


Independent Review Committee Liability and Indemnification Reimbursement Policy

Effected with certain Lloyd's Underwriters (hereinafter called the "Underwriter") through

Lloyd's Approved Coverholder ("the Coverholder"):

Executive Risk Insurance Services Ltd.
 365 Bay Street, 12th Floor
 Toronto, Ontario, M5H 2V1 Canada


DECLARATIONS

INDEPENDENT REVIEW COMMITTEE MEMBER LIABILITY AND INDEMNIFICATION REIMBURSEMENT POLICY

THIS IS A **CLAIMS MADE** POLICY. SUBJECT TO ITS TERMS, THIS POLICY APPLIES ONLY TO ANY **CLAIM** FIRST MADE DURING THE **POLICY PERIOD**, OR IF APPLICABLE, THE **OPTIONAL EXTENSION PERIOD** PROVIDED SUCH **CLAIM** IS REPORTED TO THE **UNDERWRITER** IN ACCORDANCE WITH THE TERMS OF THIS POLICY. AMOUNTS INCURRED AS **COSTS, CHARGES AND EXPENSES** SHALL REDUCE THE LIMIT OF LIABILITY PROVIDED BY THE **UNDERWRITER** AND ARE SUBJECT TO THE RETENTIONS.

THIS POLICY PROVIDES THE **ASSUREDS** WITH AN OPTION TO ELECT THAT THE **UNDERWRITERS** DEFEND ANY CLAIM.

These Declarations along with the completed and signed **Application** and the policy with endorsements shall constitute the entire contract between the **Assureds** and the **Underwriter**.

Policy No.:
Renewal of Policy No.:
Item A. Name of Independent Review Committee:
Principal Address:
Name of Investment Fund Manager:
Principal Address:
Name of Investment Fund or Investment Fund Family:
Item B. Policy Period:
From:
To:

Both days at 12:01 a.m. Local Time at the **Independent Review Committee** Principal Address stated in **Item A**.

Item C.

Limit of Liability: \$ () CAD each **Loss**
 \$ () CAD in the aggregate for the **Policy Period**
 (including all **Costs, Charges and Expenses**)

Item D. Informal Investigatory Expenses Sub Limit:

 \$() CAD each **Claim** under Insuring Clause I.A, I.B or I.C.

Item E. Retentions:

 \$() CAD each **Claim** under Insuring Clause I.A.

 \$() CAD each **Claim** under Insuring Clause I.B.

 \$() CAD each **Claim** under Insuring Clause I.C.

Item F. Insured Percentage:

 () % of **Loss** in excess of the retention under Insuring Clause I.B. or Clause I.C.

Item G. Allocation Percentage:

() % of **Loss** in excess of the retention under Insuring Clause I.B. or Clause I.C.

Item H. Option for "Duty to Defend"

- (I) Duty of the Assureds to Defend (Response)**
- (II) Duty of the Underwriter to Defend (Response)**

Item I. Premium: \$() **Broker Commission Paid:** ()%

Currency: ()Dollars (\$)

Item J. 1. Premium for **Optional Extension Period:** ()% of the premium as provided in Clause X.
 2. Length of **Optional Extension Period:** One (1) year.

Item K. Notification pursuant to Clause VIII. shall be given to:

Mr. Gillian Barnes
 Pembroke Managing Agency Limited
 Plantation Place
 30 Fenchurch Street
 London EC3M 3AD UK

Tel: +44 20 7105 8400 Fax: +44 20 7105 8490
 Email: gillian.barnes@pembrokeunderwriting.com

and to:

The Claims Manager
 Sagicor Syndicate
 1 Great Tower Street
 London EC3R 5AA UK

Tel: +44 20 3003 6846 Fax: +44 20 7327 4407
 Email: david.eynon@sagicor.eu

Item L. Pending and Prior Litigation Date:

Dated: , 2008

The insurance contract consists of this Declarations page as well as all coverage wordings, riders, or endorsements that are attached hereto.

IDENTIFICATION OF UNDERWRITER / ACTION AGAINST UNDERWRITER

This insurance has been effected in accordance with the authorization granted to the Coverholder by the Underwriting Members of the Syndicates whose definitive numbers and proportions are shown in the Table attached to Agreement No. N34327 and N34489 (hereinafter referred to as "the Underwriters"). The Underwriters shall be liable hereunder each for his own part and not one for another in proportion to the several sums that each of them has subscribed to the said Agreement.

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155 rue Metcalfe, Suite 1540, Montreal, Quebec H3B 2V6.

NOTICE

Any notice to the Underwriters may be validly given to the Coverholder.

In witness whereof this policy has been signed as authorized by the Underwriters, by Executive Risk Insurance Services Limited.

Per

The Assured is requested to read this policy, and if incorrect, return it immediately for alteration.

In the event of an occurrence likely to result in a claim under this insurance, immediate notice should be given to the Coverholder whose name and address appears above, and to the firms shown under Item K. above. All inquiries and disputes are also to be addressed to this Coverholder.

THIS POLICY CONTAINS A CLAUSE WHICH MAY LIMIT THE AMOUNT PAYABLE.



