to a third party in reliance upon a *transfer instruction* purportedly issued by:

- (i) the *insured*;
- (ii) an *employee* or a *director or officer* of the *insured*;
- (iii) a *financial institution*;
- (iv) a client of the *insured*;
- (v) a *vendor*;
- (vi) a natural person, partnership or corporation authorised by written or electronic agreement with the *insured* to perform data processing services using a *computer system*; or
- (vii) any other person with the authority to provide such *transfer instruction*;

but which *transfer* instruction proves to have been fraudulently issued by an imposter without the knowledge or consent of the entity or natural person named in (i) to (vii) above.

The cover provided under this Extension shall be subject to both the applicable *retention* and the *sub-limit of liability* specified in the *schedule*.

It is a condition precedent to our liability under this Policy that:

- (a) before acting upon any *transfer instruction* and prior to the transfer of *property*, the *insured* shall confirm the validity of such *transfer instruction*. Such confirmation must include a prearranged procedure in which the *insured* either (1) verifies the authenticity and accuracy of the *transfer instruction* by means of a call back or similar procedure to a predetermined telephone number; or (2) any other verification procedure declared in the *proposal*; and
- (b) the *insured* shall preserve and produce for us, the inspection of a contemporaneous written record of this verification at (a) above, along with all elements of the fraudulent *transfer instruction*.

### 2.24 Care, Custody and Control

We shall indemnify the *insured* for *financial loss* resulting directly from the loss of *property*, money or *securities* belonging to any other natural person or organisation, but which is under the care, custody or control of the *company* and for which the *company* is legally liable.

The cover provided under this Extension shall be subject to both the applicable *retention* and the *sub-limit of liability* specified in the *schedule*.

## 2.25 Interest

We shall indemnify the *insured* for the amount of any interest which would have been received or which becomes payable by an *insured* resulting directly from a *financial loss* covered under this Policy, provided that our liability for such interest receivable or payable is calculated by applying the average of the Reserve Bank of Australia base rate in force between the time of sustaining such *financial loss* and the date of *discovery* of such *financial loss*.

The cover provided under this Extension shall be subject to both the applicable *retention* and the *sub-limit of liability* specified in the *schedule*.

## 2.26 Verification and Reconstitution Costs

We shall indemnify the *company* for its reasonable and necessary costs, expenses and fees, incurred with our prior consent, for the verification, restoration or reconstitution or removal of electronic computer programs or *electronic data* or removal of computer codes or *software*, stored within the *company's computer system*, or which the *company* owns, holds or is responsible for, resulting from a *computer violation*, a *computer fraud* that is covered under Insurance Clause 1.3 or an *impersonation fraud* covered under Extension 2.23.

The cover provided under this Extension shall be subject to both the applicable *retention* and the *sub-limit of liability* specified in the *schedule*.

## 2.27 Extortion

We shall indemnify the *insured* for *financial loss* resulting directly from the *insured* having delivered, transferred or caused to have transferred money, *securities* or *property*, with our prior consent, to a third party who the *insured* reasonably believes to be responsible for an *extortion threat*, for the purpose of terminating such *extortion threat*, to the extent and where such *financial loss* is insurable by law and provided that:

- 2.271 prior to the surrender or transfer of such money, *securities* or *property*, the person receiving the threat has made a reasonable effort to notify a *director or officer* of the *insured* and to notify the police or local law enforcement authorities concerning such threat; and
- 2.272 the forementioned *director or officer* is satisfied that the person making the threat is both capable of carrying it out and reasonably likely to do so and that the threatened action is feasible at the time it is made;
- 2.273 in respect of the surrender of money, *securities* or *property* during transit there was no knowledge by the *insured* of any such threat when the transit was initiated; and
- 2.274 the *insured* shall provide us with written verification of the *insured's* compliance with all applicable sanctions' requirements. There will be no obligation on us to provide consent, or any indemnity, under this Extension unless and until such written verification has been provided.

For the avoidance of doubt, any indemnity paid by us to the *insured* will be in the currency of the *limit of liability*.

There shall be no coverage under this Policy for money, *securities* or *property* transferred as ransom following kidnap.

The cover provided under this Extension shall be subject to both the applicable *retention* and the *sub-limit of liability* specified in the *schedule*.

## 2.28 Identity Theft

We shall indemnify the *identity expenses* incurred by a *company*.

The cover provided under this Extension shall be subject to both the applicable *retention* and the *sub-limit of liability* specified in the *schedule*.

## 2.29 Costs, Fees and Expenses

We shall indemnify the *insured* for its reasonable and necessary costs, expenses and fees, including legal fees, incurred with our prior consent:

2.29.1 in the defence of any demand, claim, suit or legal proceeding against the *insured*; or

2.29.2 in conducting any proceedings for indemnity, contribution or recovery,

which result directly from a *financial loss* covered under this Policy, and provided always that:

- (i) such costs, expenses and fees are not recoverable from any other party; and
- (ii) there is no duty upon us to advance any costs, expenses or fees to the *insured* prior to the conclusion of the demand claim, suit or proceeding.

The cover provided under this Extension shall be subject to both the applicable *retention* and the *sub-limit of liability* specified in the *schedule*.

We shall not be liable under this Extension for:

- (a) internal or overhead expenses of the *insured*;
- (b) salary or remuneration of any *employee*; or
- (c) any cost of implementing any award, directive or recommendation of a regulatory authority.

## 3. Changes in Risk

### 3.1 Changes in Subsidiary or Liquidation of Fund

If during the *period of insurance*, the *policyholder*, either directly or indirectly through one or more of its *subsidiaries*, sells off, spins off, merges or liquidate any *subsidiary* or *fund*, coverage under this Policy with respect to such *subsidiary* or *fund* shall continue until expiry of the *period of insurance* only for *claims*:

- 3.1.1 resulting from *wrongful managerial act* or *wrongful professional act* by an *insured* of such *subsidiary* or *fund* committed, or events taking place prior to the selling off, spinning off, merger or liquidation of such *subsidiary* or *fund*; and
- 3.1.2 *financial loss* of the *company* sustained or incurred in relation to or in connection with such *subsidiary* or *fund*, resulting from perils, fraud, acts or events committed, perpetrated, occurred or taking place prior to the selling off, spinning off, merger or liquidation of such *subsidiary* or *fund*;

provided always that:

- (i) such *claim* as referred to in clause 3.1.1 is first made during the *period of insurance* or the *extended reporting period* (if applicable); and
- (ii) such *financial loss* as referred to in clause 3.1.2 is first *discovered* during the *period of insurance*; and
- (iii) only an *insured*, other than the divested or liquidated *subsidiary* or *fund* or any of its *insured persons*, remains legally or contractually liable for such *claim* or *financial loss*.

### 3.2 New Subsidiaries or Fund

If during the *period of insurance*, the *policyholder*, either directly or indirectly through one or more of its *subsidiaries*, acquires or creates a new *subsidiary* or *fund*, coverage under this Policy is automatically extended to such new *subsidiary* or *fund* and its *insureds*, unless such:

#### 3.2.1 Subsidiary

- (i) as total assets, or assets or funds under management for the last complete accounting period prior to the acquisition which are greater than twenty per cent (20%) of the total consolidated assets, or assets or funds under management of the *policyholder* declared at the inception of this *period of insurance* or reported in the latest audited annual report;
- (ii) is incorporated, domiciled, registered, or provides *investment management services* in the United States of America or any state, territory or possession thereof;
- (iii) performs professional services that significantly differ from the *investment management services* declared at inception of the Policy; or
- (iv) has its equity *Securities* publicly traded on any Securities Exchange.

### 3.2.2 Fund

- (i) has total assets or funds under management or committed capital which are greater than twenty (20) percent of the total consolidated assets or funds under management of all the *funds* insured at inception of this Policy;
- (ii) is a private equity or venture capital fund;
- (iii) is a hedge fund or fund of hedge funds, including any absolute return fund;
- (iv) is incorporated, formed, based or registered in the United States of America or any state, territory or possession thereof; or
- (v) has its equity *securities* publicly traded on any Securities Exchange.

If a newly acquired or created *subsidiary* or *fund* falls into 3.2.1 to 3.2.2 above, such entity will be covered under this Policy, but only for a period of thirty (30) days from the effective date of acquisition or creation by the *policyholder*, or until the end of the *period of insurance*, whichever occurs first, provided the *policyholder* pays any additional premium required by us in connection with such new *subsidiary* or *fund*.

We may, in our sole discretion, extend coverage for any such new *subsidiary* beyond the thirty (30) day period if during the thirty (30) day period, the *policyholder*:

- (a) requests an extension of this Policy for such *subsidiary* or *fund* to us; and
- (b) give us enough details to allow us to assess and evaluate the potential increase in exposure; and
- (c) agrees to any additional premium and amendments to the Policy required by us at our sole discretion.

Unless otherwise agreed in and attached as an endorsement to this Policy, cover under this Policy for such *subsidiary* or *fund* first acquired or created during the *period of insurance* shall only apply for *wrongful managerial acts* or *wrongful professional acts*, or other acts, facts or event covered under this Policy, and for *financial loss* resulting directly from perils, fraud, acts or events committed, perpetrated, occurred or taking place after such *subsidiary* or *fund* is first acquired or created and whilst remaining a *subsidiary* or *fund* of the *policyholder*.

### 3.3 Change in Control

If during the *period of insurance*, a *change in control* occurs, coverage under this Policy shall only apply in respect of *wrongful managerial acts*, *wrongful professional acts*, perils, frauds, acts or other events, covered by this Policy, committed, perpetrated, occurred or taking place prior to the effective date of a *change in control*.

As a condition precedent to coverage under this Policy, the *policyholder* shall give notice to us of such *change in control* as soon as reasonably practicable, however no later than thirty (30) days after the *change in control*.

Notwithstanding the effect on cover caused by such *change in control* there shall be no entitlement to cancellation of this Policy by any party (other than for non-payment of premium) and the entire premium for this Policy shall be deemed to have been fully earned as of the date of such *change in control*.

### 3.4 Public Offering of Securities

If during the *period of insurance*, the *policyholder* or any *subsidiary* or *fund*:

- 3.4.1 announces its intention to make, or undergoes, a public offering(s) of its *securities* on any market or exchange, whether its *securities* are already traded or not by any means; or
- 3.4.2 causes its *securities* to be listed on any market or exchange on which its *securities* were not traded as of the inception date, or on the date of renewal, of this Policy; or
- 3.4.3 de-lists or changes the listing status or level of any of its *securities* or increases any level ADR to either a higher-level ADR or a direct US listing with a requirement to file an annual report form 10K or 20F,

then we shall not be liable to make any payment for *financial loss* in connection with any *claim* alleging, arising from, based upon, attributable to or as a consequence of such intended or actual offering, delisting or change in listing of *securities*, including the prospectus or any other disclosures made in connection with such offering, delisting or change in listing, unless the *policyholder* agrees to any amendments to this Policy and pays any additional premium required by us related to such offering, delisting or change in listing.

The *policyholder* shall make a request for such coverage within thirty (30) days following the public announcement of such offering, delisting or change in listing and in any case prior to the actual offering, delisting or change in listing.

## 4. Definitions

When used in this Policy, its *schedule* and its Endorsements, the following definitions shall apply:

### 4.1 Asset and Liberty Protection Costs

*asset and liberty protection costs* mean reasonable and necessary fees, costs, charges and expenses by an *insured person* in defending a *deprivation of asset and liberty proceeding* against such *insured person*.

### 4.2 Bodily Injury

*bodily injury* means illness, injury, sickness, mental anguish, emotional distress, disease or death of any person.

### 4.3 Breach Costs

*breach costs* mean all fees, costs, charges, and expenses incurred by the *insured* (whether voluntarily or otherwise) for the purposes of retaining any one or more of an accountant, attorney, lawyer, forensics firm, payment card industry forensics investigator, public relations consultant, and other third party to:

- 4.3.1 conduct computer forensic analysis to investigate the *company's computer system*;
- 4.3.2 determine indemnification obligations under any written contract with respect to a *wrongful professional act* by an *outside service provider*;
- 4.3.3 determine if the *insured* is obligated to notify potentially affected individuals or applicable regulatory agencies;
- 4.3.4 effect compliance with any (i) *GDPR proceeding*, or (ii) *privacy regulation*;
- 4.3.5 notify potentially affected individuals or applicable regulatory agencies and establish new account numbers for the *company's* potentially affected individuals;
- 4.3.6 plan, implement, execute, and manage a public relations campaign to attempt to counter or minimise any actual or anticipated adverse effects of negative publicity, or to attempt to protect or restore the *company's* business reputation in response to negative publicity,
- 4.3.7 provide credit and identification monitoring services, identification restoration services, and identification theft insurance (provided we shall have no obligation to apply for or furnish such insurance) for potentially affected individuals; or
- 4.3.8 provide call centre services to handle inquiries from potentially affected individuals,

in responding to or in connection with any *privacy event* or *security event* for the purpose of Insurance Clause 1.2 and or a *cyber event* for the purpose of Insurance Clause 1.3.

#### 4.4 Change in Control

*change in control* means:

4.4.1 any event wherein any person, entity or group:

- (i) acquires more than 50% of the *policyholder's* share capital;
- (ii) acquires the majority of the voting rights in the *policyholder*;
- (iii) assumes the right to appoint or remove the majority of the board of directors (or equivalent position) of the *policyholder*;
- (iv) assumes control pursuant to a written agreement with other shareholders over the majority of the voting rights in the *policyholder*;
- (v) merges with the *policyholder*, such that the *policyholder* is not the surviving entity; or
- (vi) is appointed as a trustee in bankruptcy, administrator, receiver, liquidator, conservator, rehabilitator (or equivalent official or person in the applicable jurisdiction) for the *policyholder*, or the *policyholder* becomes a debtor-in-possession (or equivalent status in the applicable jurisdiction).

4.4.2 the nationalisation of the *policyholder* by the taking of the *company's* assets directly or indirectly, in whole or in substantial part, into state or government ownership; or

4.4.3 any government, quasi-government or government agency (including the International Monetary Fund), other regulatory agency, body or funding entity or financial stability fund:

- (i) assuming the voting control of a shareholders' meeting of the *policyholder*;
- (ii) dismissing the Board of Directors of the *policyholder*;
- (iii) appointing a management committee of the *policyholder*; or
- (iv) taking over the operations of the *policyholder* either in part or in whole, or disposing of such an undertaking, either in part or in whole.

#### 4.5 Civil Fines and Penalties

*civil fines and penalties* mean:

4.5.1 civil, administrative or regulatory monetary penalties directly assessed by an *official body* against:

- (i) an *insured person* for a violation of any law, regulation or statute;
- (ii) an *employee* for personal civil liability arising out of the provision or failure to provide *investment management services*,

but only if such fines and penalties are not relating to or resulting from a knowing, wilful or criminal violation of law; and

4.5.2 civil monetary penalties directly assessed against an *insured person* pursuant to Section 2(g)(2)(B) or Section 78ff(c)(2)(B) of the United States (U.S.) Foreign Corrupt Practices Act, 15 U.S.C. Section 78dd-2(g)(2)(B) or any similar legislation of any other country.

#### 4.6 Civil or Bail Bond Fees

*civil or bail bond fees* mean the commercially reasonable fee arrangement or premium (and only that which is available at reasonable commercial rates) to obtain a bond or other similar financial instrument in respect of an *insured person's* contingent obligations imposed by a court in connection with a *claim* and excluding the amount of any bond or other guarantee itself.

