



QBE Insurance Corporation

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**MANAGEMENT LIABILITY ENDORSEMENT
(LIMITS WITHIN POLICY AGGREGATE)**

This endorsement modifies insurance provided under the following:

ACCOUNTANTS & CONSULTANTS PROFESSIONAL LIABILITY INSURANCE POLICY

For purposes of this endorsement only:

1. The following section is added to INSURING AGREEMENTS:

1.2.9 Senior Manager Liability Coverage

We will pay those sums which a **Senior Manager** becomes legally obligated to pay as **Damages** and **Claims Expenses** resulting from a **Management Liability Claim** to which this insurance applies. In addition:

1.2.9.1 The **Management Liability Claim** must:

- I. First be made against the **Senior Manager** and reported to **us** during the **Policy Period** or any applicable **Extended Reporting Period**; and
- II. Result from a **Covered Act** which is first committed by the **Senior Manager** on or after the **Retroactive Date**;

1.2.9.2 Such **Damages** and **Claims Expenses** must not be entitled to indemnification from an investment company, **Insured Organization** or other third party; and

1.2.9.3 Prior to the effective date of this insurance, the **Senior Manager** must not have known or could not have reasonably foreseen that the **Covered Act** might give rise to a **Claim**.

1.2.10 Company Reimbursement Coverage

We will pay on behalf of the **Insured Organization** those sums, in excess of the applicable Deductible shown in the Schedule below, for which an **Insured Organization** is obligated to indemnify a **Senior Manager** who becomes legally obligated to pay such sums as **Damages** and **Claims Expenses** resulting from a **Management Liability Claim** to which this insurance applies. In addition:

1.2.10.1 The **Management Liability Claim** must:

- I. First be made against the **Senior Manager** and reported to **us** during the **Policy Period** or any applicable **Extended Reporting Period**;
 - II. Result from a **Covered Act** which is first committed by the **Senior Manager** on or after the **Retroactive Date**; and
- 1.2.10.2 Prior to the effective date of this insurance, the **Senior Manager** must not have known or could not have reasonably foreseen that the **Covered Act** might give rise to a **Claim**.

1.2.11 Entity Liability Coverage

We will pay those sums, in excess of the applicable Deductible shown in the Schedule below, for which an **Insured Organization** becomes legally obligated to pay as **Damages** and **Claims Expenses** resulting from an **Insured Organization Claim** to which this insurance applies. In addition:

- 1.2.11.1 The **Insured Organization Claim** must:
- I. First be made against the **Insured Organization** and reported to **us** during the **Policy Period** or **Extended Reporting Period**, if applicable;
 - II. Result from a **Covered Act** which is first committed by the **Senior Manager** on or after the **Retroactive Date**; and
- 1.2.11.2 Prior to the effective date of this insurance, none of **you** must have known or could not have reasonably foreseen that the **Covered Act** might give rise to a **Claim**.

Sections 1.2.9, 1.2.10 and, 1.2.11 above shall be a part of and not in addition to the respective Limits Of Liability shown in the Declarations. **We** shall have no obligation to pay any **Damages** or to defend or continue to defend any **Management Liability Claim** or **Insured Organization Claim** or to pay **Claims Expenses** under this endorsement after the respective Limit Of Liability as stated in the Schedule below has been exhausted by payment(s) of **Damages** and/or **Claims Expenses**.

2. For the purposes of this endorsement 2. DEFENSE AND LIMIT OF LIABILITY 2.2 Limit of Liability is replaced with the following:

2.2 Limit of Liability

- 2.2.1 Each **Claim: Defense Expenses** are included within the Limit of Liability; therefore, **our** maximum liability for all **Damages** and **Defense Expenses** resulting from each **Management Liability Claim** or **Insured Organization Claim** covered by this policy shall be the Limit of Liability for Each **Claim** as set forth in the Schedule below.
- 2.2.2 Aggregate: **Our** maximum liability for the combined total of all **Damages** and **Defense Expenses** resulting from all **Management Liability Claim** or **Insured Organization Claim** covered by this policy during the **Policy Period** shall be the Aggregate Limit of Liability set forth in the Schedule below.
- 2.2.3 The inclusion of more than one of **you** in any **Management Liability Claim** or **Insured Organization Claim** or the making of **Management Liability Claims** or **Insured Organization Claims** by more than one person or organization shall not increase the Limits Of Liability stated in the Schedule below. More than one **Management Liability Claim** or **Insured Organization Claim** arising out of a single **Covered Act** shall be

considered a single **Management Liability Claim** or **Insured Organization Claim**. All such **Management Liability Claims** or **Insured Organization Claims**, whenever made, shall be treated as a single **Management Liability Claim** or **Insured Organization Claim**. Any **Management Liability Claim** or **Insured Organization Claim** involving **Related Acts** shall be deemed to be made on the date any **Management Liability Claim** or **Insured Organization Claim** is first made arising out of such **Related Acts**.