INDEPENDENT REVIEW COMMITTEE MEMBER LIABILITY AND INDEMNIFICATION REIMBURSEMENT POLICY

In consideration of the payment of the premium, and in reliance on the **Application** and subject to all of the provisions of this policy, the **Underwriter** and the **Assureds** agree as follows:

I. INSURING CLAUSES

The **Underwriter** shall pay on behalf of:

- A. the **Independent Review Committee Member Non-Indemnifiable Loss** resulting from any **Claim** first made against the **Independent Review Committee Member** during the **Policy Period**, or, if exercised, during the **Optional Extension Period** which the **Independent Review Committee Member** are legally obligated to pay by reason of a **Wrongful Act** except for **Loss** which the **Investment Fund Manager** and/or the **Investment Fund** is permitted or required to pay under applicable legislation on behalf of the **Independent Review Committee Member** as indemnification.
- B. the **Investment Fund Manager Loss** that the **Investment Fund Manager** is required or permitted to pay as indemnification to any of the **Independent Review Committee Member** resulting from any **Claim** first made against the **Independent Review Committee Member** during the **Policy Period**, or, if exercised, during the **Optional Extension Period** for a **Wrongful Act**.
- C. the **Investment Fund Loss** that the **Investment Fund** is required or permitted to pay as indemnification to any of the **Independent Review Committee Member** resulting from any **Claim** first made against the **Independent Review Committee Member** during the **Policy Period**, or, if exercised, during the **Optional Extension Period** for a **Wrongful Act**.

II. DEFINITIONS

The following terms whenever used in this policy in boldface type shall have the meanings indicated. The use of a defined term either in the singular or plural has the same meaning.

- A. "**Application**" means:
 - 1. the applications for this policy or any policy of which this policy is a renewal; and
 - 2. any materials submitted with the applications, or at any later date, which shall be retained on file by the **Underwriting Manager** and shall be deemed to form part of the policy hereto, as if physically attached.
- B. "**Assureds**" means the **Independent Review Committee Member**, the **Investment Fund Manager**, and the **Investment Fund**.

C. **"Attorney in Fact"** means:

Nicholas Smith
 Attorney in Fact in Canada for Lloyd's Underwriters
 1155 rue Metcalfe, Suite 1540
 Montreal, Quebec
 H3B 2V6

D. **"Claim"** means:

1. any written demand by the **Investment Fund Manager**, the **Investment Fund** or any, past, present or future security or unit holder of the **Investment Fund** for monetary damages or non-monetary, injunctive relief or other relief against any **Independent Review Committee Member**;
2. a civil proceeding commenced by the service against any **Independent Review Committee Member** of a statement of claim or other similar pleading in which monetary damages or non-monetary damages, injunctive relief or other relief are sought against the **Independent Review Committee Member**, by or on behalf of the **Investment Fund Manager**, the **Investment Fund** or any past, present or future security holder of an **Investment Fund**;
3. an arbitration commenced by the service against any **Independent Review Committee Member** of an arbitration demand in which monetary damages or non-monetary damages, injunctive relief or other relief are sought, by or on behalf of the **Investment Fund**, the **Investment Fund Manager** or any past, present or future security holder of an **Investment Fund**; or
4. a formal or informal administrative or regulatory proceeding or investigation by any provincial or territorial securities commission or regulatory body, against any **Independent Review Committee Member**, commenced by the service or filing of a formal notice against, or the receipt of a written notice by, such **Independent Review Committee Member** regarding such proceeding or investigation;

including any appeal from any of the proceedings identified in paragraphs 2, 3 or 4 above.

E. **"Costs, Charges and Expenses"** means any reasonable and necessary fees and expenses including, but not limited to, legal and expert fees, incurred by an **Assureds** in defence of a **Claim**, but shall not include:

1. salaries, wages, fees, overhead or benefit expenses of any kind associated with the **Independent Review Committee** or the **Investment Fund Manager** of the **Investment Fund**;
2. any amounts incurred in the defence of a **Claim** for which any other insurer has a duty to defend;
3. any amounts incurred in relation to informal administrative proceedings or investigations in excess of the amount shown in **Item D.** on the Declarations page.

F. **"Financial Impairment"** means:

1. that the **Investment Fund Manager** or the **Investment Fund**, has:
 - (i) filed a proposal or a notice of intention to make a proposal, made an assignment or has had a receiving order made against it, pursuant to the provisions of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended; or

- (ii) filed an application under section 11 of the *Companies' Creditors Arrangement Act*, R.S 1985, c. C-36, as amended and an initial order has been made by a court of competent jurisdiction granting it protection under that Act;

or,

- 2. an interim receiver, receiver, receiver and manager, trustee, liquidator or any other person with the same rights or powers, has been appointed in respect of the **Investment Fund** and/or **Investment Fund Manager** by a court of competent jurisdiction pursuant to the provision of any provincial, territorial or federal statutory law in Canada and been granted the power to take, or has taken, possession and control of, all or part of the assets, undertakings and properties of the **Investment Fund** and/or **Investment Fund Manager**, including cash, deposit instruments, securities or other property which it is holding in trust for any other person;

or,

- 3. the **Investment Fund** and/or **Investment Fund Manager** is insolvent or otherwise financially unable to indemnify the member;

and in either case and as a direct result of (1), (2) or (3) above, the **Independent Review Committee Member** are not being indemnified on a current basis by the **Investment Fund Manager** or the **Investment Fund**.

G. "**Independent Review Committee**" means the committee of natural persons established for an **Investment Fund** in compliance with National Instrument 81-107, *Independent Review Committee for Investment Funds*, established by the Canadian Securities Administrators.