#### 4.7 Claim

*claim* means:

- 4.7.1 a written demand against any *insured*, for monetary, non-monetary or injunctive relief or other legal remedy, commenced by the *insured's* receipt of such demand, except where such demand is made by an *insured* unless the demand is (a) a required precursor to the commencement of any civil proceeding as described in clause 4.7.2 or (b) is made by an *employee* acting in the capacity as customer of the *company*;
- 4.7.2 a suit or proceeding, including any civil proceeding, third party proceeding, counterclaim, arbitration or mediation proceeding, commenced by the service of a complaint or similar pleading, brought by any person or entity against an *insured* for monetary damages or other relief, including non-pecuniary relief;
- 4.7.3 a criminal proceeding brought against an *insured person*;
- 4.7.4 a formal regulatory or administrative proceeding brought against an *insured*, commenced by the filing of a notice of charges or similar document; or
- 4.7.5 an arbitration proceeding against any *insured*, or mediation or other dispute resolution process, alleging a *wrongful managerial act* or a *wrongful professional act*.

For the purpose of Insurance Clause 1.1, *claim* shall also mean an *employment claim* and a *securities claim*.

For the purposes of determining cover and the applicability and interpretation of the terms and conditions of Sections 3, 5, 6 and 7 of this Policy, *claim* shall also mean *investigation, potential claim, pre-claim event, corporate manslaughter proceeding, securities claim, employment practices claim, environmental claim* and *extradition claim* and the event insured under Extension 2.19 'Loss of Documents and Data'.

#### 4.8 Clean Up Costs

*clean up costs* mean reasonable costs, expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralising, detoxifying, reducing, remediating or assessing the effects of *pollutants* or greenhouse gases.

#### 4.9 Committee

*committee* means any committee, explicitly mentioned in the bye laws of the *insured entity*, which has been created to perform specific directional or supervisory acts on behalf of the *insured entity*.

#### 4.10 Company

*company* means:

- 4.10.1 the *policyholder* and any *subsidiary* for the purpose of Insurance Clause 1.1 and all Extensions applicable to Insurance Clause 1.1;
- 4.10.2 any *fund* for the purpose of Insurance Clause 1.2 and all Extensions applicable to Insurance Clause 1.2;
- 4.10.3 the *policyholder*, any *subsidiary* and any *fund* for the purpose of Insurance Clause 1.3 and all Extensions applicable to Insurance Clause 1.3.

*Company* does not mean any entity in which one or more *funds* holds or held *securities*, whether registered and traded or not in a public market, or other debt or equity interest, or is performing or has performed due diligence in anticipation of making an investment of its capital in such entity.



#### 4.11 Computer Fraud

*computer fraud* means:

- 4.11.1 the intentional unlawful, unauthorised, dishonest, fraudulent or malicious misuse or manipulation of the *insured's computer system* (either directly or indirectly via another *computer system*) through the introduction of data or computer instructions directly into, or modification or deletion of data or computer instructions within the *insured's computer system*, by a third party, upon which the *insured* or an *outside service provider* has acted and relied, and provided that such introduction, modification or deletion results in either:
- (i) the loss of money, *securities* or *property*, or the transfer of such money, *securities* or *property* by the *insured* or an *outside service provider* to a third party; or
  - (ii) an account of the *insured*, or of its client or customer, to be added, deleted, debited or credited; or
  - (iii) an unauthorised or fictitious account to be debited or credited;
- 4.11.2 a *financial institution*, any client or customer of the *insured*, or a natural person, partnership or corporation authorised by written or electronic agreement with the *insured* to perform data processing services using a *computer system*, having acted or relied upon fraudulent *electronic communications* or fraudulent *telephone communications* purporting to have been, but were not sent by the *insured* or an *outside service provider*.

#### 4.12 Computer System

*computer system* means computer hardware and *software* and the *electronic data* stored thereon including associated input and output devices, data storage devices, networking equipment, components, firmware and electronic back up facilities including systems available through the internet, intranets, extranets or virtual private networks.

Solely with respect to the *insured's computer system*, this includes hardware and *software*, and the *electronic data* stored thereon, which:

- (i) the *insured* leases, owns or operates;
- (ii) the *insured* leases or owns, but is operated by a third party pursuant to a written contract for and on behalf of the *insured*; or
- (iii) is owned by the *insured's employees* and operated by them on behalf of the *insured* for the purpose of obtaining remote access to the *insured's computer system* or otherwise operated pursuant to the *insured's Bring Your Own Device Policy*,

to provide services to the *insured*.

#### 4.13 Computer Violation

*computer violation* means:

- 4.13.1 the introduction of *malware* into the *insured's computer system*; or
- 4.13.2 the actual or attempted fraudulent, dishonest, malicious or criminal preparation, introduction, modification, destruction, corruption, deletion, replication or extraction of any *software*, *electronic communications*, *electronic data*, or *uncertificated security* by a natural person, who has:
- (i) gained unauthorised access to the *insured entity's computer system*; or
  - (ii) authorised access to the *insured entity's computer system*, but uses such access to cause such preparation, introduction, modification, destruction, corruption, deletion, replication or extraction;

upon which the *insured* or an *outsider service provider* has acted or relied, and which causes damage to, or loss, destruction or alteration of any *computer system*, any *electronic data* or *software* stored within a *computer system* or *electronic communication system* of the *insured*.

#### 4.14 Continuity Date

*continuity date* means for *insured persons*, the Continuity Date for *insured persons* specified in the *schedule*.

#### 4.15 Corporate Manslaughter Proceeding

*corporate manslaughter proceeding* means a criminal proceeding for manslaughter against a *director or officer* in their capacity as such for a *company*, arising out of an incident giving rise to one or more fatalities in which the *company* is implicated or alleged to have played some part, including but not limited to involuntary, constructive or grossly negligent manslaughter, and directly related to the business of the *company*.

#### 4.16 Corporate Transaction

*corporate transaction* means any transaction involving the purchase or sale of shares, equity, debt or assets of any entity.

#### 4.17 Correction Costs

*correction costs* means reasonable and necessary costs and expenses, incurred by the *insured*, with our prior consent, in taking action, after discovery during the *period of insurance* of a *correction event* or a NAV calculation error, to correct direct monetary damages to a client or customer of the *insured*, in order to mitigate, minimise or prevent the *insured's* exposure to any actual or potential *claim* and *financial loss* that would otherwise be covered under this Policy if a *claim* were to be made against the *insured*.

*Correction costs* shall include *costs of NAV correction*.

*Correction costs* does not include costs, loss, damages, charges and expenses:

- (i) arising out of the *insured's* decisions in connection with investments or transactions of the client's or customer's assets, made pursuant to discretionary authority granted to an *insured*, even if such authority is subject to investment guidelines or general investment instructions; or
- (ii) arising out of: (a) loss of actual money, securities or other property in the custody or control of the *insured*; or (b) diminution in value or damages resulting from the diminution in value of money, securities or other property unless caused directly by a *wrongful professional act* of the *insured*; or (c) the wire or electronic transfer of funds; or
- (iii) required to be incurred by the *insured* pursuant to any contractual obligation to any clients or customer of the *insured*, if such obligation does not otherwise constitute covered *financial loss* and would not otherwise exist in the absence of such contractual obligation; or
- (iv) for which no coverage would have been afforded under this Policy had the *wrongful professional act* resulted in a *claim*.

Furthermore, we shall not be liable for:

- (i) internal or overhead expenses of the *insured*, other than those involved in taking immediate action to correct, prevent, limit or mitigate its exposure to a covered *financial loss*;
- (ii) salary or remuneration of any *employee*;
- (iii) any increase in the liability of or the *financial loss* of the *insured* arising from taking such actions; or
- (iv) the amount of any applicable *retention*.

#### 4.18 Correction Event

*correction event* means a *wrongful professional act* of an *insured* which:

- 4.18.1 arises out of the *insured's* failure to follow directions from a client or customer in connection with investments or transactions of that client's or customer's assets, made at the specific direction or approval of such client or customer; and
- 4.18.2 arises in the ordinary course of the *insured's* operations and if not corrected would automatically result in monetary damages to a client or customer of the *insured*, or if the client or customer is a *fund*, would directly result in damage to the shareholders of that *fund*; and
- 4.18.3 would, in the absence of any correction, result or have resulted in a *claim* and in *financial loss* that would be covered under this Policy.

#### 4.19 Costs of NAV Correction

*costs of NAV correction* mean the reasonable and necessary external costs and expenses that the *insured* is required to pay, with our prior consent:

- 4.19.1 to an independent auditor of a *fund* for monitoring the correction process of a NAV calculation error; or
- 4.19.2 to identify or notify *fund's* investors who must be indemnified for a NAV calculation error; or
- 4.19.3 to obtain the advice of an outside public relations consultant for the mitigation of the *insured's* reputation damage following a NAV calculation error, if such damage is objectively established by media reports or other publicly available third-party data,

arising out of or in connection with any unintentional incorrect calculation of the Net Asset Value of a *fund*, occurring and discovered during the *period of insurance*, which exceeds the applicable tolerance threshold set forth by an *official body*, and for which an *insured* is required to take corrective actions, in accordance with the directives and requirements set forth by such *official body*.

It is a condition precedent to our liability under this Policy that the *insured* provides formal written notice of the discovery of a NAV calculation error, by or on behalf of the *fund*, to the *official body*, as soon as required and pursuant to the express requirements and provisions of such *official body*.

#### 4.20 Counterfeit or Counterfeiting

*counterfeit or counterfeiting* means the imitation of a physical instrument, fiat currency or fiat coin which, because of the quality of the imitation, the *company* or an *outside service provider* believes it is the authentic original instrument, currency or coin. Fictitious instruments, currency or coin which merely contain fraudulent misrepresentation of fact and are genuinely signed or endorsed are not *counterfeit*.

#### 4.21 Cyber Event

*cyber event* means:

- 4.21.1 the unauthorised access to;
  - 4.21.2 physical theft by a person other than an *employee* of;
  - 4.21.3 introduction of *malware* into; or
  - 4.21.4 denial of service attack upon,
- the *insured's computer system* causing a breach of network security.

#### 4.22 Defence Costs

*defence costs* mean reasonable and necessary fees (including but not limited to attorneys' fees and experts' fees), costs, charges and expenses (other than regular or overtime wages, salaries, remuneration, fees or overhead of an *insured*) incurred with our prior consent, after a *claim* is made against the *insured*:

- 4.22.1 by or on behalf of an *insured* in the investigation, defence, discharge, dismissal, adjustment, settlement or appeal of any such *claim*; or

4.22.2 by any accredited expert retained through defence lawyers, on behalf of an *insured* to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a *claim*; or

4.22.3 by or on behalf of the *insured* in conducting any proceeding for indemnity, contribution or recovery relating to such *claim*; or

4.22.4 by or on behalf of the *insured* in the pursuit of any appeal from a final award of a court, tribunal or alternative dispute resolution process binding on the *insured* and resulting from such *claim*.

*Defence costs* shall not include:

- (i) *investigation costs*;
- (ii) any fees, costs, charges and expenses incurred by the *company* in connection with any direction or request by an *official body* to provide them with a report on a matter or appoint a person to provide them with a report on a matter under Section 166 or 166A of the Financial Services and Markets Act 2000 (as enacted in the United Kingdom) or any equivalent or similar legal or regulatory provision in any other jurisdiction.

#### **4.23 Deprivation of Assets and Liberty Proceeding**

*deprivation of assets and liberty proceeding* shall mean any formal or official proceeding brought against an *insured person* by any *official body*, resulting directly from or as part of a covered *claim*, seeking:

4.23.1 confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such *insured person*;

4.23.2 a charge over real property or personal assets of such *insured person*;

4.23.3 a temporary or permanent prohibition on such *insured person* from holding the office of or performing the function of a director or officer (or equivalent) of any entity;

4.23.4 restriction of such *insured person's* liberty to a specified domestic residence or an official detention;

4.23.5 a prohibition on such *insured person* departing from a country; or

4.23.6 deportation of such *insured person* following revocation of otherwise proper, current and valid immigration status for any reason other than such *insured person's* conviction of a crime.

#### **4.24 Director or Officer**

*director or officer* means any natural person who is a past, present or future director or officer duly elected or appointed as a director, officer, management committee member, member of the board of managers, supervisory board member, management board member, trustee or governor, or equivalent position in a foreign jurisdiction, of the *company*, including a *non-executive director*, independent director of the *company* or an 'Accountable Person' within the meaning of the Banking Act 1959 (Cth).

#### **4.25 Discovery or Discovered**

*discovery* means when a *responsible officer* first has knowledge of any peril, fraud, act, event, facts or matters which would cause such *responsible officer* to reasonably foresee that a *financial loss* covered by this Policy is likely to have been or to be incurred even though the exact amount or details of such *financial loss*, act, peril, event, facts or matters are not known at the time of discovery. *Discovery* by any *responsible officer* shall constitute discovery by every *insured*.

#### **4.26 Document**

*document* means records or documents of any nature, including computer records and *electronic data*, but excluding any bill of exchange, cheque, currency, draft, letter of credit, money order, promissory note, cryptographic or digital assets or currency, cryptographic key material providing access to digital currency systems, or other negotiable instruments including any records thereof.

#### 4.27 Electronic Communications

*electronic communications* mean information, instructions, messages or payments transmitted or communicated:

4.271 digitally through an *electronic communication system* or over the internet; or

4.272 through the delivery of *storage media*.

#### 4.28 Electronic Communication System

*electronic communication system* means systems which permit the digital transmission of instructions, messages, information or payments, including:

- (i) electronic communication operations by Fedwire, Clearing House Interbank Payment System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), Clearing House Automated Payment System (CHAPS), the funds transfer system for the transfer of preauthorised recurring debits and credits of an Automated Clearing House Association which is a member of the National Automated Clearing House Association and similar automated communication systems; and
- (ii) those systems which operate automated teller machines or point of sale terminals and include any shared networks or facilities for said system in which the *company* participates; and
- (iii) telephone banking communications system which provides clients of the *company* with access to the *company's computer system* via an automated touch tone telephone service and which require the use of *Tested* code (including but not limited to a PIN number) in order to effect any banking transactions; and
- (iv) *tested* telex and *tested* telefacsimile.

#### 4.29 Electronic Data

*electronic data* means information stored or transmitted in digital format usable in a *computer system*.

*Electronic data* does not include *software* or cryptographic or digital currency or tokens of any kind, digital assets functioning or intended to function as a medium of exchange, or cryptographic key material providing access to digital currency systems.

#### 4.30 Emergency Costs

*emergency costs* means that part of *defence costs, mitigation costs, investigation costs, extradition costs* or *asset and liberty protection costs* incurred by the *insured* prior to receiving our consent when such prior consent cannot reasonably be obtained in a timely manner in relation to a *claim*, and for which we shall provide retroactive approval for such costs in accordance with Section 6.6 of this Policy.

