

Bankers Professional Liability Policy
STEADFAST INSURANCE COMPANY



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In consideration of payment of the premium and in reliance upon the statements made in the application and its attachments and any materials submitted therewith, all of which are made a part hereof, and subject to the Declarations and subject to the Limit of Liability in Item 2. of the Declarations and the terms, conditions and exclusions contained herein (including any endorsements attached hereto), Steadfast Insurance Company (herein called the Company) and the "Named Insured agree as follows:

I. INSURING CLAUSE

The Company Shall pay "Loss" on behalf of the "Insured" that the "Insured" becomes legally obligated to pay as a result of any "Claim" first made against the "Insured" during the "Policy Period," or, if purchased, during the Extended Reporting Period, for a "Wrongful Act" of an "Insured" or of any person for whose "Wrongful Act" the "Insured" is legally responsible, but only if such "Wrongful Act" occurs:

- (1) prior to or during the "Policy Period," and
- (2) solely in the rendering or failure to render "Professional Services" to others.

II. DEFENSE AND SETTLEMENT

The Company shall have the right, but not the duty, to assume the defense of any "Claim" to which this policy applies.

In the event that the Company does not assume the defense, the "Insured" shall allow the Company to associate effectively with the defense.

The "Insured" agrees not to settle any "Claim," incur any "Defense Costs" or otherwise assume any contractual obligation or admit any liability with respect to any "Claim" without the Company's written consent, which shall not be withheld unreasonably. The Company shall not be liable for any settlement, "Defense Costs," assumed obligation or admission to which it has not consented.

"Defense Costs" incurred by the "Insured" with the written consent of the Company, which shall not be withheld unreasonably, are part of and not in addition to the Limit of Liability set forth in Item 2. of the Declarations, and the payment by the Company of "Defense Costs" reduces such applicable Limit of Liability.

The "Insured" agrees to provide the Company with all information, assistance and cooperation that the Company reasonably requests. The "Insured" agrees that, in the event of a "Claim," the "Insured" will not do anything that may prejudice the Company's position or its potential or actual rights of recovery.

The Company may make any investigation it deems necessary, and with the written consent of the "Insured," which consent shall not be withheld unreasonably, may make any settlement of a "Claim" it deems expedient.

If the "Insured" refuses to consent to any settlement that the Company recommends and that is acceptable to the claimant:

1. the Company's liability shall not exceed the amount of damages for which the "Claim" could have been settled, if the "Insured" had consented to such recommendation, plus "Defense Costs" incurred by the Company, and "Defense Costs" incurred by the "Insured" with the Company's written consent up to the date of such refusal; and
2. the Company may withdraw from the defense of the "Insured," if it has assumed the "Insured's" defense, by tendering control of the defense to the "Insured," and the "Insured" shall thereafter, at its own expense, negotiate or defend such "Claim" independent of the Company.

The Company shall not be obligated to pay any "Claim", judgment, award or "Defense Costs" or undertake or continue defense of any suit or proceeding after the limit of the Company's liability has been exhausted by the payment of "Loss" or "Defense Costs".

III. DEFINITIONS

When used in this policy:

A. "Claim" means:

- (1) a judicial proceeding in a court or an administrative proceeding in which money damages are sought; or
- (2) an arbitration or mediation proceeding in which money damages are sought; or
- (3) a written demand for money damages.