H. "**Independent Review Committee Member**" means:

- 1. any person who was, now is, or shall be a member of the **Investment Review Committee** including any chairman, subcommittee member, all persons serving in a functionally equivalent role for the **Independent Review Committee**; and
- 2. the lawful spouse or domestic partner of any of the persons set forth in the above provisions of this definition, but only to the extent the spouse or domestic partner is a party to a **Claim** solely in his or her capacity as spouse or domestic partner of any such persons and only for the purposes of any **Claim** seeking damages recoverable from marital community property, property jointly held by any such person and the spouse or domestic partner; and
- 3. the estates, heirs, legal representatives or assigns of any of the persons included in the definition of **Independent Review Committee Member**, in the event of his or her death, incapacity, insolvency or bankruptcy.

I. "**Investment Fund**" means any "Investment Fund" as that term is defined in National Instrument 81-106, *Investment Fund Continuous Disclosure*. Provided, however, that **Investment Fund** shall not include any:

- (i) hedge fund; or
- (ii) **Labour Sponsored Fund**.

J. "**Investment Fund Manager**" which is designated in **Item A.** of the Declarations and means any "manager" as that term is defined in National Instrument 81-107, *Independent Review Committee for Investment Funds*, established by the Canadian Securities Administrators.

K. "**Labour Sponsored Fund**" means any **Investment Fund** which is a "Labour Sponsored Fund" within the meaning of National Instrument 81-106, *Investment Fund Continuous Disclosure*, established by the Canadian Securities Administrators.

- L. **"Loss"** means **Costs, Charges and Expenses**, damages, any judgment amount (including pre-judgment interest, post-judgment interest, and taxable costs and disbursements as allowed by the Court or agreed upon by the parties), punitive, exemplary and multiple damages awarded against any **Independent Review Committee Member** but only to the extent that such damages are insurable under the law most favourable to the insurability of such damages, or, any settlement (undertaken with the prior consent of the **Underwriter**) incurred by any **Assureds**, but shall not include:
1. criminal or civil fines or penalties imposed by law;
 2. that portion of any multiplied damages award which exceeds the amount multiplied;
 3. any benefits (including fringe benefits, payments in connection with any employee benefit plan or any other payment other than salary) owed pursuant to the terms of any employment contract;
 4. the return or withdrawal of salary, fees, compensation or charges paid to any **Independent Review Committee Member**;
 5. any **Loss** deemed uninsurable under the law pursuant to which this policy shall be construed (and in undertaking this determination the **Assureds** are entitled to the benefit of the jurisdiction most favourable to the **Assureds**);
 6. any investment gains or losses or claims related directly or indirectly to the fluctuation in **Net Asset Value** of any **Investment Fund**;
 7. any compensation, fees or expenses paid to independent counsel or advisors, or any disputes over compensation, fees or expenses paid or unpaid to independent counsel or advisors;
 8. any **Loss** related directly or indirectly to a challenge or assertion that an individual **Independent Review Committee Member** should not be defined as independent in relation to **NI 81-107**.
- Solely for the purposes of the foregoing and notwithstanding Clause **IX.**, of this Policy, the law of the jurisdiction most favourable to the insurability of the **Loss** shall control for the purposes of resolving any dispute between the **Underwriter** and any **Independent Review Committee Member** regarding whether such **Loss** is insurable under this Policy, provided that such jurisdiction is where:
1. the **Loss** was awarded or imposed;
 2. any **Wrongful Act** occurred for which such **Loss** was awarded or imposed;
 3. any **Independent Review Committee Member** in respect of whom such **Loss** was awarded or imposed, normally resides; or
 4. the **Underwriting Manager** has its principal place of business in Canada.
- M. **"Net Asset Value or (NAV)"** means the market value of all securities or assets owned by an **Investment Fund**, minus its total liabilities. **NAV** is typically calculated on a per-share basis.
- N. **"NI 81-106"** means National Instrument 81-106 *Investment Fund Continuous Disclosure*, established by the Canadian Securities Administrators, as amended from time to time.
- O. **"NI 81-107"** means National Instrument 81-107 *Independent Review Committee for Investment Funds*, established by the Canadian Securities Administrators, as amended from time to time.
- P. **"Non-Indemnifiable Loss"** shall mean **Loss** for which the **Independent Review Committee Member** is not being indemnified or otherwise reimbursed on a current basis by:

1. the **Investment Fund** and the **Investment Fund Manager** because:
 - i. they both are not permitted or required under the terms of Section 3.14 of **NI 81-107** to indemnify the **Independent Review Committee Member** in respect of such **Loss**; or
 - ii. of **Financial Impairment**; and
2. any other person or entity in respect of whom the **Independent Review Committee Member** is contractually entitled to be indemnified in respect of such **Loss**.

Q. "**Optional Extension Period**" means the period described in Clause **X.A**.

R. "**Pending and Prior Litigation**" means:

1. any litigation based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any pending, filed and prior litigation prior to the date noted in **Item L**. of the declarations,
2. any fact, circumstance, situation, transaction or event underlying or alleged in such litigation, regardless of the legal theory upon which such **Claim** is predicated, or
3. any demand, suit or other proceeding, pending, filed or made against any **Independent Review Committee Member**, or order, decree or judgment entered against any **Independent Review Committee Member**, on or before the date designated in **Item L**. of the Declarations, or the same or substantially the same facts, circumstances or situation underlying or alleged there.

S. "**Policy Period**" means the period from the effective date and hour of this policy to the policy expiration date and hour as set forth in **Item B**. of the Declarations, or its earlier cancellation date and hour, if any, or the end of the **Optional Extension Period**, if purchased.