#### 4.31 Employee

*employee* means:

- 4.31.1 a natural person who was, is or during the *period of insurance* becomes a paid employee (full time, part-time or temporary) in the regular service of the *company* and in the ordinary course of the *company's* business, and whom the *company* compensates by salary, wages and/or commissions and has the right to govern, instruct and direct and under the direct control and supervision of such *company*;
- 4.31.2 a natural person seconded to the *company*, or guest student pursuing studies or duties or any person engaged in work experience or on a training scheme with the *company* while working under their direct control and supervision; or
- 4.31.3 a natural person who is a member of a *committee*; or
- 4.31.4 a *director or officer* of the *company*, but only when:
  - (i) performing acts within the scope of the usual duties of an employee providing services to or for the *company* under a contract of employment and under the direct control and supervision of such *company*, or

- (ii) while acting as a member of a *committee* duly elected or appointed by resolution of the board of directors of the *company* to perform specific services, or otherwise directed by a written decision or instruction of the board of directors, to perform specific acts or services, as distinguished from general directorial acts, on behalf of the *company* and working under the direct control and supervision of the *company*;

4.31.5 In respect of Insurance Clause 1.3 only, *employee* shall also include:

- (i) a natural person who is an ex-employee of the *company* for a period not exceeding 60 days following the termination of their employment with the *company*, other than when their employment is terminated as a result of a *wrongful dishonest act*; or
- (ii) a natural person whose identity the *insured* is unable to discover, but whose *wrongful dishonest act* caused a *financial loss* under this Policy and the evidence proves beyond reasonable doubt that the *financial loss* was sustained due to a *wrongful dishonest act* of a person under 4.31.1 to 4.31.4 above.

*Employee* does not mean any external auditor, external accountant, independent agents or broker, independent financial advisor, tide agent or any similar agent or independent representative remunerated on sales or commission basis, external lawyers or solicitors or employee of independent valuation firms.

#### 4.32 Employment Practices Claim

*employment practices claim* means a *claim* based upon or alleging an *employment practices wrongful act*.

#### 4.33 Employment Practices Wrongful Act

*employment practices wrongful act* means:

4.33.1 any actual or alleged act, error or omission with respect to any employment or prospective employment of any past, present, future or prospective *employee* or *director* or *officer* of the *company*; or

4.33.2 a proceeding, investigation or charge brought by or before the Human Rights Commission (or similar body).

Such proceeding, investigation or charge will be deemed to be made against an *insured person* when it is first brought.

#### 4.34 Environmental Claim

*environmental claim* means any *claim* based upon, arising out of or attributable to:

4.34.1 the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of *pollutants* or greenhouse gases into or on real or personal property, water or the atmosphere; or

4.34.2 any direction or request that the *company* or the *insured persons* test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *pollutants* or greenhouse gases, or any voluntary decision to do so, whether or not such greenhouse gases are *pollutants*.

#### 4.35 Excess Limit of Liability

The additional *excess limit of liability* means our maximum liability per *non-executive director*, as specified the *schedule*, arising from all *claims* made against such *non-executive director*, and in the aggregate, as specified in the *schedule*, for all *claims* against all *non-executive directors* combined, payable under this Policy for all *financial loss*, as set out in Extension 2.9 Non-Executive Director Additional Protection.

#### 4.36 Extended Reporting Period

*extended reporting period* means the period immediately following the *period of insurance* during which the *insured* may notify us of any *claim* first made during such period for a *wrongful managerial act* or a *wrongful professional act*, or of *financial loss* first *discovered* during such *extended reporting period* resulting directly from any peril, fraud, act or event covered under this Policy, and committed, perpetrated or occurring or arising prior to the expiration of the *period of insurance*.

#### 4.37 Extortion Threat

*extortion threat* means a threat communicated to the *insured*:

- 4.37.1 to do bodily harm to any director, trustee, officer, partner, *employee* (or a relative, guest or any member of the household of such director, trustee, officer, partner, employee) who is, or allegedly is, being held captive or under threat;
- 4.37.2 to destroy or cause physical damage to the *premises, property, or computer systems* of the *insured*; or
- 4.37.3 to cause the *insured* to transfer, pay or deliver money, *securities or property* by reason of having gained unauthorised access to a *computer system* of the *insured*.

*Extortion threat* shall not include, and no cover shall be available under any of the Insurance Clauses or Extensions to this Policy for, any threat:

- (i) to introduce *malware* into the *computer system* of the *insured*;
- (ii) to sell, disclose, disseminate or divulge confidential security codes, computer programs or *electronic data* to another person or party;
- (iii) to destroy, corrupt, alter, encrypt or otherwise make unavailable computer programs or *electronic data* which are stored within a *computer system* of the *insured* by causing a computer program or *electronic data* to be dishonestly, fraudulently, maliciously or criminally input, modified, corrupted or deleted; or
- (iv) to deny access to a *computer system* or *electronic communication system* of the *insured*.

#### 4.38 Extradition

*extradition* means any formal process by which an *insured person* located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation resulting directly from another *claim* (other than an *extradition claim*) that is covered under this Policy.

#### 4.39 Extradition Claim

*extradition claim* means an official request for *extradition* or the execution of a warrant for arrest where such execution is an element of the *extradition*.

#### 4.40 Extradition Costs

*extradition costs* shall mean reasonable and necessary fees, costs and expenses incurred, with our prior consent, such consent not to be unreasonably withheld or delayed, in connection with:

4.40.1 an *insured person* lawfully:

- (a) opposing, challenging, resisting or defending any *extradition claim*; or
- (b) appealing any order or other grant of *extradition* of such *insured person*;

4.40.2 an *insured person* retaining the services of an accredited crisis counsellor and/or tax advisor and/or public relations consultant, exclusively and directly in connection with the *extradition* of that *insured person*; or

4.40.3 the overseas travelling costs (one round trip) and accommodation for the *insured person*, his/her lawful spouse or domestic partner and any children under the age of eighteen, directly in connection with the *extradition* of such *insured person*.

#### 4.41 Financial Impairment

*financial impairment* means the status of the *company* resulting from:

- 4.41.1 the appointment by any governmental, provincial, federal or state official, agency or court of any trustee in bankruptcy, administrator, receiver, liquidator, conservator, rehabilitator (or equivalent official or person in the applicable jurisdiction) to take control of, supervise, manage or liquidate the *company*; or
- 4.41.2 the *company* becoming a debtor in possession (or the equivalent status in the applicable jurisdiction).

#### 4.42 Financial Institution

*financial institution* means:

- 4.42.1 any bank, credit institution, undertaking for collective investment in *securities*, investment firm, investment advisory or asset management company or other financial institution; or
- 4.42.2 any regulated stock exchange, regulated commodities or mercantile exchange, regulated future or derivatives exchange, or clearing house regulated by any competent financial service authority, or any other regulated trading facility, system or network providing services or functionality of the same nature; or
- 4.42.3 any entity or organisation with whom the *company* has a written or electronic contract or agreement for the provision of purchasing services, safekeeping, registration and entitlement records in connection with *securities*; or
- 4.42.4 any regulated central or international securities depository with whom the *company* has entered into a written or electronic contract or agreement for the purchase, transfer, sale or pledge of *uncertificated securities*.

#### 4.43 Financial Instrument

*financial instrument* means cheques, bill of exchange, letter of credit, drafts or similar written promises, orders or directions to pay a certain sum of money that are made, drawn by or drawn upon an *insured* or by anyone acting or purporting to be acting as the *insured's* agent.

#### 4.44 Financial Loss

*financial loss* in respect of Insurance Clauses 1.1 and 1.2 means the total amount the *insured* is liable to pay for:

- 4.44.1 compensatory damages and related costs resulting from a *claim* made against such *insured*, for which coverage applies, awarded pursuant to a judgment or other adjudication of a court or tribunal by whose jurisdiction the *insured* is bound, or following arbitration or other alternative dispute resolution processes whose findings are binding upon the *insured*, including, but not limited to judgments (and any award of pre-judgment and post-judgment) interest on, and plaintiff's or claimant's legal fees awarded with respect to covered damages or compensation for damages awarded by an *official body*;
- 4.44.2 compensation for damages awarded by an *official body*;
- 4.44.3 a settlement negotiated by the *insured* with our prior consent in accordance with the provisions of this Policy;
- 4.44.4 *defence costs*;
- 4.44.5 *investigation costs, civil or bail bond fees, prosecution costs, and assets and liberty protection costs*;
- 4.44.6 the fees, costs, expenses and amounts covered under Extension 2.2 Loss Mitigation, 2.3 Emergency Costs, 2.5 Civil and Administrative Fines and Penalties, 2.10 Pre-Claim Event, 2.11 Extradition, 2.12 Personal Reputation Restoration, 2.13 Taxes and Social Security Contributions, 2.14 Health and Safety, 2.15 Environmental Claim, 2.16 Cyber Event, 2.19 Loss of Documents and Data, 2.20 Defamation, and 2.22 Correction Costs in Section 2 of this Policy.

*financial loss* in respect of Insurance Clause 1.3 means:

- 4.44.7 direct financial loss of any *property*, money or *securities* sustained by the *insured* as a result of any single peril, fraud, act, event or omission (or related series of perils, frauds, acts, events or omissions) for which coverage is provided under this Policy; or
- 4.44.8 the fees, costs, expenses and amounts covered under Extension 2.2 Loss Mitigation, 2.23 Fraudulent Impersonation, 2.24 Care Custody and Control, 2.25 Interest, 2.6 Verification and Reconstitution Costs, 2.27 Extortion, 2.28 Identity Theft, 2.29 Costs Fees and Expenses in Section 2 of this Policy.



*Financial loss* does not include any of the following:

- (a) any amount for which the *insured* are absolved from payment by reason of any covenant, agreement or court order;
- (b) wages, salaries, fees, commissions, bonuses, promotions, profit sharing or other remuneration, social or pension benefits or contributions or other employment related benefits, except as provided under Extension 2.13 Taxes and Social Security Contributions, or that part of bonuses, commissions or profit sharing paid to an *employee* for a specific transaction with which such *employee* was involved and in respect of which that *employee* had committed a *wrongful dishonest act* covered under this Policy;
- (c) fines or penalties, other than as provided under Extension 2.5, or punitive, exemplary or multiple damages, except: (i) when compensatory in nature and (ii) when such damages are assessed or imposed with respect to a covered *claim*, other than an *employment practices claim*, (iii) and if and only to the extent that such damages are insurable under the law applicable to this Policy and the jurisdiction in which such damages are assessed or imposed and such *claim* is made or the *wrongful managerial act* or *wrongful professional act* that gave rise to a *claim* took place;
- (d) any amount incurred by the *company* that represents or is substantially equivalent to an increase in the consideration paid or proposed to be paid by a *company* in connection with its purchase of any *securities* or assets;
- (e) *clean up costs* for which any *insured* may be liable;
- (f) disgorgement, reimbursement or restitution of any kind;
- (g) any amount that constitutes loss or deprivation of fees, income or profits by the *insured*, including interests and dividends or loss or rights and privileges;
- (h) any amount that constitutes return by the *insured* of fees, commissions, or royalties, no matter whether claimed as restitution of specific funds, forfeiture, financial loss, setoff or otherwise;
- (i) amounts that constitute contractual penalties or *liquidated damages*;
- (j) amounts or loss which are deemed uninsurable under the law pursuant to which this Policy shall be construed or in the jurisdiction where the *claim* is made or brought;
- (k) the theft or loss of confidential information, including customer information, other than the damage, destruction or alteration of *electronic data* resulting from a covered *computer violation* or *computer fraud*;
- (l) *breach costs*; or
- (m) In respect to Insurance Clause 1.3 only, any loss arising from the *insured* owning, trading in, or being responsible for the custodianship of cryptographic or digital currency or tokens of any kind, digital assets functioning or intended to function as a medium of exchange, or cryptographic key material providing access to digital currency systems.

#### **4.45 Forgery or Forged**

*forgery or forged* means bearing the forged signature or endorsing of the name of another genuine person or a copy of said person's signature without the authority of that person and with the intent to deceive, but does not mean the signing or endorsing, in whole or in part, of one's own name, in any capacity, for any purpose. Mechanically or electronically produced or reproduced signatures are treated the same as handwritten signatures.

#### **4.46 Fraudulent Alteration**

*fraudulent alteration* means a material alteration of a *financial instrument* for a fraudulent purpose by any person other than the person who was authorised to prepare to sign such instrument.

#### 4.47 Fund

*fund* means any trust, investment trust, investment fund, investment management company (open or closed ended), managed investment scheme, partnership, undertaking for collective investment, real estate fund, other fund, sub-fund, compartment, mandate or other similar entity sponsored, created or promoted by a *company*, but does not include any employee benefit, pension, welfare benefit, share option or share saver plan or charitable fund or foundation maintained by the *policyholder* or a *subsidiary* for the benefit of the past, present and or future employees or their respective beneficiaries on or after the inception date of this Policy. Furthermore, *fund* shall not include any vehicle or structure created for securitisation purposes only, or any Special Purpose Acquisition Company (SPAC) or equivalent vehicle created solely to raise capital through an initial public offering (IPO) for the purpose of acquiring an existing company.

#### 4.48 GDPR

*GDPR* means the General Data Protection Regulation (Regulation (EU) 2016/679) and any amendment thereto. *GDPR* shall also include any state, provincial, territorial, local, or federal regulations enacted in furtherance of or pursuant to implementation of the General Data Protection Regulation (Regulation (EU) 2016/679) and any amendment thereto.

#### 4.49 GDPR Proceeding

*GDPR proceeding* means a formal investigation of or an administrative adjudication proceeding against an *insured* concerning the *GDPR* by an administrative or regulatory agency, including an appeal thereof, commenced by the *insured's* receipt of a subpoena, investigative demand, complaint or similar document.

#### 4.50 Identity Expenses

*identity expenses* mean reasonable and necessary legal, expert or consultant fees, costs and expenses incurred by the *company* during the *period of insurance*, with our prior consent, resulting directly from an *identity theft*:

- (i) to correct or reinstate official public records;
- (ii) when applying for civil or criminal proceedings to be dismissed or withdrawn because the alleged liability resides with or the alleged offence was committed by someone else other than the *insured*; or
- (iii) to investigate the identity of the perpetrator and their method of operation in respect of an *identity theft*; or
- (iv) to procure public relations services to redress adverse publicity or injury to their reputation; or
- (v) costs of rewriting or amending the *insured's* software programs or systems, where such rewriting or amending is necessary to correct the programs or amend the security codes following an *identity theft*.

#### 4.51 Identity Theft

*identity theft* means the theft or fraudulent modification, alteration or corruption by an *employee* or a third party of information or publicly available data on file or within the *computer systems* owned or controlled by an *insured* or of an official registry, which relates to the *insured's* formation and genuine identity (including statutorily required returns or filings, official records of regulatory authorisations, licenses and permits and records of legal compliance or infractions), which data:

- (i) is used to publicly document, authenticate or prove the existence of the entity; or
- (ii) which may be relied upon by investors, *financial institutions*, vendors, credit reporting authorities and others in assessing and establishing the *insured's* credit ratings.

#### 4.52 Impersonation Fraud

*impersonation fraud* means the *insured* or an *outside service provider* being deceived as to the identity of a third party and acting or relying upon a *transfer instruction* from that third party resulting in the transfer of money, *securities* or *property*.

#### 4.53 Indemnifiable Financial Loss

*indemnifiable financial loss* means the *financial loss* which the *company* is not specifically prohibited from indemnifying the *insured person* for, by reason of the law applicable to the *company*, the *company's* statutes or by-laws, or any resolution of the *company's* shareholders, unless the *company* is unable to indemnify the *insured person* due to *financial impairment*.

#### 4.54 Instruction

*instruction* means a written or printed instruction or advice or *tested* facsimile:

- (i) directed to the *insured* or an *outside service provider*; or
- (ii) issued by the *insured*, authorising or acknowledging the transfer, payment, directing, delivery, assignment, change of beneficiary or receipt of *property*, money or *securities*.

