



BrokerEdgeSM

Securities Brokerage

Executive and Professional Liability Policy

Professional Liability Coverage Part

Executive Risk Specialty Insurance Company

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BROKEREDGESM
SECURITIES BROKERAGE
EXECUTIVE AND PROFESSIONAL LIABILITY POLICY

EXECUTIVE RISK SPECIALTY INSURANCE COMPANY

PROFESSIONAL LIABILITY COVERAGE PART

NOTICE: THE COVERAGE AFFORDED UNDER THIS COVERAGE PART IS CLAIMS MADE COVERAGE, WHICH APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD," OR, IF PURCHASED, THE EXTENDED REPORTING PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS UNDER THIS COVERAGE PART WILL BE REDUCED BY THE PAYMENT OF "DEFENSE EXPENSES," AND "DEFENSE EXPENSES" WILL BE APPLIED AGAINST THE RETENTION. THE COVERAGE AFFORDED UNDER THIS COVERAGE PART DIFFERS IN SOME RESPECTS FROM THAT AFFORDED UNDER OTHER POLICIES. PLEASE READ THE ENTIRE POLICY, INCLUDING THE GENERAL TERMS AND CONDITIONS AND THIS COVERAGE PART, CAREFULLY.

Subject to the Limit of Liability and to all of the terms, conditions and limitations of this Policy and any endorsements to this Policy, Executive Risk Specialty Insurance Company (the "Underwriter") and the Insureds agree as follows:

I. INSURING AGREEMENTS

The Underwriter will pay on behalf of the **Insured Loss** from **Claims** first made against the **Insured** during the **Policy Period** or, if applicable, the Extended Reporting Period, for **Wrongful Acts** first committed on or after the **Retroactive Date**.

II. DEFINITIONS

- (A) **"Broker/Dealer"** means the **Named Insured** and any **Subsidiary**.
- (B) **"Claim"** means a written demand received by an **Insured** seeking monetary damages, including any civil legal proceeding or arbitration against an **Insured**.
- (C) **"Individual Insured"** means any past, present or future partner, member, director, officer, or employee of the **Broker/Dealer** who is not a **Registered Representative**.
- (D) **"Insured"** means the **Broker/Dealer, Individual Insureds** and **Registered Representatives**.

- (E) **“Merger Maximum”** means the following:
- (1) registered representatives numbering fifteen percent (15%) of the total number of registered representatives of the **Broker/Dealer** as of the inception date of this Policy; or
 - (2) gross annual revenues for the most recent fiscal year of twenty-five percent (25%) of the gross annual revenues of the **Broker/Dealer** in the most recent fiscal year.
- (F) **“Natural Insured”** means an **Individual Insured** or a **Registered Representative** who is a natural person.
- (G) **“Personal Injury Tort”** means any actual or alleged false arrest, detention, malicious use or abuse of process or malicious prosecution; libel, slander, oral or written publication of defamatory or disparaging material or publication in violation of an individual’s right to privacy; wrongful eviction or entry; or other invasion of privacy.
- (H) **“Professional Services”** means:
- (1) the sale and/or servicing of **Securities** approved by the **Broker/Dealer**;
 - (2) the administration of individual retirement accounts, Keogh retirement plans, qualified 401(K) plans, and employee benefit plans (other than multiple employer or multiple employee welfare arrangements) but only with respect to **Securities** approved by the **Broker/Dealer**;
 - (3) the sale and/or servicing of life, health, annuities, accident and disability products, but only with respect to **Registered Representatives** who are duly licensed to do so and only with respect to products that have been approved by the **Broker/Dealer**;
 - (4) solely in connection with any of the activities or services described in (1)-(3) above, financial, economic and investment advice, financial planning, provision of computer or internet services, administrative services, and publication of any materials prepared or written by the **Broker/Dealer**;
 - (5) **Professional Supervision.**
- (I) **“Professional Supervision”** means the **Broker/Dealer’s** selection of products approved for sale by its **Registered Representatives**, its oversight and direction of the performance of its **Registered Representatives**, and its creation and implementation of compliance and supervisory procedures.

(J) **“Registered Representative”** means:

- (1) any individual who is licensed as a registered representative or registered principal by the National Association of Securities Dealers, Inc. and who is an independent contractor with, or is employed by, the **Broker/Dealer** during the **Policy Period**;
- (2) the heirs, executors, administrators, or legal representatives of any individual described in (1) above, in the event of death, incapacity or bankruptcy of the individual;
- (3) any entity owned in its entirety by one or more individual(s) described in (1) above; and
- (4) employees of any individual described in (1) above or of any entity described in (3) above;

provided, that an individual or entity will be deemed a **Registered Representative** only with respect to his, her or its rendering of **Professional Services** on behalf of the **Broker/Dealer**.

(K) **“Securities”** means common and preferred stocks, bonds, mutual fund shares, variable annuities, and any other instrument that is a “security” as that term is defined in the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, or any rules or regulations promulgated thereunder.