T. "**Underwriter(s)**" means the insurance companies and **Underwriters** at Lloyd's of London, England whose names appear below. The following **Underwriters** have duly authorized Executive Risk Services Limited, as the **Underwriting Manager**, to execute and sign this policy on their behalf under Contract No. N34327 and N34489 in the following proportion:

Pembroke Managing Agency Syndicate 4000 at Lloyd's	44.44%
Sagikor Syndicate Syndicate 1206 at Lloyd's	55.56%

U. "**Underwriting Manager**" means:

Executive Risk Insurance Services Limited
365 Bay Street, 12th Floor
Toronto, Ontario M5H 2V1
Canada

The **Underwriting Manager** is the authorized agent of the **Underwriter**, but is not a party to this contract.

V. "**Wrongful Act**" means any actual or alleged breach of duty or breach of the standard of care provided for in National Instrument 81-107, *Independent Review Committee for Investment Funds*, established by the Canadian Securities Administrators, and/or actual or alleged error, omission, misstatement, misleading statement or negligent act, by any **Independent Review Committee Member**, solely while acting in his or her capacity as a member of the **Independent Review Committee** for the **Investment Fund** designated in **Item A**. of the Declarations.

III. EXCLUSIONS

The **Underwriter** shall not be liable under any Insuring Clause for **Loss** in connection with any **Claim**:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving sickness, bodily injury, mental anguish, emotional distress, disease, death, false arrest, false imprisonment, damage to, or, destruction of tangible property, including intellectual property, and loss of use thereof, or libel, slander, defamation, harassment or invasion of privacy.
- B. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
 - 1. any **Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given prior to the **Policy Period** under any other policy of insurance;
 - 2. any **Pending or Prior Litigation** prior to the date noted in **Item L.** of the Declarations.
- C. to the extent it is insured under any other existing valid **Independent Review Committee Member** policy or any **Investment Fund Manager Errors & Omissions** policy, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, and regardless of whether or not any **Loss** in connection with such **Claim** is collectible or recoverable under such other **Independent Review Committee Member** policy or any **Investment Fund Manager Errors & Omissions** policy and for which any other insurer has a duty to pay; provided, however, this exclusion shall not apply to the amount of **Loss** which is in excess of the amount of any deductible and the limit of liability of such other policy where such **Claim** is otherwise covered by this policy.
- D. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, actual or alleged seepage, release, dispersal, transportation, emission, pollution, irritants, mould, vapour, soot, acids, alkalis, infectious or medical waste, asbestos, noise, silica, Sudan 1 dye or contamination of any kind, including but not limited to the treatment, removal or disposal, of waste of any kind including radioactive, toxic, explosive, or nuclear material waste or any other substance defined or identified on a list of hazardous substances issued by or pursuant to the Canadian Environmental Protection Act, the United States Environmental Protection Agency, the United States Atomic Energy Act of 1954 or any federal, provincial, state, county, municipal or local counterpart thereof.
- E. based upon, arising out of or in any way involving any willful violation by any **Independent Review Committee Member** of the rules, orders, policies or regulations of any federal, provincial or territorial securities regulator, regulatory agency, regulatory organization or similar body, provided however that this exclusion shall not apply: (i) to **Costs, Charges and Expenses**; and (ii) until a judgment, arbitration or other final adjudication adverse to the **Independent Review Committee Member** establishes such willful violation;
- F. based upon, arising out of or in any way involving the alleged use of any information concerning the investment program of an **Investment Fund**, or the investment portfolio of an **Investment Fund Manager**, with respect to the purchase or sale of securities by any **Independent Review Committee Member** for their own benefit or advantage, provided, however, that this exclusion shall not apply unless it is established in fact such alleged use of any information establishes such willful violation;
- G. based upon, arising from, or in consequence of such **Independent Review Committee Member** having gained in fact any personal profit, remuneration or pecuniary advantage to which such **Independent Review Committee Member** was not legally entitled; provided, however, that this exclusion shall not apply unless it is established that in fact such personal profit, remuneration or pecuniary advantage was not lawfully obtained;
- H. based upon, arising from or in any way involving any dispute over fees, compensation, expenses or charges of any **Independent Review Committee Member**;

- I. for actual or alleged compensation, fees or expenses paid to independent counsel or advisors, or any disputes over compensation, fees or expenses paid or unpaid to independent counsel or advisors;
- J. based upon, arising from, or in consequence of any challenge or assertion that an individual **Independent Review Committee Member** should not be defined as independent in relation to **NI 81-107**;
- K. based upon, arising from, or in consequence of any dishonest, fraudulent, criminal, malicious or willful violation of any statute, law or regulation, error or omission committed by any **Independent Review Committee Member**; provided, however, that this exclusion shall not apply: (i) to **Costs, Charges and Expenses**; and (ii) until a judgment, arbitration or other final adjudication adverse to the **Independent Review Committee Member** establishes such a dishonest, fraudulent, criminal, malicious or willful act, error or omission;

IV. SEVERABILITY OF EXCLUSIONS

With respect to any of the exclusions in Clause III., the knowledge possessed by one **Independent Review Committee Member** shall not be imputed to any other **Independent Review Committee Member** for the purpose of determining coverage.

V. LIMIT OF LIABILITY, RETENTIONS AND ORDER OF PAYMENTS

- A. The **Underwriter** shall be liable to pay the percentage of **Loss** set forth in **Item F.** of the Declarations in excess of the amount of the applicable retention up to the limit of liability, it being warranted that the remaining percentage of **Loss** shall be uninsured.