- B. "Continuity Date" means the inception date of the first Banker's Professional Liability Insurance Policy issued by the Company to the "Named Insured" and continuously renewed and maintained in effect with the Company to the inception date of this policy.
- C. "Defense Costs" means reasonable and necessary fees, costs and expenses (other than the remuneration of any employee of any "Named Insured", "Subsidiary" or the Company), including premiums for any appeal bond, attachment bond, or similar bond (but without any obligation to apply for or furnish any such bond), incurred by the Company or by the "Insured" with the Company's written consent, in the investigation, adjustment and defense of any "Claim" covered under this policy.
- D. "Insured" means the "Named Insured" and its "Subsidiaries," and any past, present or future officer, director, trustee, employee, partner or member of the "Named Insured" and its "Subsidiaries," solely while acting within the scope of his or her duties as such, but not including any service or act, error or omission as a director, officer, trustee, employee, partner or member of any entity, other than the "Named Insured" and its "Subsidiaries" or any trust or estate administered by the "Named Insured" or its "Subsidiaries" pursuant to a written agreement.
- E. "Interrelated Wrongful Acts" means all "Wrongful Acts" that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes. All "Wrongful Acts" that are asserted in any single "Claim" shall be considered "Interrelated Wrongful Acts." All "Claims" that allege "Wrongful Acts" that are the same as, related to, arise out of, or are in any way connected to "Wrongful Acts" alleged or contained in any other "Claim" shall also be considered "Interrelated Wrongful Acts."
- F. "Investment Banking Activities" means underwriting, syndicating, securitizing, market making or promoting of, or participating in:
- (1) any merger, acquisition, divestiture, tender offer, proxy contest, leveraged buy-out, going private transaction or spin-off;
 - (2) any offering of debt or equity securities;
 - (3) any bankruptcy proceeding, reorganization, capital restructuring or recapitalization;
 - (4) the dissolution or sale of all (or substantially all) of the assets or stock of any entity;
 - (5) any effort to provide capital or financing for any enterprise or entity;
 - (6) any acquisition or sale of securities by the "Named Insured" or any "Subsidiary" for its own account;
 - (7) the rendering of a fairness opinion, except in the administration of any fiduciary account; or
 - (8) any disclosure requirements in connection with the foregoing, or representation, guarantee or warranty provided by or on behalf of any "Insured" as to the performance of the foregoing.
- G. "Lending Activities" means the actual or alleged:
- (1) grant, commitment, restructure, termination, repossession or foreclosure of any loan, lease or other extension of credit, or the failure to do any of the foregoing, including any advice given in connection with the foregoing;
 - (2) purchase, sale, transfer, participation or syndication of any loan, lease or other extension of credit, or the failure to do any of the foregoing, including any advice given in connection with any of the foregoing; or
 - (3) services performed by or for any entity or property of which the Named Insured or any Subsidiary acquired ownership or control as security for any loan, lease or other extension of credit.
- H. "Loss" means damages, judgments, settlements and "Defense Costs." "Loss" does not include:
- (1) any amount for which the "Insured" is absolved from liability by reason of any covenant, agreement or court order; or
 - (2) any amount that the "Insured" is not legally obligated to pay; or
 - (3) any amount that is without legal recourse to the "Insured"; or
 - (4) principal, interest or other monies paid, accrued or due as the result of any loan, lease or extension of credit; or
 - (4) fines or penalties imposed by law, or the multiple portion of any multiplied damage award; or
 - (5) punitive or exemplary damages; or
 - (6) any amount uninsurable under the law pursuant to which this policy is construed.

- I. "Named Insured" means the entity named in Item 1. of the Declarations.
- J. "Policy Period" means the period from the inception date of this policy shown in Item 3. of the Declarations to the earlier of the expiration date shown in Item 3. of the Declarations or the effective date of termination of this policy.
- K. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste materials (including materials to be recycled, reconditioned or reclaimed), any other emission or odor, waste water, asbestos or asbestos product, or any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or a state, county municipality or locality counterpart thereof.
- L. "Professional Services" means those services rendered, or required to be rendered, to others, pursuant to an agreement and for a fee or other payment, and include non-compensated services, provided they are rendered, or required to be rendered, in connection with paid services.
- M. "Subsidiary," either in the singular or plural, means any organization in which more than 50% of the outstanding voting securities or voting rights representing the present right to vote for election of directors is owned or controlled, directly or indirectly, in any combination, by the "Named Insured" or any "Subsidiary."
- N. "Wrongful Act" means any act, error or omission actually or allegedly committed or attempted solely in the rendering of or failure to render "Professional Services" to a client of the "Named Insured" or a "Subsidiary," and includes "Interrelated Wrongful Acts."

IV. EXCLUSIONS

This policy shall not apply to any "Loss" in connection with any "Claim" made against any "Insured":

A. based upon, arising from or in connection with:

- (1) obtaining, in fact, any personal profit or advantage to which the "Insured" was not entitled legally; or
- (2) any, in fact, deliberately fraudulent or dishonest "Wrongful Act"; or
- (3) any, in fact, criminal "Wrongful Act"; or
- (4) any, in fact, deliberate noncompliance with any statute or regulation.