(L) **“Wrongful Act”** means any actual or alleged act, error, omission, breach of fiduciary or other duty or **Personal Injury Tort** by an **Insured**, or by any person other than an **Insured** for whose actions the **Insured** is legally responsible, in rendering or in failing to render **Professional Services** for clients of the **Broker/Dealer**.

III. EXCLUSIONS

This Coverage Part does not apply to any **Claim**:

- (A) brought about or contributed to by:
- (1) any knowing, intentional, fraudulent, or dishonest **Wrongful Act** by an **Insured**;
 - (2) any willful or intentional violation of statute, rule or regulation by an **Insured**; or

- (3) any gaining by an **Insured** of any profit, remuneration or advantage to which the **Insured** was not entitled, including, without limitation, any **Insured's** use of, aiding or abetting the use of, or participation after the fact in the use of non-public information in violation of any law, rule or regulation;

provided, that, except for **Claims** based on or directly or indirectly arising out of or resulting from, in whole or in part, an **Insured's** commission of or knowing participation in any embezzlement, misappropriation, commingling of funds, or criminal act, this EXCLUSION (A) shall only apply to an **Insured** if it is established in fact that the **Insured** participated in or acquiesced in the knowing, intentional, fraudulent, or dishonest act, the willful or intentional violation, or the gaining of profit, remuneration or advantage; and

provided further, that with respect to any **Claim** based on or directly or indirectly arising out of or resulting from, in whole or in part, an **Insured's** commission of or knowing participation in any embezzlement, misappropriation, commingling of funds, or criminal act, if, upon the final disposition of such a **Claim**, an **Insured** to whom this EXCLUSION (A) applies shall have been found by a court of competent jurisdiction not to have committed or knowingly participated in such embezzlement, misappropriation, commingling, or criminal act, the Underwriter will reimburse that **Insured's Defense Expenses** in connection with the **Claim**, such reimbursement to constitute payment of **Loss** under this Policy and to be subject to any applicable retention and limit of liability under this Policy; and

provided further, that with respect to any other **Claim**, each **Insured** agrees that, if it is finally established that the Underwriter has no liability to an **Insured** with respect to a **Claim** by reason of this EXCLUSION (A), such **Insured** will repay the Underwriter upon demand all **Defense Expenses** paid on behalf of such **Insured** in connection with the **Claim**;

(B) based on or directly or indirectly arising out of or resulting from:

- (1) any **Wrongful Act** or any matter, fact, circumstance, transaction, or event which has been the subject of, or which is logically or causally connected to, any **Claim** made or notice given under any policy of insurance prior to the Inception Date set forth in ITEM 2(a) of the Declarations;
- (2) any **Wrongful Act** or any matter, fact, circumstance, transaction, or event which was described in the **Application** or in any application for a policy of which this Policy is a renewal or replacement; or

- (3) any civil, criminal, administrative, or arbitration proceeding as to which any **Insured** has received written notice prior to the Inception Date set forth in ITEM 2(a) of the Declarations, or any matter, fact, circumstance, transaction, or event underlying or alleged in such proceeding;
- (C) based on or directly or indirectly arising out of or resulting from:
 - (1) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal, or disposal of, any smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants;
 - (2) any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination, or radioactive substance; or
 - (3) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any of the foregoing, or any action taken in contemplation or anticipation of any such regulation, order, direction or request;
- (D) based on or directly or indirectly arising out of or resulting from any actual or alleged violation of the Employee Retirement Income Security Act of 1974 or any regulations promulgated thereunder or relating thereto, or of any similar provisions of international, federal, state, or local statutory or common law, or any regulations pertaining thereto, in connection with any **Insured's** pension, employee benefit or welfare plan;
- (E) based on or directly or indirectly arising out of or resulting from the insolvency of any bank, banking firm, broker or dealer in securities, clearing agency, insurance or reinsurance company, or any other person or entity; or the inability of any such entity or person to make any payment or settle or effect any transaction of any kind; provided, that this EXCLUSION (E) will not apply to any **Claim** based on an **Insured's** investment in **Securities** of any such entity on behalf of the claimant;
- (F) for any bodily injury, emotional distress, mental anguish, sickness, disease, or death of any person or loss of consortium, support, companionship or services of any kind resulting therefrom; provided, that this EXCLUSION (F) will not apply to allegations of emotional distress or mental anguish if and only to the extent that they arise solely from an **Insured's** rendering of or failure to render **Professional Services**;
- (G) for damage to, destruction of, loss of, or loss of use of, tangible property; provided, that this EXCLUSION (G) will not apply to any **Claim** arising from damage to, destruction of, loss of, or loss of use of, client records in an

Insured's possession;