The retention applicable to Insuring Clause I.B. or Clause I.C. shall apply to **Loss** on the basis that the **Investment Fund Manager** and/or the **Investment Fund** is required or permitted or is capable of providing indemnification, regardless of whether or not actual indemnification is made.

The applicable retention will not be applied, either by reason the **Investment Fund Manager** and/or the **Investment Fund** are both not permitted or required under the terms of Section 3.14 of **NI 81-107** to indemnify the **Independent Review Committee Member** in respect of such **Loss**, or, in the event **Financial Impairment** of all the **Investment Funds** occurs and the **Investment Fund Manager** is unable to in fact provide indemnification.

- B. The amount shown in **Item C.** of the Declarations shall be the maximum aggregate limit of liability of the **Underwriter** under the policy.
- C. More than one **Claim** involving the same **Wrongful Act** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times:
 - 1. the time at which the earliest **Claim** involving the same **Wrongful Act**; or
 - 2. the time at which the **Claim** involving the same **Wrongful Act** shall be deemed to have been made pursuant to Clause VIII.B.
- D. Any payment of **Loss** by the **Underwriter** shall reduce the limit of liability.
- E. The **Underwriter** shall pay **Loss** in the order in which **Loss** is incurred. If **Loss** is payable under more than one Insuring Clause concurrently the **Underwriter** shall pay the **Loss** in the following priority:
 - 1. first to satisfy **Loss** on account of a **Claim** for which coverage is provided under Insuring Clauses I.A..

2. second, if there is any remaining amount available any such amounts shall be paid for coverage which is provided under Clause I.B..
 3. third, if there is any remaining amount available any such amounts shall be paid for coverage which is provided under Clause I.C..
- F. The **Underwriter** shall pay **Costs, Charges and Expenses** no later than every 90 days following delivery of the relevant invoices to the **Underwriter**.

VI. DEFENCE, SETTLEMENTS AND JUDGMENT

A. Duty of the **Assureds** to Defend

If the **Assureds** exercise the option for “Duty of **Assureds** to Defend” as provided for in **Item H.(I)** of the Declarations of this policy, then the **Assureds** have the duty and obligation to defend any **Claim** for which coverage exists, in whole or in part, and the **Underwriter** has no duty to defend the **Claim** under any circumstances.

If the **Assureds** exercise the option for “Duty of the **Underwriter** to Defend” as provided for in **Item H.(II)** of the Declarations of the policy, then the **Underwriter** shall have the duty and obligation to defend any **Claim** for which coverage exists, in whole or in part. However, the Duty of the **Underwriter** to defend ceases upon the exhaustion of the **Limit of Liability** as provided for in **Item C** of the Declarations.

- B. No settlement shall be made and no **Costs, Charges and Expenses** shall be incurred without the **Underwriter’s** consent, such consent not to be unreasonably withheld. This provision applies where the **Assureds** exercise the option for “Duty of the **Assureds** to Defend” as provided for in **Item H.(I)** of the Declarations of the policy.
- C. In the event the **Assureds** elect for the “Duty of the **Assureds** to Defend” as provided for in **Item H.(I)** of the Declarations of the policy, the **Underwriter** shall have the right to associate with the **Assureds** and their legal representatives in the investigation, defence and settlement of any **Claim** that is potentially covered in whole or in part by this policy.

VII. ALLOCATION

If both **Loss** covered by this policy and **Loss** not covered by this policy are incurred, because a **Claim** against an **Assured** includes both covered and uncovered matters the **Assureds** and the **Underwriter** shall allocate such amount as follows:

- (a) the percentage set forth in **Item G.** of the Declarations, of all **Costs, Charges and Expenses** in respect of such **Claim** shall be allocated to covered **Loss**, unless the **Underwriter** and the **Assureds** mutually agree to a higher percentage of **Costs, Charges and Expenses**. Further, no **Costs, Charges and Expenses** shall be allocated to the **Investment Fund Manager** or the **Investment Fund** to the extent that it is unable to indemnify any **Assureds** by reason of **Financial Impairment** or statutory law. Such allocation of **Costs, Charges and Expenses** shall be final and binding and shall not apply to or create any presumption with respect to the allocation of any other **Loss**.

All **Costs, Charges and Expenses** allocated to covered **Loss** shall be advanced by the **Underwriters** as provided for in Clause **V (F)**. If the **Independent Review Committee Member** is unable to obtain indemnification from the **Investment Fund Manager** or the **Investment Fund** by reason they are not permitted or required under the terms of Section 3.14 of **NI 81-107** to indemnify the **Independent Review Committee Member** in respect of such **Loss**, the **Underwriters** shall advance **Costs, Charges and**

Expenses until indemnification is attained whereupon any monies advanced as **Costs, Charges or Expenses** can be recovered by the **Underwriter** having regard to the applicable retention, or, the **Underwriters** may deduct the amount of any such **Costs, Charges and Expenses**, as set off, from any **Loss** yet to be paid.

- (b) with respect to all **Loss** other than **Costs, Charges and Expenses**, the **Assureds** shall allocate such amount based upon the relative legal exposure and relative risk of the parties having regard to both insured and uninsured claims and insured and uninsured parties.