#### 4.55 Insured

*insured* means:

- 4.55.1 any *insured person* for the purpose of Insurance Clauses 1.1 and 1.2 and all Extensions applicable to Insurance Clauses 1.1 and 1.2;
- 4.55.2 the *company* or any *employee* for the purpose of Insurance Clauses 1.1 and 1.2 and all Extensions applicable to Insurance Clauses 1.1 and 1.2; or
- 4.55.3 the *company* for the purpose of Insurance Clause 1.3 and all Extensions applicable to Insurance Clause 1.3.

#### 4.56 Insured Person

*insured person* means any natural person who is, was or during the *period of insurance* becomes:

- 4.56.1 a *director or officer*;
- 4.56.2 an *outside entity executive*;
- 4.56.3 an *employee* of the *company*:
  - (i) while acting in a managerial or supervisory capacity for the *company*;
  - (ii) who is required to co-operate with an *investigation*;
  - (iii) named as a co-defendant with a *director or officer* of the *company* in a *claim*, including in a *securities claim* or an *employment practices claim*; or
  - (iv) to whom the Financial Conduct Authority or Prudential Regulation Authority has given approval to perform one or more of controlled functions for a *company* pursuant to Section 59 of the UK Financial Services and Markets Act of 2000, or the equivalent position under any other similar statute, law, rule or regulation in any other jurisdiction;
- 4.56.4 a de facto director including any person who has not been validly appointed as a director who acts in the position of a director; or the directors of the company are accustomed to act in accordance with the person's instructions or wishes;
- 4.56.5 member of the *company's* internal audit committee, internal compensation committee, or any other internal board committee of and for the *company*; and
- 4.56.6 a General Counsel or Risk Manager of the *policyholder*;

but, with regard to all of the foregoing, only when and to the extent that such *insured person* is acting or has acted in their capacity as an *insured person*.

*Insured persons* shall not include any auditor, receiver, consultant, conservator, liquidator, administrator, trustee, rehabilitator or the equivalent in any other jurisdiction elected by or appointed to by the *company*.

#### 4.57 Interrelated Wrongful Acts

*interrelated wrongful acts* mean all *wrongful managerial acts* or all *wrongful professional acts* that have as a common nexus any fact, act, circumstance, event, transaction, cause or series of causally connected facts, acts, circumstances, events, transactions or causes.

#### 4.58 Investigation

*investigation* means any civil, criminal, administrative or regulatory investigation, hearing, official examination or inquiry:

4.58.1 into the affairs of the *company*, an *insured person* or *employee* in their capacity as such, commenced by or brought by an *official body*, once an *insured person* or *employee* is identified in writing and receives formal written notice from an *official body* requiring such person to cooperate or attend, or to produce documents, provided that:

- (i) such formal written notice from an *official body* first arises during the *period of insurance* or *extended reporting period* (if applicable);
- (ii) the *investigation* concerns acts or conduct or a *wrongful managerial act* or *wrongful professional act* that occurs after the inception date of this Policy and the *retroactive date*; and
- (iii) the *insured* has notified us of such formal written notice from an *official body* in accordance with Section 6 of this Policy.

4.58.2 of an *insured person* or an *employee* commenced by the arrest and detainment or incarceration of such *insured person* by any law enforcement authority and relating to an alleged *wrongful managerial acts* or all *wrongful professional acts*.

An *investigation* shall be deemed to be 'first made' when the *insured person* is first identified, served, or required to co-operate or arrested and detained.

*Investigation* shall not include industry-wide or sector investigations, hearings, examinations or inquiries or any regular or routine regulatory audit, examination, inspection or review, including any request for mandatory information from any regulatory entity which focuses on more than three (3) or the majority of industry actors rather than the *insured*.

#### 4.59 Investigation Costs

*investigation costs* mean reasonable and necessary fees, costs, charges and expenses incurred, with our prior consent, by or on behalf of an *insured person* directly in connection with such *insured person's* required participation in an *investigation*, including preparation for any required interview or provision of information.

*Investigation costs* do not include remuneration payable to any *insured persons* or *employee* of any *company* or any *outside entity*, cost of their time, costs or overheads of any *company* or *outside entity*, or any criminal fines or penalties (or the equivalent) levied or imposed in connection with the *investigation*.

#### 4.60 Investment Management Services

*investment management services* means the rendering by the *insured* of financial, economic or investment advice regarding investments or investment management services performed or required to be performed by any *company* in respect of any *fund* or *mandate*:

4.60.1 in return for a fee, commission or other compensation; or

4.60.2 without compensation as long as such non-compensated advice and/or services are rendered in conjunction with advice and/or services rendered for compensation,

provided the *insured* is duly authorised, licensed and/or approved to provide such services.

*Investment management services* include:

- (i) the creation, formation, capitalisation, operation, administration and management of any *fund* by any *insured*;
- (ii) the implementation and execution of any *mandate* pursuant to a written contract;

- (iii) the marketing of any *fund* or *mandate* and the solicitation of potential investors in any such *fund* or *mandate*;
- (iv) portfolio management and asset allocation services;
- (v) *professional supervision*;
- (vi) administration, custodial or registry services;
- (vii) distribution of publications prepared or written by any *insured* for or on behalf of any *fund* or *mandate* or any client or customer; or
- (viii) any administrative, back office, middle office or other operations of the *insured entity* which support the provision of those services.

*Investment management services* shall not include the rendering of, or the failure to render legal or tax services or tax advice.

#### **4.61 Limit of Liability**

*limit of liability* means the amount specified as such in the *schedule*.

#### **4.62 Liquidated Damages**

*liquidated damages* mean damages that are specified and/or agreed in a contract or written agreement, including compensation for breach of contract specifically agreed under a warranty or similar clause.

#### **4.63 Loan**

*loan* means:

- 4.63.1 any loan or transaction in the nature of, or amounting to, a loan or extension of credit, including a mortgage or a lease, made by or obtained from the *company*;
- 4.63.2 any note, invoice, account, agreement, receivables or other evidence of debt, assigned or sold by or to, or discounted or otherwise acquired by the *company*, including the purchase, discounting or other acquisition of accounts or invoices;
- 4.63.3 any overdraft or similar payments made or withdrawals from a client's account involving items which are not paid for any reason; or
- 4.63.4 a guarantee.

#### **4.64 Malware**

*malware* means any unauthorised, corrupting, or harmful software, code or program specifically designed to:

- (i) erase or corrupt *electronic data*;
- (ii) damage or disrupt any network or *computer system*; or
- (iii) circumvent any security product or service,

including, but not limited to, computer viruses, Trojan horses, keystroke loggers, cookies, spyware, adware, worms, ransomware and logic bombs.

#### **4.65 Mandate**

*mandate* means an agreement in writing under which a client or customer appoints the *insured* entity to manage a discrete portfolio of assets on behalf of such client or customer.

#### 4.66 Mitigation Costs

*mitigation costs* mean the reasonable and necessary fees, direct costs and expenses incurred by an *insured person*, with our prior consent:

4.66.1 following first discovery of a *wrongful managerial act* or a *wrongful professional act* during the *period of insurance*; or

4.66.2 following *discovery* first occurring during the *period of insurance* of a covered peril, fraud, act, event or omission,

in order to mitigate, minimise, prevent or avoid:

- (i) *financial loss* that would otherwise be covered under this Policy if a *claim* were to be made against the *insured* arising from such *wrongful managerial act* or *wrongful professional act*; or
- (ii) the *company's* exposure to actual or potential direct financial loss that would otherwise constitute covered *financial loss* under this Policy.

*Mitigation costs* does not include:

- (a) *indemnifiable financial loss*;
- (b) costs related to any liability which would not otherwise be covered under this Policy;
- (c) payments arising out of, based upon or attributable to an *investigation* or *pre-claim event*;
- (d) any increase in the liability of or the *financial loss* of the *insured person* arising from taking such actions;
- (e) the remuneration of any *insured person* or *employee*, the costs of their time or any other costs or overheads of any *company*;
- (f) any payment which would not be included in the coverage provided under this Policy if the *claim* had been made against the *insured person* by the potential claimant.
- (g) the amount of any applicable *retention*;
- (h) *breach costs*; or
- (i) *correction costs* and/or *costs of NAV correction*.

#### 4.67 Money Laundering or Related Financial Crime

*money laundering or related financial crime* the actual, attempted or alleged:

4.67.1 conspiracy to commit;

4.67.1 commission of; or

4.67.1 aiding, abetting, counselling, procuring, or inciting,

the movement of illicit cash or cash equivalent proceeds including any act which is in breach of and/or constitutes an offence or offences under:

- (i) any legislation which implements or is designed to implement the European Council Directive 91/308/ EEC on prevention of the use of the financial system for the purpose of money laundering, as amended, and/or any offence under the International Convention for the Suppression of the Financing of Terrorism; or
- (ii) any similar legislation anywhere in the world including but not limited to the Proceeds of Crime Act 2002 (United Kingdom) and/or the Racketeer Influenced and Corrupt Organizations Act, 18 United States Code, Chapter 96 (United States).

#### 4.68 Non-Executive Director

*non-executive director* means any natural person serving as a *director or officer* of the *company* during the *period of insurance* who is not also an *employee* of any *company* or a holder of an executive role within the *company*.

#### 4.69 Official Body

*official body* means any regulator, government body, government agency, parliamentary commission, official trade body or similar body that has the legal authority to regulate, control, supervise, conduct *investigations*, perform audits, impose fines and penalties, issue orders or directives, or to undertake other actions or measures; as well as, any other public or administrative agency or self-regulatory body that is empowered by statute or statutory regulation to perform the above functions in relation to the *company* or an *outside entity*.

#### 4.70 Outside Entity

*outside entity* means any:

4.70.1 any organisation chartered and operated as a not-for-profit organisation; and

4.70.2 any other entity specifically included as an *outside entity* by endorsement to this Policy, provided such organisation or entity is not included in the definition of *company*.

#### 4.71 Outside Entity Executive

*outside entity executive* means any natural person, including any *director or officer* or any *employee* of the *company* who:

4.71.1 did or will serve or act; or

4.71.2 during the *period of insurance* is serving or acting,

in the capacity as a director or officer, shadow director, de facto director or trustee (but not a pension trustee) or equivalent position, of an *outside entity* at the *company's* specific direction or request.

#### 4.72 Outside Service Provider

*outside service provider* means any person or *financial institution* or other entity providing services to financial institutions that is not an *insured* and that:

4.72.1 performs *investment management services* of or on behalf of the *insured*, at the direction of the *insured* and pursuant to a written contract or agreement which defines the scope of the *investment management services* to be performed; or

4.72.2 performs professional financial services for or on behalf of the *insured* pursuant to a written or electronic contract or agreement; and

4.72.3 with whom the *insured* has a written or electronic contract or agreement for the provision of purchasing services, safekeeping, registration and entitlement records in connection with *securities*; or

4.72.4 with whom the *insured* has entered into a written or electronic contract or agreement for the purchase, transfer, sale or pledge of *uncertificated securities*.

#### 4.73 Period of Insurance

*period of insurance* means the period specified as such in the *schedule*, including any extension thereto agreed by us.

#### 4.74 Personal Information

*personal information* means any information from which an individual may be uniquely and reliably identified including an individual's name, telephone number, tax file number, medical or healthcare data or other protected health information, driver's licence number or passport number, bank account number, credit card number, debit card number, access code or password that would permit access to that individual's financial account or any other non-public personal information as defined in any privacy regulation applicable to the individual.

*Personal information* does not include information lawfully available to the general public for any reason, including information from foreign, national or local government records.

#### 4.75 Personal Reputation Crisis

*personal reputation crisis* means any negative statement, authorised and published by, for or on behalf of an *official body*, specifically regarding and mentioning an *insured person*, provided that such statement is included in a press release or published in any print or electronic media outlet.

#### 4.76 Personal Reputation Restoration Expenses

*personal reputation restoration expenses* mean the reasonable and necessary fees, costs, charges and expenses incurred by an *insured person*, with our prior consent, for a public relations/crisis management consultant, who shall not be a law firm, retained solely, and independently from the *company*, by an *insured person* within thirty (30) days of the *personal reputation crisis* of such *insured person*, to specifically mitigate the adverse publicity to such *insured person's* professional reputation, as a direct result of the *personal reputation crisis*.

#### 4.77 Policyholder

*policyholder* means the entity specified as such in the *schedule*.

#### 4.78 Pollutants

*pollutants* mean any air emission, odour, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, noise, fungus (including mould, mildew and any mycotoxins, spores, scents or by-products produced or released by fungi, but not any fungi intended by the *insured* for consumption) and electric or magnetic or electromagnetic field. Such matters shall include, without limitation, solids, liquids, gaseous, thermal, biological, nuclear or radiological irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials.

#### 4.79 Potential Claim

*potential claim* mean a *claim* that, if made against the *insured*, would be covered under this Policy in respect of which the *insured* incurs *mitigation costs* under Extension 2.2 or *correction costs* and the *costs of NAV correction* under Extension 2.22 in order to mitigate, minimise, prevent or otherwise avoid *financial loss* that would otherwise be covered under this Policy.

#### 4.80 Pre-Claim Costs

*pre-claim costs* mean reasonable and necessary fees, costs, charges and expenses in retaining advisors separate from the *company* or an *outside entity* to:

4.80.1 provide legal advice directly related to a *pre-claim event*; or

4.80.2 prepare a report (and any supplementary reports as necessary) to an *official body* in response to a *pre-claim event*;

provided that *pre-claim costs* shall not include *indemnifiable financial loss*.

#### 4.81 Pre-Claim Event

*pre-claim event* means:

4.81.1 a raid on, or on-site visit to any *company* or any *outside entity* by an *official body* that involves the production, review, copying or confiscation of documents or interviews of such *insured person*;

4.81.2 a communication from an *official body* to an *insured person* requesting the production, review, copying or confiscation of documents or interviews of such *insured person* that does not constitute an *investigation*;

4.81.3 any *self-report* alleging *wrongful managerial acts* by an *insured person*,

provided that such raid, visit, communication from an *official body*, *self-report* must first take place, first occur, commence and be first notified during the *period of insurance*.

A *pre-claim event* shall not include any regular regulatory procedure, supervision, inspection or compliance reviews, or any industry-wide or sector investigations, hearings, examinations or inquiries which focuses on more than three (3) or the majority of industry actors.



#### 4.82 Premises

*premises* means any interior portion of any building owned or occupied by the *company* in which they conduct their business and perform professional financial services.

#### 4.83 Prior Known Fact

*prior known fact* means:

4.83.1 an *insured person* first became aware of, after the *continuity date*, but prior to the commencement of the *period of insurance*; and

4.83.2 the *insured person* knew, at any time after the *continuity date* but prior to the commencement of the *period of insurance*, may result in an allegation against the *insured* of a *wrongful act*.

#### 4.84 Privacy Event

*privacy event* means an actual or alleged:

4.84.1 unauthorised access, disclosure, loss or theft of:

- (a) *personal information* in the care, custody or control of any *insured*; or
- (b) corporate information in the care, custody or control of any *insured* that is specifically identified as confidential and protected under a non-disclosure agreement or similar contract;

4.84.2 violation of any *privacy regulation* by the *insured*; or

4.84.3 failure by the *insured* to comply with that part of its public declaration of its policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to *personal information* that specifically:

- (i) prohibits or restricts the *insured's* disclosure, sharing or selling of *personal information*;
- (ii) requires the *insured* to provide an individual access to *personal information* or to correct incomplete or inaccurate *personal information* after a request is made; or
- (iii) mandates procedures and requirements to prevent the loss of *personal information*,

provided the *insured* has in force, at the time of such failure, such a policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to *personal information*.