- (H) brought by or on behalf of, or in the name or right of, any person or entity with a legal or equitable interest in any form of security of, or other ownership interest in, the **Broker/Dealer**, except to the extent such **Claim** is brought in such person's or entity's capacity as a client or customer of the **Broker/Dealer** and is brought and maintained independently of, and without the solicitation, assistance, participation or intervention of, any other **Insured**;
- (I) brought by, on behalf of, or in the name or right of any **Insured**, any affiliate of any **Insured**, any employer or employee of any **Insured**, or any entity through which an **Insured** has sold any investment or insurance product; provided, that this EXCLUSION (I) will not apply to any **Claim** by an **Insured** in the form of a crossclaim, third party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Policy;
- (J) brought by, on behalf of, or in the name or right of any governmental, quasi-governmental, regulatory, or self-regulatory entity, whether directly or indirectly, in any capacity other than its capacity as a direct client of an **Insured**;
- (K) based on or directly or indirectly arising out of or resulting from services performed by an **Insured** in the capacity of actuary, attorney, accountant, real estate agent or real estate broker, or third-party claims administrator;
- (L) based on or directly or indirectly arising out of or resulting from any **Insured** acting or serving as a clearing agent, specialist or market maker for any securities or failing to clear or make a market for any securities;
- (M) based on or directly or indirectly arising out of or resulting from an **Insured's** provision of investment banking services, including, without limitation, any of the following: service as an underwriter, consultant, adviser, or specialist; the giving of financial, economic or investment advice relating to or in connection with any actual or contemplated merger, acquisition, syndication, securities offering (regardless of whether the offering is primary or secondary, or public or private), restructuring, divestiture, proxy contest, or other form of investment banking; and services performed by an investment banking department in the ordinary course of business;
- (N) based on or directly or indirectly arising out of or resulting from any **Wrongful Act** which was committed or alleged to have been committed by an **Insured** prior to the **Retroactive Date**;
- (O) based on or directly or indirectly arising out of or resulting from the exercise of discretionary authority with regard to the disposition, management or supervision of assets; provided, that this EXCLUSION (O) shall not apply to the **Insured's** provision of asset allocation services funded solely with mutual fund shares or

variable annuities, as long as such services are provided strictly on a fee basis;

- (P) based on or directly or indirectly arising out of or resulting from any transaction involving any of the following: non-covered options; commodities; any type of futures contract; any equity security priced under five dollars (\$5.00) at the time of any transaction, unless the security is (i) traded on a national securities exchange, (ii) NASDAQ approved or authorized, or (iii) part of a mutual fund;
- (Q) based on or directly or indirectly arising out of or resulting from any transaction involving any **Securities** or investment products not approved or authorized by the **Broker/Dealer** for sale by **Registered Representatives**;
- (R) based on or directly or indirectly arising out of or resulting from an **Insured's** liability under any contract or agreement, regardless of whether such liability is direct or assumed; provided, that this EXCLUSION (R) will not apply to liability which would attach to an **Insured** even in the absence of a contract or an agreement;
- (S) based on or directly or indirectly arising out of or resulting from any **Insured** serving as a member, partner, principal, director, officer, trustee, or employee of:
 - (1) any entity that is not an **Insured**, even if such service is directed or requested by an **Insured**; or
 - (2) any entity acquired by an **Insured**, whether by merger, consolidation or otherwise, at any time prior to the **Insured's** acquisition of such entity;
- (T) based on or directly or indirectly arising out of or resulting from any failure, malfunction, breakdown, or unauthorized access to or use of: any computer system, database or component (hardware or software); any other communications or information transmission system; or any digital, electronic or mechanical system or unit.

IV. CONDITIONS

(A) Applicable Retentions:

- (1) The retention set forth in ITEM 4 (A)(1) of the Declarations shall be the retention which shall apply to **Loss** resulting from any **Claim** made against a **Registered Representative** who is a **Natural Insured**, unless the **Claim** is also made against the **Broker/Dealer**, any **Individual Insured**, or any other **Registered Representative** that is not a **Natural Insured**, in which case the provisions of (2) below shall apply.
- (2) The retention set forth in ITEM 4 (A)(2) of the Declarations shall be the retention which shall apply to **Loss** resulting from any **Claim** made against a **Registered Representative** that is not a **Natural Insured**, unless the **Claim** is also made against the **Broker/Dealer** or any **Individual Insured**, in which case the provisions of (3) below shall apply. In the event that a **Registered Representative** that is not a **Natural Insured** is one of multiple **Registered Representatives** named in a **Claim**, the **Registered Representatives** that are not **Natural Insureds** shall be responsible, on a pro rata basis, for the entire applicable retention. The **Registered Representatives** agree to indemnify and hold harmless the Underwriter for all or any portion of the retention owed by any other **Registered Representative**.
- (3) The retention set forth in ITEM 4 (A)(3) of the Declarations shall be the retention which shall apply to **Loss** resulting from any **Claim** made against the **Broker/Dealer** or any **Individual Insured**, whether severally or jointly with one or more **Registered Representative(s)**. In the event the **Broker/Dealer** or any **Individual Insured** is one of multiple **Insureds** named in a **Claim**, the **Broker/Dealer** shall be responsible for the entire applicable retention. The **Broker/Dealer** agrees to indemnify and hold harmless the Underwriter for all or any portion of the retention owed by any **Individual Insured** or **Registered Representative**.

In witness whereof, the Underwriter has caused this Policy to be executed on the Declarations Page.

Henry A. Aubert

Secretary

[Signature]

Co-Chairman