If the **Assureds** and the **Underwriter** cannot agree on such an allocation the **Underwriter**, if requested by the **Assureds**, shall submit the allocation dispute to binding arbitration pursuant to the Arbitration Act in force in the Canadian province or territory in which the **Investment Fund** is domiciled. The arbitration panel shall consist of one arbitrator selected by the **Assureds**, one arbitrator selected by the **Underwriter**, and a third independent arbitrator selected by the first two arbitrators. The fees of the arbitrators shall be shared equally by the **Assureds** and the **Underwriter**.

VIII. NOTIFICATION

- A. The **Assureds** shall, as a condition precedent to their rights to payment under this policy, give the **Underwriter** notice in writing of any **Claim** as soon as practicable but, in any event, within 45 days of the expiration of the **Policy Period** or, if exercised, prior to the expiry of the **Optional Extension Period**.
- B. If during the **Policy Period** the **Assureds** first become aware of a specific **Wrongful Act** the **Assureds** shall give written notice to the **Underwriter** as soon as practicable of:
1. the specific **Wrongful Act**;
 2. the consequences which have resulted or may result therefrom;
 3. the relief sought by the claimant(s); and
 4. the circumstances by which the **Assureds** first became aware of the **Wrongful Act**,

and upon this condition precedent being satisfied any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this policy to have been made at the time such notice was first given.

- C. Notice to the **Underwriter** provided for in this Clause shall be given to the firms shown under **Item K.** of the Declarations.
- D. The **Underwriter** shall be notified in writing by the Chairman of the **Independent Review Committee** or the **Investment Fund Manager**:
- a. At the end of the each interim period following a change in the **Investment Fund Manager** for an **Investment Fund** unless the new manager is an affiliate of the former **Investment Fund Manager**;
 - b. Immediately upon the majority of the members of an **Independent Review Committee** voting to remove an individual member of that **Independent Review Committee**;
 - c. Immediately upon the majority of security holders of an **Investment Fund** voting to remove an individual member of an **Independent Review Committee**; or
 - d. Immediately upon any Canadian provincial or territorial securities regulatory authority or regulator taking any action against the **Investment Fund Manager** or the **Investment Fund**, including but not limited to requiring a transaction to be unwound, in response to the **Independent Review Committee** notifying any provincial or territorial securities regulatory authority or regulator of an actual or alleged instance in which the **Investment Fund Manager** has not complied with a condition or conditions

imposed by securities legislation or the **Independent Review Committee** in its approval under subsection 5.2 of **NI 81-107**.

IX. GENERAL CONDITIONS

A. Warranty Clause for Insuring Clauses I.A., I.B. & I.C.:

It is warranted that the particulars and statements contained in the **Application** are the basis of this policy and are to be considered as incorporated into and constituting a part of this policy.

By acceptance of this policy, the **Assureds** agree:

1. that the statements in the **Application** are their representations, that they shall be deemed material to the acceptance of the risk or the hazard assumed by the **Underwriter** under this policy and that this policy is issued in reliance upon the truth of such representations;
2. that in the event that the **Application** contains misrepresentations made with the actual intent to deceive, or contains misrepresentations (including statements and financial calculations or forecasts) which materially affect either the acceptance of the risk or the hazard assumed by the **Underwriter** under this policy, this policy shall be void and of no effect whatsoever with respect to those **Assureds** who made or had knowledge of such misrepresentations.

In granting coverage to any one of the **Assureds**, the **Underwriter** has relied upon the Declarations and Statements in the written **Application** and upon any Declarations and Statements in the original written **Application** submitted to any other **Underwriter** in respect of prior coverage. All such Declarations and Statements are the basis of such coverage and shall be considered as incorporated in and constituting part of this policy.

With respect to the Declarations and Statements contained in such written **Application(s)** for coverage afforded to the **Independent Review Committee**, no statement in the **Application** or knowledge possessed by any **Independent Review Committee Member** shall be imputed to any other **Independent Review Committee Member** for the purpose of determining if coverage is available.

B. No Right to Rescind Insuring Agreement I.A :

The **Underwriter** has no right to void or rescind Insuring Clauses I.A.

C. Adjustment Clause

1. This policy is issued and the premium computed on the basis of the information submitted to the **Underwriter** as part of the **Application**.

In the event:

- I. the **Investment Fund Manager** or the **Investment Fund** or their parent company consolidates with or merges into, or sells all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert, or any person or entity or group of persons or entities acting directly or indirectly, jointly or in concert shall acquire an amount of the outstanding securities representing more than fifty percent (50%) of the voting power for election of directors of the **Investment Fund Manager**, or its parent, or acquires the voting rights of such an amount of securities, then this Policy shall continue in full force and effect but only with respect to **Claims** for covered **Wrongful Acts** alleged, committed or attempted by any **Independent Review Committee Member** prior to the effective date of such event, unless;