#### 4.85 Privacy Regulation

*privacy regulation* means any legislation, regulation or by-law, including any amendments thereto, associated with the control and use of personally identifiable financial, medical or other sensitive information, or any other legislation, regulation or by-law associated with identity theft or privacy.

#### 4.86 Professional Supervision

*professional supervision* mean an *insured's* selection of an *outside service provider* or unaffiliated investment advisors and their oversight and direction of the performance of such *outside service provider* and unaffiliated investment advisors in providing *investment management services*.

#### 4.87 Property

*property* means tangible property of an *insured* other than money or *securities*.

#### 4.88 Property Damage

*property damage* means any damage to or destruction of any property or loss of use of such property, and any direct consequential loss resulting there from.

#### 4.89 Proposal

*proposal* means any information and/or statements or materials supplied to us, including any application form completed and signed by the *policyholder* and any attachments thereto.

#### 4.90 Prosecution Costs

*prosecution costs* mean reasonable and necessary fees, costs, charges and expenses incurred by an *insured person* in defending proceeding or in bringing a proceeding for a declaration and/or injunction to oppose any *official body* seeking a *deprivation of asset and liberty proceeding* or to appeal to seek to obtain the discharge or revocation of a *deprivation of asset and liberty proceeding*.

#### 4.91 Responsible Officer

*responsible officer* means any natural person who has been, now is, or shall become a partner, *director or officer*, general counsel, head of legal, compliance officer, departmental director, internal auditor, risk manager, insurance manager, head of information and data security, trustee, or equivalent of any *company*, who is not in collusion with any *employee* in respect of *financial loss* which may be covered under Insurance Clause 1.3.

#### 4.92 Retention

*retention* means the applicable amounts specified in the *schedule*, applicable to the various Insurance Clauses and type of *claims*.

#### 4.93 Retroactive date

*retroactive date* means the date specified in the *schedule*.

#### 4.94 Schedule

*schedule* means the Schedule attaching to and forming part of this Policy duly signed and stamped by an authorised officer of Zurich.

#### 4.95 Securities

*securities* mean any bond, debenture, note, share, stock or other equity or security for debt, *uncertificated securities*, and will include any certificate of interest or participation in, receipt for, warrant or other right to subscribe to or to purchase, voting trust certificate relating to, or other interest in any of the foregoing items representing money or *property*. *Securities* shall not include money or *property*.

#### 4.96 Securities Claim

*securities claim* means a *claim* that alleges a violation of any laws (statutory or common), rules or regulations regulating tradable financial asset representing debt or equity interests or ownership in a *company*, the purchase or sale or offer or solicitation of an offer to purchase or sell such financial assets, or any registration relating to such financial asset:

4.96.1 brought by any person, entity or *official body* arising out of, based upon or attributable to the purchase or sale, or offer or solicitation of an offer to purchase or sell any such financial asset representing debt or equity interests or ownership in the *company* that is publicly traded on any exchange; or

4.96.2 brought by a holder of any such tradable financial asset representing debt or equity interests or ownership in the *company* in his, her or its capacity as such and with respect to his, her or its interest in such instruments of and issued by such *company*; or

4.96.3 brought derivatively on behalf of or in the name of the *company* (in the form of a shareholder 'derivative action' or its equivalent) against an *insured*.

*Securities claim* shall not include an administrative or regulatory proceeding commenced or brought against, or an investigation of the *company*.

*Securities claim* shall also not include a *claim* brought by or on behalf of any director, officer or employee of the *company* alleging, arising out of, based upon or attributable to the loss of, or the failure to receive or obtain, the benefit of any *securities* (including warrants or options).

#### 4.97 Security Event

*security event* means any unauthorised access to, introduction of malware or malicious software into or denial of service attack upon the *company's computer system* resulting in:

4.97.1 an actual and measurable interruption, suspension, failure, degradation or delay in the performance of the *company's computer system*; or

4.97.2 the theft, alteration, modification, corruption or destruction of corporate information in the care, custody or control of any *insured* that is not available or known to the public.

#### 4.98 Self-Report

*self-report* means a written report or notification to an *official body* by the *company*, an *outside entity* or an *insured person* pursuant to a legal obligation to inform such *official body* of matters giving rise to an actual or potential regulatory issue where failure to provide such a report or delay in reporting can itself give rise to enforcement consequences to the *company* or an *insured person* from such *official body*.

#### 4.99 Software

*software* means operations and applications, codes and programs by which *electronic data* is electronically collected, transmitted, processed, stored or received, provided always that *software* does not include *electronic data*.

#### 4.100 Statutory Charge

*statutory charge* means a charge under the Law Reform Act 1936 (NZ), Law Reform (Miscellaneous Provisions) Act 1946 (NSW), the Civil Law (Wrongs) Act 2002 (ACT), the Law Reform (Miscellaneous Provisions) Act 1956 (NT) or any other substantially similar legislation on this policy, where the value of the charge may be greater than this policy's *limit of liability*.

#### 4.101 Storage Media

*storage media* means the physical components or materials on which data, facts or information or computer programs can be recorded.

#### 4.102 Sub-Limit of Liability

*sub-limit of liability* means our limit of liability under this Policy for certain covers and Extensions, which is within and forms part of, and is not in addition to, the *limit of liability*. The amount of the *sub-limit of liability* for each respective cover and Extension is in the aggregate and specified in the *schedule*.

#### 4.103 Subsidiary

*subsidiary* means any entity or organisation, including any joint venture or partnership, in which on or before the inception date of this Policy (or for the purpose of Section 3.3 New Subsidiaries, during the *period of insurance*), the *policyholder*, directly or indirectly through one or more *subsidiary*:

4.103.1 controls the composition of the board of directors, or has the right to elect or appoint a majority of the board of directors (or equivalent in any other country);

4.103.2 controls more than 50% of the shareholder or equity voting rights; or

4.103.3 holds more than 50% of the issued share capital or equity.

For the purposes of determining cover, an entity shall only be deemed a *subsidiary* with respect to *wrongful managerial acts* and *wrongful professional acts* committed, and *financial loss* resulting directly from perils, fraud, acts or events committed, perpetrated, occurred or taking place, subsequent to the date that such entity first became a *subsidiary* and prior to the date such entity ceased to be a *subsidiary*.

#### 4.104 Telephone Communications

*telephone communications* mean instructions made over the telephone by a client with the use of:

4.104.1 a unique code previously arranged with such client and a call-back to an authorised person other than the individual initiating the transfer request; or

4.104.2 a unique password or security code or unique personal security details if such client is a private natural person.

#### 4.105 Tested

*tested* means a method of authenticating the contents of a communication between the *company* and a client of the *company* or a *financial institution*, or between the offices of the *company*, for the purposes of protecting the integrity of the communication.

#### 4.106 Theft

*theft* means the intentional permanent deprivation of money, *securities* or *property*.

#### 4.107 Trading

*trading* means the purchase, sale or other dealing in:

4.1071 *Securities*, commodities, futures, options, derivatives, funds, currencies including cryptographic or digital assets, tokens or currency of any kind, foreign exchange, exchange traded products and similar instruments; or

4.1072 any other instruments traded through any regulated stock exchange, commodities or mercantile exchange, future or derivative exchange, clearing house, or any other regulated trading facility, trading system network or online platform providing services or functionality of a similar nature,

whether for the *company's* own account or for the account of clients or others.

#### 4.108 Transfer Instruction

*transfer instructions* mean an instruction, communicated in the form of an *electronic communication* or a *telephone communication* directing the *company* to transfer *property*.

#### 4.109 Uncertificated Security

*uncertificated security* means a share, participation or other interest in property of or an enterprise of the issuer or an obligation of the issuer, shown as an electronic entry recorded on the account of the transferor, pledgee or pledgee on the relevant register or central depository of such securities, and which:

- (i) is a type commonly dealt in upon securities exchanges or markets; and
- (ii) is either one of a class or series or by its terms is divisible into a class or series of shares, participations, interests or obligations: and
  - (a) is not represented by an instrument; or
  - (b) is part of a master or global certificate; or
  - (c) represents a paper certificate that has been surrendered by a financial institution and which paper certificate has been combined into a master depository note and the paper certificates are immobilised.

#### 4.110 Vendor

*vendor* means an entity or individual from whom the *insured* purchases goods or receives services under a written contract.

#### 4.111 Voluntary Exchange or Purchase

*voluntary exchange or purchase* means the voluntary giving or surrendering (whether or not such giving or surrendering is induced by deception) of money, *securities* or *property* in any exchange or purchase.

#### 4.112 Wrongful Managerial Act

*wrongful managerial act* means actual, alleged or attempted breach of duty, breach of statutory duty, breach of trust, breach of warranty of authority, neglect, error, misstatement, misleading statement, libel, slander or defamation or any other acts, errors or omissions by any *insured person* in his or her insured capacity as such, or any matter claimed against such *insured person* by reason of his/her status as such. The term *wrongful managerial act* shall also include an *employment practices wrongful act*.

#### 4.113 Wrongful Criminal Act

*wrongful criminal act* means any fraudulent, dishonest, malicious or criminal act committed by a third party, and which is committed with the intent to cause the *insured* to sustain a *financial loss*, of:

4.113.1 *theft*;

4.113.2 *forgery*;

4.113.3 *fraudulent alteration*;

4.113.4 *counterfeiting*;

4.113.5 *computer fraud*.

*Wrongful criminal act* shall in no event mean:

- (i) *corporate transaction*;
- (ii) voluntary exchange or purchase unless covered under *forgery, fraudulent alteration, counterfeiting or computer fraud*, or Extension 2.23;
- (iii) *extortion* unless covered under Extension 2.27.

#### 4.114 Wrongful Dishonest Act

*wrongful dishonest act* means any fraudulent, dishonest, malicious or criminal act of an *employee*, wherever committed and whether committed alone or in collusion with others, which is committed with the intent to cause the *insured* to sustain a *financial loss*.

However, in respect of *financial loss* resulting from *loans* and *trading*, *wrongful dishonest act* shall only mean any fraudulent or dishonest act of an *employee* with the intent to cause a loss to the *insured* and with the intent to obtain an improper financial gain for the *employee* who committed such *wrongful dishonest act*, or any person or organisation, other than a counterparty, in collusion with such *employee*; provided however, that the *insured* can prove beyond reasonable doubt that such *employee* obtained or intended to obtain improper financial gain.

Salary, fees, commission, bonuses, any similar employee benefit earned in the normal course of employment, including salary increases, promotions, profit sharing or other emoluments, do not constitute improper financial gain.

#### 4.115 Wrongful Privacy Act

*wrongful privacy act* means any act, error, omission, neglect, or breach of duty actually or allegedly committed or attempted by an *insured* in the course of rendering *investment management services* that results in or arises from a *privacy event*.

#### 4.116 Wrongful Professional Act

*wrongful professional act* means:

4.116.1 any act, error, omission, misrepresentation, misstatement, misleading statement, neglect, or breach of duty;

4.116.2 a *wrongful security act*; or

4.116.3 a *wrongful privacy act*,

actually or allegedly committed or attempted by an *insured*, in connection with the rendering or failure to render *investment management services* to others.

#### 4.117 Wrongful Security Act

*wrongful security act* means any act, error, omission, neglect, or breach of duty actually or allegedly committed or attempted by an *insured* in the course of rendering *investment management services* that results in or arises from a *security event*.

## 5. Exclusions

We shall not be liable under this Policy to make any payment for *financial loss*, *claims* or *investigations* under any of the Insurance Clauses or Extension of Cover of this Policy:

### 5.1 Prior and Pending Claims or Notifications and Prior Discovery

arising out of, based upon, in connection with, attributable to or arising out of, based upon, in connection with, attributable to or as a consequence of:

- 5.1.1 any civil, criminal, administrative, regulatory, arbitration, mediation proceeding or *claim* initiated or commenced against an *insured* prior to or pending at the applicable Prior and Pending Date as specified in Section 6 the *schedule*; or alleging or deriving from the same or essentially the same facts as alleged in such actions;
- 5.1.2 any act, fact, same or related *wrongful managerial act*, *wrongful professional act*, *investigation*, fact, event, circumstance, situation, or *claim* which has been the subject of any written notice given under any insurance policy or any policy of which this Policy is a direct or indirect renewal or replacement, or any policy expiring prior to the inception date of this Policy;
- 5.1.3 any act, error or omission or *wrongful managerial act*, *wrongful professional act*, *investigation*, fact, event, circumstance, situation, or *claim* occurring, initiated, committed or commenced prior to:
  - (i) the inception date of this Policy or of any policy issued by us to the *policyholder* of which this Policy is a continuous renewal or replacement, which a *responsible officer* became aware, knew or could have reasonably foreseen that could give rise to a *claim* or coverage under this Policy; or
  - (ii) the *retroactive date*;
- 5.1.4 any *interrelated wrongful act* or *investigation* which has the same originating cause as any item referenced in clauses 5.1.1, 5.1.2 or 5.1.3 above; or any *mitigation costs* relating to the foregoing; or
- 5.1.5 any loss, peril, fraud, act, event or circumstance *discovered* prior to the inception date of the *period of insurance* of this Policy, or which a *responsible officer* knew or reasonably should have known before the inception date of the *period of insurance* or *discovered* subsequent to the expiry of the *period of insurance*, unless the *extended reporting period* is elected and applies.

For the avoidance of doubt, this Policy does not provide cover for *wrongful managerial acts*, *wrongful professional acts*, *wrongful dishonest acts* or *wrongful criminal acts* committed, occurred, perpetrated or taking place prior to the date that an entity became an *insured*.

### Exclusions applicable to Insurance Clauses 1.1 and 1.2

With respect to Insurance Clauses 1.1 and 1.2 of this Policy and any Extensions of Cover applicable to Insurance Clauses 1.1 and 1.2, we shall not be liable to make any payment for *financial loss*, *claims* or *investigations*:

### 5.2 Conduct

alleging, arising from, based upon, in connection with, attributable to or as a consequence of:

- 5.2.1 any *insured* having gained in fact any profit or advantage to which he, she or it had or has no legal entitlement; or
- 5.2.2 any dishonest or fraudulent act or omission committed by any *insured* or any intentional violation or breach of any law or regulation; provided that this exclusion shall not apply to *defence costs* incurred by an *insured person* in connection with a *corporate manslaughter proceeding* or workplace health and safety proceeding.

Part 5.2.1 of this exclusion shall not apply in a *securities claim* against an *insured person* alleging violations of Sections 11, 12 or 15 of the United States of America Securities Act of 1933 to the portion of any *financial loss* attributable to such violations.

This exclusion only applies where the conduct in question has been finally established by court judgment or other final non-appealable adjudication.

For the purpose of determining the applicability of this exclusion:

- (a) no conduct or knowledge of an *insured* shall be imputed to any other *insured person*; and
- (b) only the conduct and knowledge of any past, present or future chairman, chief executive officer, chief operating officer, chief financial officer, general counsel or chief legal counsel (or holder of any equivalent position) of the *company* shall be imputed to the *company*.