The "Wrongful Act" of any "Insured" shall not be imputed to any other "Insured" under this policy for purposes of determining the applicability of this Exclusion;

B. alleging, based upon, arising from or in connection with:

- (1) any "Wrongful Act" occurring prior to the "Continuity Date," if on such date any "Insured" knew or reasonably could have foreseen that such "Wrongful Act" could lead to a "Claim"; or
- (2) any "Wrongful Act" that has been the subject of any notice given by the "Insured" during the policy period of any prior policy;

C. based upon, arising from or in connection with any "Claim":

- (1) pending against the "Insured," or order, decree or judgment entered against the "Insured," on or prior to the inception date of the "Policy Period" of this policy as set forth in Item 3. of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein; or
- (2) based upon, arising from or in connection with any "Claim" for which the "Insured" is insured (or would have been insured but for the exhaustion of the limits of liability thereof) under any policy in effect before the inception date of the "Policy Period" of this policy;

D. brought or maintained by or on behalf of any "Insured" in any capacity, or by or on behalf of any parent company of the "Insured," or its successors or assigns, or by or on behalf of any business enterprise operated or managed or owned by any "Insured," directly or indirectly, or by or on behalf of any securities holder of the "Named Insured" or any "Subsidiary," or by or on behalf of any federal or state government, or any of its agencies, except:

- (1) a "Claim" brought or maintained by any director, officer, employee, trustee, partner or member of the "Named Insured" or any "Subsidiary" for contribution or indemnity, if the "Claim" directly results from another "Claim" covered under this policy; or

- (2) with respect to any "Claim" by a securities holder or a regulatory agency, solely in the securities holder's or regulatory agency's capacity as a client of the "Named Insured" or any "Subsidiary";
- E. alleging, based upon, arising out of or in connection with any "Claim" or "Wrongful Act" regarding the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "Pollutants," or any governmental direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or respond in any way to "Pollutants";
- F. alleging, arising out of, based upon or in connection with any "Claim" or "Wrongful Act" involving, directly or indirectly,:
- (1) bodily injury, sickness, emotional or mental distress or disease, discrimination, or death of any person; or
 - (2) loss or damage to or destruction of any property from any cause, including the loss of use thereof (including but not limited to property in the care, custody or control of an "Insured" or its agent, or in transit); or
 - (3) injury from oral or written publication of a libel or slander or of other defamatory or disparaging material, or, or violation of a person's right of privacy;
- G. based upon, arising out of or in connection with the bankruptcy of, or suspension of payment by, any broker or dealer in securities or commodities, or any bank or banking firm other than the "Insured";
- H. for any dispute involving fees, commissions, costs or other charges for any "Professional Services";
- I. alleging, based upon, arising from or in connection with any "Lending Activities"; provided, however, that this exclusion shall not apply to any "Claim" solely alleging any "Wrongful Act" in the servicing of any loan, lease or other extension of credit owned by others;
- J. alleging, based upon, arising from or in connection with any "Claim" or "Wrongful Act" regarding the actual or alleged violation of any of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, or amendments thereto, or any similar provisions of federal, state or local law, but only with respect to any plan sponsored by the "Named Insured" or any "Subsidiary" for the benefit of its own employees;
- K. alleging, based upon, arising from or in connection with any,:
- (1) "Investment Banking Activities"; or
 - (2) the decrease in value (or failure to appreciate) of money, securities, real or personal property or any other investment, unless the decrease (or failure to appreciate) was caused by a "Wrongful Act" of the "Insured" in the administration of any fiduciary account;
- L. arising from or in connection with any "Claim" based upon liability of others assumed by the "Insured" under any contract or agreement, either oral or in writing, unless the liability would have attached in the absence of the contract or agreement.

V. GENERAL CONDITIONS AND LIMITATIONS

A. LIMIT OF LIABILITY AND RETENTION

For the purposes of this policy, all "Loss" arising out of the same "Wrongful Act" and all "Interrelated Wrongful Acts" of any "Insured" shall be deemed one "Loss," and such "Loss" shall be deemed to have originated in the earliest "Policy Period" in which a "Claim" is first made against any "Insured" alleging any such "Wrongful Act" or "Interrelated Wrongful Acts."

The Company's maximum liability for all "Loss" on account of all "Claims" first made during the "Policy Period" shall be the Limit of Liability for each "Policy Period" set forth in Item 2. of the Declarations.