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- (a) written notice of such transaction or event is given to the **Underwriter** by the Chairman of the **Independent Review Committee** or the **Investment Fund Manager**, as soon as practicable, but not later than 30 days; of the date of public announcement of such event;
 - (b) the **Independent Review Committee** provides the **Underwriter** with such information in connection therewith as the **Underwriter** may deem necessary;
 - (c) the **Assureds** accept any special terms, conditions, exclusions or additional premium charge as may be required by the **Underwriter**; and
 - (d) the **Underwriter**, at its sole discretion, agrees to provide such coverage by endorsement and will determine any additional reasonable premium charge.
- II. the mandate or responsibilities for the **Independent Review Committee** described in the **Independent Review Committee** written charter, as outlined under subsection 3.6 of **NI 81-107**, or the terms of the indemnification from the **Investment Fund** or **Investment Fund Manager** are altered, amended or revised from that in place at the inception date of this Policy, then this Policy shall continue in force and effect but only for **Claims** for covered **Wrongful Acts** alleged, committed or attempted by any **Independent Review Committee Member** prior to the effective date of such alteration, amendment or revision, unless;
- (a) written notice of such alteration, amendment or revision, is given to the **Underwriter** by the Chairman of the **Independent Review Committee** or the **Investment Fund Manager**, as soon as practicable following the date after such alteration, amendment or revision, but not later than 30 days;
 - (b) the **Independent Review Committee** provides the **Underwriter** with such information in connection therewith as the **Underwriter** may deem necessary;
 - (c) the **Assureds** accept any special terms, conditions, exclusions or additional premium charge as may be required by the **Underwriter**; and
 - (d) the **Underwriter**, at its sole discretion, agrees to provide such coverage by endorsement and will determine any additional reasonable premium charge.
- III. **Financial Impairment** of the **Investment Fund Manager** or all of the **Investment Funds** occurs, then this Policy shall continue in force and effect but only with respect to **Claims** for covered **Wrongful Acts** alleged, committed or attempted by any **Independent Review Committee Member** of the **Independent Review Committee** for that **Investment Fund Manager** prior to the effective date of such event.

The Chairman of the **Independent Review Committee** or the **Investment Fund Manager** shall give the **Underwriter** written notice of any such event as soon as practicable but not later than 10 days after the date such Chairman of the **Independent Review Committee** or the **Investment Fund Manager** is advised or becomes aware of such event.

- IV. all duly appointed members of the **Independent Review Committee** resign at the same time, then this Policy shall continue in force and effect but only with respect to **Claims** for covered **Wrongful Acts** alleged, committed or attempted by any **Independent Review Committee Member** prior to the effective date of such event.

The Chairman of the **Independent Review Committee** or the **Investment Fund Manager** shall give the **Underwriter** written notice of any such event as soon as practicable but not later than 10 days after the date such Chairman of the **Independent Review Committee** or the **Investment Fund Manager** is advised or becomes aware of such event.

D. Cancellation Clause

1. By acceptance of this policy, the **Assureds** hereby confer the exclusive power and authority to cancel this policy to the Chairman of the **Independent Review Committee**. The Chairman of the **Independent Review Committee** may cancel this policy by surrender thereof to the **Underwriter**, or by providing written notice by registered mail to the **Underwriter** stating when thereafter such cancellation shall be effective. The registered mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**.
2. The **Underwriter** may cancel this policy only for non-payment of premium by registered mail, to the **Independent Review Committee** Chairman, the **Investment Fund Manager** and the **Investment Fund**; written notice stating when, not less than 15 days thereafter, such cancellation shall be effective. The registered mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the **Underwriter** shall be equivalent to registered mailing. If the foregoing notice period is in conflict with any governing law or regulation, then such period shall be amended to afford the minimum notice period permitted thereunder.
3. If this policy is cancelled pursuant to Clause 1. above, the **Underwriter** shall retain the customary short rate proportion of the premium hereon, as determined by the **Underwriter**. If this policy is cancelled pursuant to Clause 2 above, the **Underwriter** shall retain the pro-rata proportion of the premium hereon. Payment or tender of any unearned premium by the **Underwriter** shall not be a condition precedent to the effectiveness of cancellation.

E. Where Coverage Applies:

This policy covers a **Wrongful Act** that occurs anywhere, regardless of where the **Claim** is commenced, for **Loss** incurred anywhere in the world, unless prohibited by law.

X. OPTIONAL EXTENSION PERIOD

- A. If this policy is terminated or not renewed, for any reason other than for non-payment of premium, by the **Independent Review Committee Member** or by the **Underwriter**, then the **Assureds** shall have the right, upon payment of an additional premium calculated at that percentage shown in **Item J.1.** of the Declarations of the total premium for this policy, to an extension of the coverage granted by this policy with respect to any **Claim** first made during the period of time set forth in **Item J.2.** of the Declarations after the policy expiration date, but only with respect to any **Wrongful Act** committed before such date.
- B. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for this policy must have been paid. The right to purchase the **Optional Extension Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** is given to the **Underwriter** prior to expiration of the **Policy Period**. If such notice and premium payment is not so given to the **Underwriter**, there shall be no right to purchase the **Optional Extension Period**.
- C. In the event of the purchase of the **Optional Extension Period**, the entire premium shall be deemed fully earned at its commencement.
- D. In the event the **Optional Extension Period** is purchased, it shall terminate forthwith on the effective date of any contract of insurance or indemnity which replaces the coverage afforded by this policy through the **Optional Extension Period** either in whole or in part, and in the event the **Optional Extension Period** is so terminated, the **Underwriter** shall not be obliged to refund any premium, to the **Assureds**, court appointed liquidator, monitor appointed pursuant to the Company Creditors

Arrangement Act, R.S.C. or any bankruptcy trustee pursuant to the Bankruptcy and Insolvency Act, for the unexpired period of such **Optional Extension Period**.

- E. The exercise of the **Optional Extension Period** shall not in any way increase the limit of liability of the **Underwriter**.
- F. The **Optional Extension Period** is not capable of being cancelled by any **Assureds**, their assignees or the **Underwriter** after payment of the **Optional Extension Period** premium.
- G. The offer of renewal terms and conditions, limits of liability and/or premiums different from those in effect prior to renewal shall not constitute a refusal to renew or a non-renewal.