### **5.3 Bodily Injury and Property Damage**

for *bodily injury* or *property damage*, provided, that this exclusion shall not apply to:

- 5.3.1 *financial loss* which is not *indemnifiable financial loss*;
- 5.3.2 *financial loss* covered under Extension 2.14 Health and Safety;
- 5.3.3 a *securities claim*;
- 5.3.4 mental or emotional distress in connection with an *employment practices claim*;
- 5.3.5 an *environmental claim* covered under Extension 2.15 Environmental Claim; or
- 5.3.6 *defence costs* and/or *investigation costs*.

### **5.4 Money Laundering or Related Financial Crime**

arising out of, based upon, in connection with, attributable to or as a consequence of *money laundering* or *related financial crime*.

Save that, with respect to Insurance Clause 1.1 only, we shall advance *defence costs* pursuant to Section 6.2 until it is admitted or determined that such *money laundering* or *related financial crime* did in fact occur by a formal written admission by the *insured* or a judgment or other final, non-appealable adjudication or proceeding adverse to the *insured*.

### **5.5 Company / Outside Entity vs Insured – USA claims only**

any USA *claim* brought by, or on behalf of, or at the instigation of the *company* or an *outside entity*; provided, however, this exclusion shall not apply to:

- 5.5.1 a *claim* brought or maintained by a liquidator, receiver, bankruptcy trustee or administrative receiver, (or the equivalent in any other country), either directly or derivatively on behalf of the *company* or the *outside entity* without the solicitation, voluntary assistance or active participation of any director or officer (or equivalent in any other country) of the *company* or the *outside entity*;
- 5.5.2 a *claim* in the form of a derivative action brought or maintained in the name of the *company* or the *outside entity* by one or more persons who are not directors or officers (or equivalent in any other country) of the *company* or the *outside entity* and who bring and maintain the *claim* without the solicitation, voluntary assistance or active participation of any director or officer (or equivalent in any other country) of the *company* or the *outside entity*; or
- 5.5.3 *defence costs* incurred by the *insured person*.

## Exclusions applicable to Insurance Clauses 1.2 (Professional Liability)

With respect to Insurance Clauses 1.2 of this Policy and any Extensions of Cover applicable to Insurance Clauses 1.2, we shall not be liable to make any payment for *financial loss, claims* or *investigations*:

### 5.6 Assumed Liability, Guarantee, Warranty

alleging, arising from, based upon, in connection with, attributable to or as a consequence of any:

- 5.6.1 liability assumed or accepted by an *insured* or an *outside service provider* under any contract or agreement except to the extent that actual legal liability would have attached to an *insured* or *outside service provider* in the absence of such contract or agreement as a matter of civil or common law as applicable; or
- 5.6.2 any legal liability arising from any guarantee or warranty provided by the *insured* or an *outside service provider* as to the performance of any investment products.

### 5.7 Market abuse

alleging, arising from, based upon, in connection with, attributable to or as a consequence of:

- 5.7.1 any use or obtaining by an *insured*, whether acting alone or in collusion with others, of or aiding or abetting by an *insured* in the obtaining or use of, or participation after the fact by any *insured* in the obtaining or use of, non-public information in relation to investments traded on any recognised market in a manner prohibited by law or any rules or regulations promulgated under any law;
- 5.7.2 requiring or encouraging a third party to engage in actions which, if engaged in by an *insured*, would amount to prohibited actions; or
- 5.7.3 behaviour which constitute market abuse (including but not limited to insider trading) pursuant to the provisions of applicable legislation.

### 5.8 Fees, Commissions, or Other Compensation

- 5.8.1 for reimbursement, restitution or disgorgement of fees, profits, commissions, premiums, taxes, costs or other compensation paid to, payable to, owed, due to or claimed for any *investment management services* rendered or required to be rendered by an *insured* or an *outside service provider*, or that portion of any settlement or award in an amount equal to such fees, profits, commissions, premiums costs or other compensations or that constitutes restitution or reimbursement; or
- 5.8.2 for the actual or alleged charging of excessive, undisclosed or otherwise improper fees, profits, commissions, premiums, taxes, costs or other compensation by the *insured* or an *outside service provider*.

### 5.9 Insolvency

alleging, arising from, based upon, in connection with, attributable to or as a consequence of the bankruptcy, insolvency, financial default, liquidation, receivership or liquidation of an *insured* or an *outside service provider*.

### 5.10 Insured vs Insured

brought or instigated by or on behalf of, or for the benefit of any:

- 5.10.1 *insured*, or successors or assigns of any *insured*, or any entity owned, controlled, operated or managed by the *insured* at the time the *wrongful professional act* giving rise to such *claim* was committed (or alleged to have been committed); or
- 5.10.2 entity that controls, operates or manages or wholly or partly owns the *insured*, or any subsidiary or affiliate or other entity that is operated or controlled by the *policyholder's* parent company at the time the *wrongful professional act* giving rise to such *claim* took place,

unless such *claim* is brought by or on behalf of:

- (i) an *employee* solely in the capacity as a client or customer of the *company* and is instigated and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention of any other *insured*;



- (ii) an *insured*, other than a *fund*, for contribution, indemnity or recovery, if such *claim* directly results from another *claim* originating from an independent third party which is otherwise covered under this Policy and as long as such *claim* is instigated and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention by any other *insured*. Cover under this Policy shall be limited to that part of *financial loss* which consists of compensation for damages incurred by that third party and for which the *insured* is legally liable, and shall exclude any other or additional *financial loss*, costs or expenses incurred by the *insured*; or
- (iii) a *fund* for contribution or indemnity, if such *claim* directly results from another *claim* originating from an independent third party, as long as such *claim* is instigated and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention by any other *insured*, and where failure to make such a *claim* would have otherwise resulted in the *fund* incurring a statutory liability or a subsequent *claim* by a third party.

### 5.11 Intellectual Property

alleging, arising out of, based upon, in connection with, attributable to or as a consequence of:

- 5.11.1 the invalidity, infringement, violation, dilution, breach or misappropriation of any patent, intellectual property right, copyright, trade or service mark; or
- 5.11.2 the misappropriation of any trade secret.

### 5.12 Business Risk

alleging, arising out of, based upon, attributable to or as a consequence of:

- 5.12.1 any transaction or change in value of any account, where the *insured* is acting on its own behalf or as principal, including any proprietary trading loss, *financial loss* or a business loss; or
- 5.12.2 any liability under a contract of insurance or reinsurance to pay benefits indemnity due to an *insured's* capacity as the insurer or re-insurer of such contract of insurance or reinsurance.

### 5.13 Diminution in Value

alleging, arising out of, based upon, attributable to, as a consequence of or in any way involving, directly or indirectly:

- 5.13.1 diminution in value (or failure to appreciate) of any investments including *securities*, money, currencies, options, futures transactions, commodities, *property*, property or any other item of value; or
- 5.13.2 any actual or alleged representation, advice, guarantee or warranty provided by or on behalf of the *insured* as to the performance of any such investments' or
- 5.13.3 the loss of value, surrender value or cancellation value of any leased product or service, except when such diminution or loss of value (or failure to appreciate) is caused solely by a *wrongful professional act* of an *insured* in the execution or implementation of *investment management services*.

### 5.14 Investment Banking

arising out of, based upon, attributable to, as a consequence of the rendering or failure to render advice or other services to clients of any *insured* in connection with any investment banking services, including but not limited to:

- 5.14.1 underwriting, securitising, syndicating, promoting or market making of any debt or equity securities or other evidence of indebtedness, or any structured or leveraged loans or financing, debt restructuring or financing, brokerage, securities trading and dealing or any other similar investment banking activity;
- 5.14.2 rendering of advice or recommendations regarding any actual, attempted or threatened merger, acquisition, divestiture, tender offer, proxy contest, leveraged buy-out, privatisation insolvency proceeding, reorganisation, capital restructuring, re-capitalisation, spin-offs, primary or secondary offerings of debt or equity securities or other evidence of indebtedness, 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;

5.14.3 rendering of a fairness opinion regarding the valuation of any assets or business entity; or

5.14.4 any disclosure requirements in connection with 5.14.1 to 5.14.3 above;

provided that this exclusion shall not apply in respect of Insurance Clause 1.2 to:

- (i) *investment management services* rendered by the *insured* relating to or in connection with investing in securities of entities that are involved in any merger, acquisition, restructuring or divestiture, as long as the *insured* is not a participant in such transaction; or
- (ii) the distribution of *securities* of a *fund* by an internal fund distributor.

## 5.15 USA Specific Exclusions

alleging, arising out of, based upon, relating to or attributable to any actual or alleged:

5.15.1 violation, by the *insured* or *outside service provider*, of the Racketeer Influenced and Corrupt Organisations Act 18 USC Section 1961 as amended, and regulations promulgated there under;

5.15.2 violation, by the *insured* or *outside service provider*, of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, and any regulations promulgated there under where the *insured* is acting as a trustee, fiduciary or administrator of any pension, profit sharing or employee benefit plan maintained by the *insured* for the benefit of its past, present and future *employees* or their respective beneficiaries;

5.15.3 violation, by the *insured* or *outside service provider*, of the Securities Act of 1933, or the Securities and Exchange Act of 1934 as amended, and regulations promulgated there under;

5.15.4 violation, by the *insured* or *outside service provider*, of the Fair Credit Reporting Act (FCRA) and any amendment of or addition to such law including the Fair and Accurate Credit Transactions Act (FACTA); or

5.15.5 (i) loan, or transaction in the nature of, or amounting to, a loan or lease or extension of credit, except when a *claim* solely alleges or arises out of a *wrongful professional act* in the administration or servicing of such loan, lease or extension of credit; or (ii) any advice, securities or collateral, participation in or restructuring of, collection, termination, foreclosure or repossession, in connection with such loan, lease or extension of credit, or any failure to do any of the foregoing, or the rendering of advice in connection with any loan, lease or extension of credit; or (iii) or arising out of the operation or control of any entity or property that the *insured* acquired as security or collateral for any loan, lease or extension of credit,

when such *claim* or *investigation* is brought or commenced (or for the purposes of Extension 2.3, would likely be commenced) in whole or in part within the jurisdiction of or pursuant to the laws of, the United States of America or its territories or possessions.

## Exclusions applicable to Insurance Clauses 1.2 and 1.3 (Professional Liability and Crime)

With respect to Insurance Clauses 1.2 and 1.3 of this Policy and any Extensions of Cover applicable to Insurance Clauses 1.2 and 1.3, we shall not be liable to make any payment for *financial loss, claims* or *investigations*:

## 5.16 Uncontrollable Events

arising out of, based upon, attributable to, as a consequence of or resulting from, directly or indirectly:

5.16.1 civil unrest, including but not limited to protests, striking employees, riots and looting;

5.16.2 war, terrorism, invasion, act of foreign enemy, hostilities or warlike operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot or the act of any lawfully constituted authority;

5.16.3 emergency governmental actions, including but not limited to embargos, or any seizure, confiscation, expropriation, nationalisation or destruction of a *computer system* by such governmental authority, including without limitation any damage or loss to *property* or *documents* as a result of such action;

- 5.16.4 failure, interruption, or outage to Internet access provided by the Internet service provider to the and/or any resulting lack of functionality in any online services, failure of telephone lines, data transmission lines, satellites, or other infrastructure comprising or supporting the Internet unless such infrastructure is under the *insured's* operational control;
- 5.16.5 fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, pandemic; epidemic, or any other similar event however caused;
- 5.16.6 mechanical failure, *software* failure, faulty construction, design error, latent defect, wear or tear, gradual deterioration, electrical disturbance, *storage media* failure or breakdown, *electronic data* processing failure or breakdown, or any malfunction or inadvertent error in programming or inadvertent errors or omissions in processing;
- 5.16.7 mechanical or electrical failure or interruption caused by a third party, acting independently of the *company*, or by an event outside of the *company's* control, including any electrical power, communication or other utility interruption or surge, brownout, blackout, short circuit, over voltage, or power fluctuations; or
- 5.16.8 any actual and measurable interruption, suspension, voluntary or regulatory shutdown, failure, degradation or delay in the performance of an *outside service provider's computer system* arising or resulting from a *cyber event*, including any liability to the *outside service provider* itself.

#### **Exclusions applicable to Insurance Clause 1.3 (Crime)**

With respect to Insurance Clause 1.3 of this Policy and any Extensions of Cover applicable to Insurance Clause 1.3, we shall not be liable to make any payment for *financial loss*:

#### **5.17 Consequential Loss**

- 5.17.1 which is indirect or consequential loss of any kind, except when covered under Extensions 2.2 or 2.29;
- 5.17.2 which represents loss or deprivation of income or profits, including interests and dividends or loss or rights and privileges, except when covered under Extension 2.2;
- 5.17.3 arising out of, based upon or attributable to business interruption (including loss of computer and time), including business interruption resulting from or as a consequence of a *security event*; or
- 5.17.4 arising out of, based upon or attributable to loss of or damage to property of any kind by reason of wear, tear, gradual deterioration, moth or vermin.

#### **5.18 Credit Risk**

with respect to *wrongful criminal acts* only, arising from, resulting directly or indirectly from, or in connection with the full or partial non-payment of or default under any:

- 5.18.1 credit agreement, extension of credit or hire purchase agreement;
- 5.18.2 loan or transaction of the nature of a loan;
- 5.18.3 lease or rental agreement; or
- 5.18.4 invoice, account, agreement or any other evidence of debt.

However, this exclusion shall not apply to any *financial loss* where the *insured* has relied or acted upon:

- (a) any document that is a *forgery*;
- (b) contains a *fraudulent alteration*; or
- (c) any currency notes or coins that is *counterfeit*.

#### **5.19 Bills of Lading and Similar Documents**

with respect to *wrongful criminal acts* only, arising out of or resulting directly or indirectly from *forgery*, or *fraudulent alteration* or *counterfeit* of any:

5.19.1 bills of lading, being documents of title issued by a carrier to the order of a shipper and transferable to another person or entity by endorsement; or

5.19.2 warehouse or trust receipts; or

5.19.3 documents of title or receipts similar in nature or effect or serving a similar purpose to any of the foregoing in 5.19.1 and 5.19.2 above.

## **5.20 Cyber Event**

arising out of, based upon, attributable to, as a consequence of or resulting from, directly or indirectly, a *cyber event*, except when resulting from a covered *wrongful dishonest act* or *computer fraud*, or when covered under Extensions 2.2, 2.23, 2.24, or 2.28.

## **5.21 Impersonation Fraud**

arising out of, based upon, attributable to, as a consequence of or resulting from, directly or indirectly, an *impersonation fraud*, except when resulting from a covered *wrongful dishonest act* or when covered under Extensions 2.2, 2.23 or 2.28.

## **5.22 Subsequent Wrongful Dishonest Act**

arising out of or resulting directly or indirectly from a previous or related *wrongful dishonest act* of an *employee* committed after the time at which a *responsible officer* (not being, or acting in collusion with, that *employee*) became aware of a previous *wrongful dishonest act* of that *employee*, unless we agree to waive the application of this Exclusion.

## **5.23 Intellectual Property Rights and Trade Secrets**

alleging, arising out of or resulting directly or indirectly from the accessing of any confidential information, including but not limited to trade secrets, customer information, patents, trademarks, trade names or copyrights, *electronic data* or computer programs, except to the extent that any such confidential information is used to support or facilitate the commission of an act covered under this Policy.

## **5.24 Kidnap and Ransom**

in connection with any *financial loss* arising from kidnap, ransom or any threat thereof.