The Company's liability hereunder shall apply only to that part of each "Loss" that is excess of the Retention set forth in Item 4. of the Declarations. The Retention shall be borne by the "Insured" and remain uninsured and at its own risk. "Defense Costs" are subject to the Retention.

The purchase of the Extended Reporting Period under Section V.(C) of this policy shall not increase or reinstate the aggregate Limit of Liability.

B. REPORTING AND NOTICE

The "Insured" shall, as a condition precedent to exercising any rights under this policy, give the Company written notice of any "Claim" made against the "Insured" as soon as practical, but in no event later than sixty (60) days after the expiration of the "Policy Period," or if purchased, the Extended Reporting Period.

If during the "Policy Period" or Extended Reporting Period, if purchased, the "Insured" becomes aware of circumstances that could give rise to a "Claim" against the "Insured" and gives written notice of such circumstances to the Company during the "Policy Period," or Extended Reporting Period, if purchased, then any "Claim" subsequently arising from such circumstances shall be considered to have been made during the "Policy Period," or the Extended Reporting Period, in which the circumstances were first reported to the Company.

The "Insured" shall:

1. include with any notice of "Claim" or circumstances, a description of the "Claim" or circumstances, the nature of the alleged "Wrongful Act," the nature of the alleged or potential damage, the names of actual or potential claimants, and the manner in which the "Insured" first became aware of the "Claim" or circumstance, and
2. give to the Company such information and cooperation as it may reasonably require.

All notices under any provisions of this policy shall be in writing and given by prepaid express courier or certified mail properly addressed to the appropriate party.

Notice to any "Insured" may be given to the "Named Insured" at the address as shown in Item 1. of the Declarations.

Notice to the Company shall be given to:

Steadfast Insurance Company
One Liberty Plaza, 30th Floor
New York, New York 10006
Attention: Professional Liability Claims Department.

C. EXTENDED REPORTING PERIOD

If the Company refuses to renew this policy, or the "Named Insured" terminates or refuses to renew this policy, the "Named Insured" shall have the right, upon payment of the additional premium set forth in Item 5(A). of the Declarations, which shall be fully earned, to an extension of the coverage granted by this policy for the period set forth in Item 5(B). of the Declarations (Extended Reporting Period) following the effective date of such termination or nonrenewal, but only with respect to any "Wrongful Act" taking place prior to the effective date of such termination or nonrenewal. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the "Insured" to the Company within thirty (30) days following the effective date of termination or nonrenewal. Any "Claim" made during the Extended Reporting Period shall be deemed to have been made during the "Policy Period."

The offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew.

D. CHANGES IN EXPOSURE

1. Acquisition or Creation of Another Organization

If before or during the "Policy Period" the "Named Insured" or a "Subsidiary":

- a) acquires securities or voting rights in another organization or creates another organization that becomes a "Subsidiary" as a result of such acquisition or creation, or
- b) acquires any organization by merger into or consolidation with the "Named Insured,"

except as otherwise provided below, such organization and its "Subsidiaries," directors, officers, partners and employees automatically shall be covered under this policy, but only with respect to any "Wrongful Act" taking place after such acquisition or creation, unless the Company agrees, after presentation by the "Named Insured" of a complete application and all appropriate information, to provide coverage by endorsement for any "Wrongful Acts" occurring before the acquisition or creation date and the "Named Insured" agrees to any amendment of the policy and to pay any additional premium required by the Company.

However, if the fair value of all cash, securities, assumed indebtedness and other consideration paid by the "Named Insured" or the "Subsidiary" for any such acquisition during the "Policy Period" exceeds 10% of the total assets of the "Named Insured" or the "Subsidiary" as reflected in the "Named Insured's" or the "Subsidiary's" most recent audited consolidated financial statements, the "Named Insured" or the "Subsidiary" shall give written notice of such acquisition to the Company as soon as practicable together with such information as the Company may require and then such organization, and its "Subsidiaries," directors, officers, partners and employees shall be covered by this policy for any "Wrongful Act," before or after the acquisition or creation date, only if the "Named Insured" agrees to any amendment of the policy and to pay any additional premium required by the Company.