XI. ASSISTANCE, COOPERATION AND SUBROGATION

The **Assureds** agree to provide the **Underwriter** with such information, assistance and cooperation as the **Underwriter** or its counsel may reasonably request, including the right of the **Underwriter**, or, **Underwriter's** appointed counsel to associate in the investigation, defence and settlement of any **Claim** in accordance with Clause VI.C., including an audit of **Assureds'** legal representative's files if so desired. The **Assureds** further agree that they shall not take any action which in any way increases the **Underwriter's** monetary exposure for **Loss** under this policy.

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

XII. ASSIGNMENTS AND ACTION AGAINST THE UNDERWRITER

No action shall lie against the **Underwriter** unless, as a condition precedent thereto, the **Assureds** shall have fully complied with all of the terms of this policy including any requirement to proceed to arbitration, nor until the amount of the **Assureds'** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and the **Underwriter**. Nothing contained herein shall give any person or organization any right to join the **Underwriter** as a party to any **Claim** against the **Assureds** to determine their liability, nor shall the **Underwriter** be impleaded by the **Assureds** or their legal representative in any **Claim**. The assignment of any interest under this policy shall not bind the **Underwriter** unless its prior consent is granted in writing.

XIII. ENTIRE AGREEMENT

By acceptance of this policy, the **Assureds** agree that this policy embodies all agreements existing between them and the **Underwriter** or any of their agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Underwriter** shall not effect a waiver or a change in any part of this policy or stop the **Underwriter** from asserting any right under the terms of this policy, nor shall the terms be waived or changed except by written endorsement or rider issued by the **Underwriter**, and executed by an authorized representative of the **Underwriter**, to form a part of this policy.

XIV. SERVICE OF SUIT

It is agreed that in the event of the failure of **Underwriters** to pay any amount claimed to be due hereunder, **Underwriters**, at the request of any person or entity insured hereunder, following arbitration if required, will submit to the jurisdiction of any court of competent jurisdiction within the territorial jurisdiction of Canada and will comply with all requirements necessary to give such court jurisdiction. Nothing in this Clause constitutes or should be understood to constitute a waiver of **Underwriters'** rights to commence an action in any court of competent jurisdiction in the territorial jurisdiction of Canada, to remove an action commenced outside the territorial jurisdiction of Canada to a Canadian court, or to seek a transfer of an action commenced in one province or territory of Canada to a court in another province or territory as permitted by the laws of Canada or of any Canadian province. It is further agreed that service of process in such suit may be made upon the **Attorney in Fact**, and that in any suit instituted against the **Underwriters** they will abide by the final decision of such court or of any appellate court in the event of an appeal.

The **Attorney in Fact** is authorized and directed to accept service of process on behalf of **Underwriters** in any such suit and/or upon the request of any person or entity insured hereunder to give a written undertaking to such person or entity that they will enter a general appearance upon **Underwriters'** behalf in the event such a suit shall be instituted.

XV. This clause applies to the Province of Quebec only

It is the express wish of all parties to this agreement that this policy of insurance and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

XVI. TERRITORY

This Policy shall be governed by, and construed in accordance with the laws of, the province in which it is delivered and the laws of Canada applicable therein.



NOTICE TO ASSUREDS Pursuant to the Freedom Of Information And Protection of Privacy Act, 1987

IMPORTANT

The notices below applies to insurance contracts containing non-automobile legal liability coverages in provinces where statistical data relating to such contracts must be reported to the Superintendent of Insurance and Lloyd's Canada.

LEGAL AUTHORITY FOR COLLECTION

Insurance Act, R.S.O. 1990, c.I.8, section 101(1).

PRINCIPAL PURPOSE FOR WHICH PERSONAL INFORMATION IS INTENDED TO BE USED

Information collected by Underwriters from **Assureds** or supplied to **Assureds** pertaining to the attached document will be used:

- to compile aggregate statistical data to be used in monitoring trends in the insurance industry;
- to develop statistical exhibits to be used in monitoring the insurance industry;
- to respond to requests for customized statistical information on the insurance industry;
- to respond to inquiries on statistical information made to Office of the Superintendent of Insurance; and
- to use and disclose such information for purposes which are consistent with the previous clauses.

THE PUBLIC OFFICIAL WHO CAN ANSWER QUESTIONS ABOUT THE COLLECTION IS:

Manager, Statistical Services
 Financial Services Commission of Ontario
 5160 Yonge Street, 17th Floor
 Box 85
 North York, Ontario
 M2N 6L9

Telephone (416) 250-7250
 Fax (416) 590-7070

Notice concerning Personal Information

By purchasing insurance from certain Underwriters at Lloyd's, London ("Lloyd's"), a customer provides Lloyd's with his or her consent to the collection, use and disclosure of personal information, including that previously collected, for the following purposes:

- the communication with Lloyd's policyholders
- the underwriting of policies
- the evaluation of claims
- the detection and prevention of fraud
- the analysis of business results
- purposes required or authorised by law

For the purposes identified, personal information may be disclosed to Lloyd's related or affiliated organisations or companies, their agents/mandataries, and to certain non-related or unaffiliated organisations or companies.

Further information about Lloyd's personal information protection policy may be obtained from the customer's broker or by contacting Lloyd's on 514-861-8361 or through info@lloyds.ca.