## **5.25 Source Documentation**

resulting directly or indirectly from fictitious, forged, fraudulently altered, counterfeit or fraudulent documents, written or printed instruments or instructions, negotiable instruments or certificated securities in physical form used as source documentation in the creation, preparation or modification of *electronic data*, *electronic communications* or a facsimile.

## **5.26 Preparation of Physical Documents**

resulting directly or indirectly from the *insured* or a *financial institution* acting on their behalf having acted or relied upon documents, written or printed instruments or instructions, negotiable instruments or certificated securities provided in physical form to the *insured* or a *financial institution* acting on their behalf but which documents, written or printed instruments or instructions, negotiable instruments or certificated securities have been dishonestly, fraudulently, maliciously or criminally created, prepared or modified using a *computer system*.

## **5.27 Statements of Condition**

resulting directly or indirectly from the the *insured* or a *financial institution* acting on their behalf having acted or relied upon *electronic data* or a facsimile (including *electronic data* or a facsimile contained in a third party originated *electronic communications* or facsimile communication) provided to the *insured* or a *financial institution* acting on their behalf which *electronic data* or facsimile represents or contains fictitious, dishonest or fraudulent:

- (i) financial accounts or financial records;
- (ii) statements of account;

- (iii) valuations of investments or real property; or
- (iv) other statements of condition intended to obtain or gain access to:
  - (a) a loan or guarantee;
  - (b) actual or committed investment funds;
  - (c) the proceeds of insurance or assurance policies;

held by, or from, the *insured*.

## 6. Notification, Defence, Settlement and Indemnification

### 6.1 Notification of Claims and Financial Loss

6.1.1 We shall only be liable under this Policy for *claims* that have been reported to us in writing as soon as reasonably practicable after a *responsible officer* first becomes aware of such *claim* or for *financial loss* that has been reported to us as soon as reasonably practicable after *discovery*, and in all events no later than thirty (30) days after the expiry of the *period of insurance* or within the *extended reporting period* (if applicable).

Written notice under this section shall include, but not be limited to, a description of the *claim*, the nature of the alleged or potential *financial loss*, the details of the actual or potential claimants, details of the actual or potential damage, loss or expenses, details of the perils, fraud, acts or events, of the actors or perpetrators, full details and justification of the corrective actions to be undertaken and the costs, expenses or loss to be incurred in relation to *loss mitigation* or a *correction event* as provided under Extensions 2.2 and 2.22, and the date and manner in which the *insured* first became aware of the *claim* or in which the *company* first *discovered* such *financial loss*.

6.1.2 If an *insured* is unable to notify us set out in 6.1.1 above as a result of a specific direction or prohibition from disclosing information by an *official body*:

- (a) the *insured* shall advise us of the existence of the non-disclosure agreement and provide full disclosure of relevant information as permitted by an *official body* within thirty (30) days from being allowed to make such disclosure by the *official body*; and
- (b) the *insured* shall always keep us informed as set out in 6.1.1 to the fullest extent permitted by the *official body* during this disclosure limitation and afterwards provide full details as requested by us once this limitation is removed.

6.1.3 Written notice hereunder shall be given to us at the address specified in the *schedule* and shall be effective from the date of receipt at such address.

6.1.4 The details of any other insurance policy which may apply to any *financial loss* covered under this Policy shall be reported to us within a reasonable time of any *claim* notification.

### 6.2 Defence and Settlements, Cooperation and Defence Costs

6.2.1 Each *insured* will have the right and duty to defend and contest any *claim* made against them. We shall be entitled to participate fully in the defence of any *claim* (even where such *claim* falls within the *retention*) and in the negotiation of any settlement.

6.2.2 It shall be condition precedent to cover under this Policy that the *insured* will not admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any *financial loss* (even when such *financial loss* is within the *retention*) without our prior consent of the, except as provided under Extension 2.3 Emergency Costs and subject to section 6.4 below. Only those settlements, consent judgments, *defence costs*, or other *financial loss* that have been consented by us shall erode the *retention* and/or shall be recoverable under the terms of this Policy. Where our consent is required under this Policy (including for the incurring of reasonable and necessary fees, costs and expenses under an applicable Extension) such consent will not be unreasonably withheld or delayed.

- 6.2.3 Each *insured* will, at their own cost (unless otherwise agreed by us or expressly provided for in this Policy):
- (a) take all reasonable steps to prevent or minimise a *financial loss*; and
  - (b) render all reasonable assistance to and cooperate with us in the defence of any *claim* and the assertion or indemnification and contribution rights; and
  - (c) give all information and assistance to us as we may reasonably require enabling us to investigate any matter under which the *insured* seeks coverage under this Policy or to determine our liability under this Policy.
- 6.2.4 Except to the extent that we have denied coverage, and subject to the *limit of liability, sub-limit of liability, excess limit of liability* and *retention*, we shall advance *defence costs* as and when incurred by the *insured*, in respect of any *claim* prior to the final resolution of such *claim*.
- 6.2.5 We may require, at our sole discretion, that the *insured's* liability alleged in a *claim* be determined in a judgment or other final, non-appealable adjudication or proceeding.
- 6.2.6 Any payments of *financial loss* to any *insured* that have been made by us shall be repaid to us by the person and/or entity (jointly or severally) to whom or on whose behalf such payments have been made in the event that any such payments are ultimately determined not to be covered by this Policy and/or such person or entity is ultimately determined not to be entitled under this Policy to the payment of such *financial loss*.

### 6.3 Proof of Loss

The *insured* shall, as soon as reasonably practicable, following the *discovery* of a *wrongful dishonest Act* or a *wrongful criminal act* and notification in accordance with Section 6.1 above, provide us the proof of *financial loss*.

The proof of *financial loss* shall set out the basis on which the *insured* reasonably believes that the *financial loss* is covered under this Policy and shall include any and all documentary evidence within the possession, custody or control of the *insured* as is reasonably necessary to support that belief.

At our request the *insured* shall provide us with additional information in order to clarify or expand on any of the evidence provided by the *insured*.

### 6.4 Basis of Valuation and Settlement

With respect to Insurance Clause 1.3, the valuation of any direct *financial loss* under this Policy shall be determined as follows:

#### 6.4.1 Securities

The value of *securities* shall be determined by their closing market value on the day of *discovery* (or if *discovered* during a weekend or national holiday, on the next business day thereafter). The basis of valuation shall include any accrued interest (including coupons), dividends and privileges up to the date of *discovery*, necessarily incurred by the *insured*, or for which the *insured* is legally liable, as the direct result of a loss of *securities* covered under this Policy.

#### 6.4.2 Book of Accounts and Records

The value of books of accounts or other records used by the *insured* in the conduct of their business, shall be the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data or information which shall have been furnished by the *insured* in order to reproduce such books and other records.

#### 6.4.3 Damage to Premises

In the case of damage to the *premises*, we shall not be liable for more than the actual diminution in value of the real property.

#### 6.4.4 Foreign Currency Valuation

If a foreign currency (being a currency other than the currency in which this Policy is written) is involved in a *financial loss* sustained by the *insured* under this Policy, then for the purpose of any calculation required in the settlement of a *financial loss*, the rate of exchange shall be the officially published rate on the date of such settlement.

#### 6.4.5 Precious Metal

The value of precious metals shall be determined by their average market value on the day of *discovery* (or if *discovered* during a weekend or national holiday, on the next business day thereafter).

#### 6.4.6 Lending

The value of lending shall be:

- (i) the amount of monies paid out or advanced by the *insured* or withdrawn or drawn down by a third party; less
- (ii) all monies received and able to be lawfully retained by the *insured* from any source whatsoever, including payments and receipt of interest, principal, commissions, or similar compensation, in relation to such lending.

#### 6.4.7 Other Property

In no event shall we be liable in respect of other *property* (not included in the above), for more than the actual cash value thereof at the time of *financial loss* or, should we elect, for more than the actual cost of repairing such other property or of replacing same with *property* or material of like quality and value, provided however, the actual cash value of such other *property* held by the *insured* as a pledge, or as collateral for an advance or loan, shall be deemed not to exceed the value of the property as determined and recorded by the *insured* when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates. In order to determine the actual cash value of such *property*, we may obtain an independent valuation from an expert valuer.

#### 6.4.8 Electronic Data, Communications and Computer Programs

- (i) To the extent that a *financial loss* comprises solely the cost of reconstituting data or information, *electronic communications* or computer programs following the actual or attempted fraudulent, dishonest, malicious or criminal preparation, input, modification, destruction, corruption, deletion, replication or extraction of such data or information, *electronic communications* or computer programs, the valuation of such *data*, *electronic communications* or computer programs shall be the cost of labour for the actual transcription or copying in order to reproduce such data or information, *electronic communications* or computer programs, including the cost of purchasing a software license necessary to reproduce such data or information, *electronic communications* or computer programs.
- (ii) If data or information or computer programs were purchased from a third party, the valuation of such data or information or computer programs shall include the purchase price of that *data* or information or computer programs from that third party if that price is less than the cost of transcription or copying.
- (iii) If data or information cannot be reproduced and that data or information represents:
  - (a) *securities*, *documents* or other instruments having a value, in this case the valuation shall be as indicated in clause 6.4.1 above; or

- (b) evidences of debt, or other instruments executed by a client of the *insured* and held by the *insured* which in the regular course of business are treated as evidencing the client's debt to the *insured* including records of charges and accounts receivable then the valuation of such items shall be as indicated in clause 6.4.1 above. If such evidence of debt and similar documents cannot be valued as indicated in clause 6.4.1, above, then the evidences of debt shall be valued in accordance with clause 6.4.6, above. In the event that it is not possible to value the such evidence of debt and similar documents as indicated clauses 6.4.1 or 6.4.6 above, then the valuation of such evidence of debt and similar documents shall be the actual monetary value of the debt on the day of *discovery* (or if *discovered* during a weekend or national holiday, on the next business day);
- (c) *money*, in physical format, including cheques and other payable orders, then the valuation of such data or information shall be its actual monetary value at the time of *financial loss*. However, in the event that such *financial loss* is suffered in a currency other than the currency stated in the *schedule*, then the valuation of such data or information shall be as indicated in clause 6.4.4 above.
- (iv) The value of *storage media* shall be the replacement cost of *storage media* of the equivalent kind or quality plus the value of any data or information or computer programs stored on such *storage media*, as described in clause 6.4.8 (ii), data or information, *electronic communications* and computer programs.

## 6.5 Duty to Defend

It shall be the duty of the *insureds* against whom a *claim* is made to take all reasonable steps to defend such *claim* and not to do anything to prejudice our position. We shall have no duty to defend any *claim* made against any *insured*.

We will accept as reasonable the retention of separate legal representation and defence to the extent required by a conflict of interest between any *insured persons* or between any *insured person* and the *company*, otherwise a joint and consolidated defence is required.

## 6.6 Emergency Costs

We shall provide retroactive approval for that part of *emergency costs* incurred by the *insured* prior to receiving our consent, when all the following are complied with:

- 6.6.1 notification is made us, in accordance with Section 6.1 of this Policy, within fourteen (14) days of such costs being incurred; and
- 6.6.2 the *insured* can satisfactorily prove to us that the actual or potential *claim* and *financial loss* are or would have been covered under this Policy; and
- 6.6.3 the *insured* can satisfactorily prove to us the reasonableness and necessity of the actions undertaken and of the costs incurred or the effective prevention, reduction, limitation or mitigation of such *claim* and *financial loss*.

Once notification to us is made, in accordance to Section 6.1 and clause 6.6.1 above, then our prior consent is always required in respect of any further action undertaken or *emergency cost* incurred by the *insured*, after such notification, in relation to the same actual or potential *claim*.

## 6.7 Single Claims / Interrelated Acts or Events

6.7.1 In respect of Insurance Clauses 1.1 and 1.2, all *claims* arising out of the same:

- (i) *wrongful managerial act, wrongful professional actor interrelated wrongful acts*; or
- (ii) facts, acts or events,

shall be deemed a single *claim*, and such *claim* shall be deemed to be first made on the date the earliest of such *claims* is first made against any *insured*, regardless of whether such date is before or during the *period of insurance* and regardless whether such *claim* involves the same or different claimants, *insureds* or legal causes of action.



6.7.2 In respect of Insurance Clause 1.3, all *financial loss* arising out of the same or from one or from a series of perils, fraud, acts or events which are causally connected with another or which are by any means causally inter-related or inter-connected, shall be deemed to be constitute and form a single *financial loss* notwithstanding the number of perils, fraud, acts or events that have been made or occurred.

Such Single *financial loss* shall (irrespective of the period of insurance in which it in fact arises) be attributed solely to the *period of insurance* or the *extended reporting period* (if applicable) during which the first peril, fraud, act or event of such series was first *discovered*.

## 6.6 Allocation

We shall not be liable to make any payment or to provide any service in connection with any *claim* except to the extent that such payment or service relates to the defence or settlement of a *claim* or other events for which coverage is provided under this Policy to an *insured* in its capacity as such.

Where the handling or defence of a *claim* or other events involves both covered and uncovered matters and parties, we shall only be liable for such costs, payments and services which relate exclusively to the defence and settlement of a *claim* or other covered event on behalf of the *insured* in their capacity as such, and we and the *insured* agree to use their best endeavours to determine a fair and proper allocation of such *financial loss* and/or *defence costs*.

With respect to *financial loss* and/or *defence cost* jointly incurred by the *company* and any *insured person* or that are subject to the applicability of different *retentions*, in connection with any *claim*, the *company* and the *insured person(s)* and we agree to use their best endeavours to determine a fair and proper allocation of such *financial loss* and/or *defence costs* between the *insured person(s)* and the *company*.

If we and the *insured* cannot agree on allocation in accordance with this section, then all such parties hereby agree to refer to the determination of the Dispute Resolution proceeding stated in General Condition 7.8 Dispute Resolution.

## 7. General Conditions

### 7.1 Aggregate and Additional Limit of Liability

The *limit of liability* shall be our maximum liability, in the aggregate, payable under this Policy for all *financial loss* and all the fees costs, expenses and amounts set out in Section 2 Extensions covered under this Policy during the *period of insurance* or all *extended reporting periods* (if applicable).

Any *sub-limit of liability* set out in the *schedule* represents the highest amount we will pay in the aggregate under this Policy in respect of any Insurance Clause or Extension to which it applies. The *sub-limits of liability* form part of, and are not in addition to, the *limit of liability*. Where more than one *sub-limit of liability* applies to any *financial loss* payable under the terms of this Policy, only one *sub-limit of liability* shall apply, being the greater of such *sub-limits of liability*.

The *limit of liability* or the *sub-limits of liability* shall apply only in excess of the applicable *retention*.

The *limit of liability* for any *extended reporting period* shall be part of, and not in addition to the *limit of liability* for the *period of insurance*.

The amounts specified in the *schedule* for *excess limit of liability* shall be payable in addition to the *limit of liability*.

### 7.2 Additional Limits of Liability

The additional *excess limit of liability* shall be our maximum liability per *non-executive director*, as specified the *schedule*, arising from all *claims* made against such *non-executive director*, and in the aggregate, as specified in the *schedule*, for all *claims* against all *non-executive directors* combined, payable under this Policy for all *financial loss*, in excess of the items set out in Extension 2.9.

### 7.3 Application of Retention

We shall only pay that amount of *financial loss* in respect of each *claim* or other costs, expenses or amounts set out in Section 2. Extensions and, that is in excess of the applicable *retention* as specified in the *schedule*.