2. Acquisition of the "Named Insured" or "Subsidiary"

If during the "Policy Period":

- a) the "Named Insured" or "Subsidiary" merges into or consolidates with another organization, or
- b) another organization, or person or group of organizations and/or persons acting in concert acquires securities or voting rights that results in ownership or voting control by the other organization(s) or person(s) of more than 50% of the outstanding securities representing the present right to vote for the election of directors of the "Named Insured,"

then coverage under this policy shall continue until:

- i) the termination of this policy; or
- ii) the third anniversary of such merger, consolidation or acquisition, if during the "Policy Period" the "Named Insured" gives written notice to the Company of its desire to elect such extended coverage period; or
- iii) any other subsequent date to which the Company may agree by endorsement,

but only with respect to "Claims" for "Wrongful Acts" taking place prior to such merger, consolidation or acquisition. Any coverage extension pursuant to (ii) or (iii) above shall be conditioned upon payment during the "Policy Period" by the "Named Insured" of any additional premium and shall be subject to any additional terms and conditions required by the Company. Any "Claim" made during such coverage extension, if a coverage extension is granted, shall be deemed to have been made during the "Policy Period" in which such merger, consolidation or acquisition occurred.

The "Named Insured" shall give written notice of such merger, consolidation or acquisition to the Company as soon as practicable, together with such information the Company may require.

3. Cessation of "Subsidiaries"

If before or during the "Policy Period" an organization ceases to be a "Subsidiary," coverage with respect to such "Subsidiary" and its directors, officers, partners and employees shall continue until termination of this policy, but only with respect to "Claims" for "Wrongful Acts" taking place prior to the date such organization ceased to be a "Subsidiary."

E. POLICY TERMINATION

This policy shall terminate:

1. upon expiration of the "Policy Period" as set forth in Item 3. of the Declarations; or
2. the effective date of termination specified in written prior notice by the "Named Insured" to the Company; or
3. ten days (10) after receipt by the "Named Insured" of a written notice of termination from the Company for failure to pay a premium when due.

The Company shall refund the unearned premium computed at customary short rates if this policy is terminated by the "Named Insured."

Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of cancellation.

F. OTHER INSURANCE

If any "Loss" arising from any "Claim" made against any "Insured" covered by this policy is also insured under any other valid policy(ies), then this policy shall cover such "Loss," subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such "Loss" is in excess of the amount of payment from such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this policy.

G. SUBROGATION

In the event of any payment under this policy, the Company shall be subrogated to the extent of such payment to all the "Insured's" rights of recovery, and the "Insured" shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Company to bring suit in the name of the "Insured." The "Insured" shall not do anything to prejudice such rights.

H. ACTION AGAINST THE COMPANY

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the "Insured" to determine the "Insured's" liability nor shall the Company be impleaded by the "Insured" or their legal representatives. Bankruptcy or insolvency of any "Insured" or of the estate of any "Insured" person shall not relieve the Company of its obligations nor deprive the Company of its rights or defenses under this policy.

I. REPRESENTATIONS

In granting coverage under this policy, the Company has relied upon the declarations, representations and warranties in the written application for this policy. All such declarations, representations and warranties are the basis of coverage under this policy and shall be considered as incorporated in and constituting part of this policy.

J. AUTHORIZATION CLAUSE

The "Named Insured" first named in Item 1. of the Declarations shall be the sole agent of all "Insureds" hereunder for the purpose of effecting or accepting any amendments to or cancellation of this policy, for the payment of premium and the receipt of any return premium that may become due under this policy, and the exercising or declining to exercise any right to an Extended Reporting Period.

K. ALTERATION AND ASSIGNMENT

No change in, modification of, or assignment of interest under this policy shall be effective except when made by a written endorsement to this policy which is signed by an authorized representative of the Company.

VI. EXTENSIONS AND TERRITORY

A. ESTATES AND LEGAL REPRESENTATIVES

This policy shall afford coverage for "Claims" for the "Wrongful Acts" of any "Insured" that are made against the estates, heirs, legal representatives or assigns of any "Insured" person who is deceased, incompetent, insolvent or bankrupt to the extent that, in the absence of such death, incompetence, insolvency or bankruptcy, such "Claim" would have been covered by this policy.

B. VALUATION AND TERRITORY

The Limit of Liability, Retention, "Loss," premium and other amounts under this policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of "Loss" under this policy is stated in a currency other than The United States of America dollars, payment under this policy shall be made in United States dollars at the rate of exchange published in The Wall Street Journal on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of "Loss" is due, respectively.

Coverage under this policy shall extend anywhere in the world.