The *retentions* shall apply to *indemnifiable financial loss* of *insured persons* and all *financial loss* of the *company*.

The *retention* is not part of our *limit of liability*. The *retention* is to be borne by the *company* and shall remain uninsured.

A single *retention* shall apply to all *financial loss* that is considered as a single *claim* according to Section 6.7 of this Policy.

If more than one *retention* is applicable to such single *claim*, then the applicable *retentions* will be applied separately to each part of such *claim*, but the maximum total *retention* applicable to such *claim* shall not exceed the largest applicable *retention*.

### 7.4 Authorisation Clause and Assignment

By acceptance of this Policy:

7.4.1 the *policyholder* agrees to act on behalf of each *insured* with respect to giving and receiving notices of *financial loss*, *claims* or circumstances, cancellation or other communication to us, paying premiums and receiving any return premiums that may become due under this Policy, agreeing to endorsements, and giving or receiving notices provided for in this Policy; and

7.4.2 each *insured* agrees that the *policyholder* shall act on their behalf.

Neither this Policy nor any rights hereunder may be assigned without our prior consent.

### 7.5 Bankruptcy

Bankruptcy or insolvency of any *insured* or of the estate of any *insured* shall not relieve us of our obligations or deprive us of our rights or defences under this Policy.

### 7.6 Cancellation

This Policy may not be cancelled by us except non-payment of premium. If the *policyholder* cancels the Policy, a refund of premium will be allowed pro rata of the premium for the unexpired *period of insurance*.

In the event there are any notified, reserved or paid circumstances or *claims* under this Policy, the *policyholder* will have the right to cancel this Policy, but without the right to a return of premium, and the entire premium will be deemed fully earned, unless the *policyholder* withdraws such circumstances or *claims* and reimburses us for any payments made under this Policy.

This Policy may not be cancelled by the *policyholder* during the *extended reporting period*, once elected.

### 7.7 Currency

All premiums, *limit of liability*, *retentions*, *financial loss* and other amounts under this Policy are expressed and payable in the currency specified in the *schedule*. If judgment is rendered, settlement is denominated or another element of *financial loss* under this Policy is stated in a currency other than this currency, payment of covered *financial loss* due under this Policy (subject to the terms, conditions, exclusions and limitations of this Policy) will be made either in such other currency at our option, or in the currency specified in the *schedule*, at the rate of exchange published in accordance with the Reserve Bank of New Zealand at the date the *financial loss* is to be paid.

### 7.8 Dispute Resolution

The *insured* and Zurich shall submit any dispute arising out of or relating to this Policy to a binding arbitration proceeding as described in this Section (hereinafter 'ADR Proceeding'). The seat of the ADR Proceeding shall be in Auckland, New Zealand. Either the *insureds* or Zurich may initiate the ADR Proceeding process by sending written notice to the other party.

Unless otherwise agreed by the parties, any such binding arbitration shall be governed by the Resolution

Rules of the New Zealand International Arbitration Centre. In any such arbitration, the *insured* collectively and Zurich shall each select an independent arbitrator, and those two arbitrators shall select a third independent arbitrator. A decision by a majority of the three arbitrators shall be final and binding upon all *insureds* and Zurich. The parties to the ADR Proceeding process shall share equally the fees and expenses of the third-appointed arbitrator as well as other common expenses of the ADR Proceeding process, although each party shall pay the fees and expenses of such party's appointed arbitrator.

## 7.9 Fraudulent Claims

If the *insured* shall give notice of any *financial loss* or circumstance knowing same to be false or fraudulent, as regards amount or otherwise, such *financial loss* shall be excluded from the Policy for the fraudulent *insured* and we shall have the right to avoid our obligations under this Policy in relation to that fraudulent *insured* or in its entirety and in such case, the Policy shall become void and all notifications shall be forfeited.

## 7.10 Failure of the Company to Indemnify Insured Persons

In respect of Insurance Clauses 1.1 only, if the *financial loss* of an *insured person* is *indemnifiable financial loss* but the *company* fails to indemnify such *insured persons* for any reason within ninety (90) days of a written demand from the *insured person* to so indemnify, then we will pay such *financial loss* to or on behalf of the *insured persons* as if such *financial loss* was not *indemnifiable financial loss* and without prior deduction of any applicable *retention*.

In such event, however, we shall be entitled to obtain immediate reimbursement from the *company* for all payments made by us that would not have been made or covered under this Policy had the indemnity been provided by the *company* in respect of such *financial loss* or such *retention*, unless the *company* fails or failed to indemnify the *insured persons* due to *financial impairment*.

Any decision by us to pay the *financial loss* of an *insured person* will be binding on the *company* and the *company* will not be entitled to withhold reimbursement of the *retention* in the event of any disagreement between us and the *company* about the payment of the *financial loss* of an *insured person*.

## 7.11 Other Insurance, Order of Payments and Non-Stacking of Limits

7.11.1 If a *financial loss* covered under this Policy is also covered, wholly or partially, by any other valid and collectable insurance policy, this Policy shall only apply and pay *financial loss* in excess of the amount paid by such other insurance policy, and irrespective of whether such other insurance policy is stated to be primary, contributory, excess, contingent or otherwise. As excess insurance this Policy shall not apply or contribute to the payment of any *financial loss* until the insured limits and retentions amounts of that other insurance policy have been exhausted.

7.11.2 Notwithstanding the above, this Policy shall always apply specifically as excess of any indemnification provided by any valid and collectable insurance coverage afforded to by *insured* under any Cyber Liability Insurance, Security and Privacy or similar insurance policy, as to any *claim* or *financial loss* also covered, wholly or partially, under such policy.

In the event such other Cyber Liability Insurance, Security and Privacy or similar insurance policy afforded an *insured* is provided by Zurich (or would be provided but for the application of the retention amount, exhaustion of the limit of liability or failure to submit a notice of a claim as required), then Zurich's maximum aggregate *limit of liability* for all *financial loss* under all such Policies in respect of such cover shall be the single largest limit of liability (as specified in the *schedule*) of such policies.

7.11.3 With respect to Insurance Clauses 1.1 and 1.2 only, in the event of a *claim* made against an *outside entity executive*, coverage as is afforded by this Policy shall be specifically excess of:

- (i) any indemnification provided by an *outside entity*; and
- (ii) any valid and collectable insurance coverage afforded to an *outside entity* or its directors or officers (or equivalent executive or management position), and
- (iii) any indemnification provided by a *company*.

In the event such other directors and officers or management liability insurance coverage afforded to the *outside entity* or any of its directors or officers is provided by us or Zurich (or would be provided but for the application of the retention amount, exhaustion of the limit of liability or failure to submit a notice of a claim as required), then Zurich's maximum aggregate *limit of liability* for all *financial loss* under all such Policies in respect of such cover shall be the single largest limit of liability (as specified in the *schedule*) of such policies.

However, we shall not be liable under this Policy for *financial loss* arising from any *claim* based upon, arising out of or attributable to any *wrongful managerial act* or *interrelated wrongful acts* taking place before or after the *insured* served as an *outside entity executive*.

## 7.12 Policy Interpretation and Jurisdiction

The validity and interpretation of this Policy shall be exclusively governed by and construed in accordance with the laws and regulations of the country specified in the Applicable Law section of the *schedule* of this Policy.

This Policy, its *schedule* and any endorsements are one contract in which, unless the context otherwise requires:

- 7.12.1 headings are descriptive only, not an aid to interpretation;
- 7.12.2 singular includes the plural, and vice versa;
- 7.12.3 the male includes the female and neuter;
- 7.12.4 all references to specific legislation include amendments to and re-enactments of such legislation; and
- 7.12.5 references to positions, offices or titles shall include their equivalents in any jurisdiction in which a *claim* is made.

Any dispute under this Policy is subject to the exclusive jurisdiction of the country, region or city specified in the Applicable Law and Jurisdiction section of the *schedule* of Policy.

In the event that any part of this Policy becomes unenforceable or invalid under any applicable law or becomes so by subsequent court decision, such unenforceability or invalidity shall not render the Policy unenforceable or invalid as a whole.

## 7.13 Representations, Severability and Non-Rescission of the Policy

This Policy is issued in reliance upon the truth and completeness of the declarations, agreements, representations and warranties made in the written *proposal*. Such declarations, agreements, representations and warranties are the basis of this Policy and are incorporated into and constituting a part of this Policy.

7.13.1 With respect to Insurance Clauses 1.1 and 1.2 only, the *proposal* shall be construed as a separate proposal by each *insured person* and with respect to declarations, statements and financial information of the *proposal*:

- (a) no statement made by any *insured* or knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *proposal*) possessed by any *insureds* shall be imputed to any *insured persons* for the purpose of determining the availability of cover under this Policy; and
- (b) Only the statements in the *proposal* made by, and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *proposal*), possessed by any past, present or future Chairman, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Chief Legal Counsel, General Counsel, Chief Risk Officer (or equivalent executive or management position) of the *company* shall be imputed to that *company*, and the knowledge of the same officers of the *policyholder* shall be imputed to all *companies*.

We agree that we shall not seek to rescind or avoid or apply other legal remedy in relation to this Policy, or any severable part of this Policy, with respect to cover under the Policy for any *insured person* who did not make any wrongful statement or did not have knowledge of any wrongful statement or misrepresentation or non-disclosure with regard to the *proposal*.

We further agree that we shall not seek to rescind or avoid or apply other legal remedy in relation to this Policy, or any severable part of this Policy, where our remedy of rescission or avoidance arises solely as a result of innocent or negligent non-disclosure or innocent or negligent misrepresentation by an *insured person*.

7.13.2 With respect to Insurance Clauses 1.1, 1.2 and 1.3, the statements in the *proposal* made by, and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *proposal*), possessed by a *responsible officer* of the *company* shall be imputed to that *company*, and the knowledge of the same officers of the *policyholder* shall be imputed to all *companies*.

We agree that we shall not seek to rescind or avoid or apply other legal remedy in relation to this Policy, as a sole consequence of an innocent or negligent non-disclosure or innocent or negligent misrepresentation by a *responsible officer*.

However, in the event that such written *proposal* contains misrepresentations or omissions made with the intent to deceive or which materially affect either the acceptance of the risk or the hazard assumed by us under the Policy, or gross negligence, then coverage shall be void ab initio.

#### 7.14 Non-Imputation of Exclusions

No act or conduct of an *insured* shall be imputed to any other *insured persons* for the purpose of determining the applicability of the Exclusions to Insurance Clauses 1.1 and 1.2.

#### 7.15 Subrogation and Recoveries

Upon any payment of any *claim* we shall be entitled to assume all rights of recovery available to any *insureds* or the *company*, including but not limited to trying to recover from the *company* any *financial loss* or *retention* paid by us pursuant to General Condition 7.10 of this Policy.

The rights and obligations under this clause also apply in respect of any payment of *financial loss* by us in connection with a *claim* which would have been excluded pursuant to Exclusion 5.1 Prior and Pending Claims or Notifications and Prior Discovery had a valid notification to another policy existing or expired before or on the inception date of this Policy been accepted.

We shall be entitled to pursue and enforce all rights in the name of any *insured* who shall provide all reasonable assistance and co-operation to us in the prosecution of such rights. Furthermore, each *insured* shall take all steps necessary or required by us, whether before or after payment by us, to preserve and secure such rights, including any remedies that the *insured* may have to recover our *financial loss*, costs or expenses from any third party, or the execution of any documents necessary to enable us effectively to bring suit in the name of the *insured*, whether such acts shall be or become necessary before or after payment by us.

We shall be entitled to take control of all steps which are taken to recover any covered *financial loss* from third party, whether or not a portion of the *financial loss* the *insured* has suffered is uninsured. The cost of those proceedings shall be borne by the *insured* and us in the same proportion that the *financial loss* bears to any uninsured element of the *claim* or proceeding against the third party, but only to the extent that those costs are incurred after we have accepted liability under this Policy. In the event that there is no uninsured *financial loss* the costs shall be borne entirely by us.

In the case of recovery by either the *insured* or us on account of any paid *financial loss*, the amount recovered, shall be applied in the following order:

- (a) first to recompense the *insured* and us for the costs incurred in bringing proceedings against the third party, and which payment shall be allocated between the *insured* and us in the same proportion as they have borne those costs;
- (b) then to the *insured* for the amount, if any, of the covered *financial loss* which exceeds the *limit of liability*;
- (c) then, to us up to the amount of *financial loss* paid by us;
- (d) then, to the *insured* in respect of any uninsured element of the *claim* against the third party, including the *retention(s)* applicable to the *financial loss*.

Interests on amounts recovered from third parties shall be allocated proportionally to the amounts paid according to (a), (b), (c) and (d) above.

If we agree not to exercise our rights of recovery against an *insured person* in connection with a *claim* unless we have established that Exclusion 5.2 Conduct applies to such *claim* and that *insured person*.

Where we recover any amount following a paid *financial loss* under this Policy, the recovery, less the reasonable costs of making such recovery, will be applied to reinstate the *limit of liability*.

#### **7.16 Territorial Scope of Cover**

Cover under this Policy shall apply to:

7.16.1 *financial loss* incurred;

7.16.2 *claims* made;

7.16.3 *wrongful managerial acts, wrongful professional acts, wrongful dishonest or wrongful criminal acts* committed; and

7.16.4 *pre-claim events* that occur,

within the Territorial Scope specified in the *schedule*, as permitted by law.

#### **7.17 Confidentiality**

The existence and terms of this Policy will be confidential as between the *insured* and us and will not be published, disclosed or otherwise communicated except where:

7.17.1 the law requires disclosure in the financial statements or annual reports of payment by the *policyholder* of a premium in respect of a contract *insured persons* against a liability;

7.17.3 we consent in writing to disclosure of the existence and/or terms of this Policy; or

7.17.4 the *insured* is compelled by order of a court to do so.

#### **7.18 Connectivity with the Companion policy**

This Policy may connect with Zurich's Companion Asset Investment Managers and Defence Costs and Expenses Insurance issued to the *policyholder* as defined in the *schedule*, where we have determined that a *statutory charge* prevents payment under this Asset Investment Managers Insurance Policy.

In the event that *defence costs* or expenses have been advanced or paid under Zurich's Companion Asset Investment Managers and Officers Defence Costs and Expenses Insurance, and it is subsequently determined (at our sole and absolute discretion) that such payment could have been paid under this Policy, the amount of such payment will be reimbursed from this policy to that Policy.

#### **7.19 Goods and Services Tax**

All *limits of liability* in this Policy (except for the *retention*) exclude GST where that GST is recoverable by us under the Goods and Services Tax Act 1985. We add GST, where applicable, to *claim* payments. However, this does not apply to the *retention* which is GST inclusive.

#### **7.20 Sanctions regulation**

Notwithstanding any other terms or conditions under this policy, Zurich shall not be deemed to provide coverage and will not make any payments nor provide any service or benefit to any *insured* or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of the *insured* would violate any applicable trade or economic sanctions, law or regulation.

#### **7.21 Waiver of Privilege**

If we instruct any lawyer to investigate or defend any *claim* against any *insured*, you authorise the lawyer to provide us any documents, information or advice in respect of the *financial loss*, including in relation to indemnity, and you waive any privilege to the extent necessary to give full effect to our entitlement in this respect. We agree to keep any documents, information or advice in respect of the *financial loss* confidential, and not to take steps to waive privilege over them.

**Zurich Australian Insurance Limited**

(incorporated in Australia)

Trading as Zurich New Zealand

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