Any **notice** pursuant to 9.1 Reporting of **Covered Acts** That May Give Rise To A **Claim** shall be the date within the **Policy Period** when **we** first receive such notice of potential **Management Liability Claim** or **Insured Organization Claim**.

d. **Our** Limits Of Liability for the **Extended Reporting Period**, if applicable, shall be part of, and not in addition to, **our** Limits of Liability for the **Policy Period**. The Limits Of Liability available to pay **Damages** shall be reduced by **Claims Expenses**.

3. For the purposes of this endorsement 4. DEDUCTIBLE is replaced with the following:

4.1 The Deductible amounts, if any, stated in the Schedule below shall be paid by **you** and shall be applicable to each **Management Liability Claim** or **Insured Organization Claim** and shall include **Damages** and **Claims Expenses**, whether or not any **Damages** payments are made.

4.2 The Deductible as stated in the Schedule below shall not reduce or increase the Limits Of Liability shown in the Schedule below.

4.3 **You** shall pay Deductible amounts to **us** within ten (10) days upon **our** written demand. The total payments requested from **you** in respect of each **Management Liability Claim** or **Insured Organization Claim** shall not exceed the Deductible amounts stated in the Schedule below.

For the purposes of this endorsement Section 8. DEFINITIONS, is amended as follows:

1. Clause 8.9 **Damages** is replaced with the following:

8.9 **Damages** means sums which **you** are legally obligated to pay solely as a result of any:

- a. **Management Liability Claim** with respect to Senior Management Liability Coverage or Company Reimbursement Coverage; or
- b. **Insured Organization Claim** with respect to Entity Liability Coverage;

to which this insurance applies, including **Defense Expenses**, provided however that **Damages** shall not include:

- (1) Fines, penalties, or taxes;
- (2) **Claims** or **Damages** which are uninsurable pursuant to the law of the applicable jurisdiction;
- (3) Compensation or interest charged to or due from clients or customers of the **Insured Organization**, unless such compensation is used as a measure of **Damages** incurred by the claimant;
- (4) Amounts for which there is no legal recourse against **you**; or
- (5) The cost of complying with any settlement for, or award of, non-monetary relief.

2. Section 8.10 **Defense Expenses** is replaced with the following:

8.10 Defense Expenses means:

- a. Reasonable and necessary fees charged by an attorney(s) designated by **us** to defend a **Management Liability Claim** or **Insured Organization Claim**;
- b. All other fees, costs and charges incurred by **us** and resulting from the investigation, adjustment, defense and appeal of a **Management Liability Claim** or **Insured Organization Claim**; and

However:

- (1) **Defense Expenses** do not include salary, wages, overhead, benefit expenses or expenses of partners, principals, officers, directors, members or employees of **yours** or **ours**; and
 - (2) **Our** determination as to the reasonableness of **Defense Expenses** shall be conclusive on all of **you**.
3. Section 8.28 **You** or **your** is amended to add the following:
- 8.28.9 **Insured Organization**; and
- 8.28.10 **Senior Manager**.
4. Section 8.24 **Retroactive Date** is replaced with the following:
- 8.24 **Retroactive Date** means the date shown as such in the Schedule below. If no such date is shown in the Schedule below, **Retroactive Date** shall mean the date stated in Item 6. of the Declarations.
5. Section 8.7 **Covered Act** is replaced with the following:
- 8.7 **Covered Act** means any actual or alleged act, error, omission or **Personal Injury** arising from **Professional Services** by any **Senior Manager** in their capacity as such, or, for purposes of Section 1.6, by the **Insured Organization**.
6. For the purposes of this endorsement the following is added to Section 8. DEFINITIONS:
- 8.31 **Financial Impairment** means the status of an entity resulting from the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such entity.
- 8.32 **Insured Organization** means the Named Insured stated in Item 1. of the Declarations as legally constituted at the inception date of this insurance. **Insured Organization** cannot be a natural person.
- 8.33 **Insured Organization Claim** means:
- a. A written demand for monetary damages;
 - b. A civil proceeding commenced by the service of a complaint or similar pleading; or
 - c. A criminal proceeding commenced by a return of an indictment;

brought against an **Insured Organization** for a **Covered Act**, and which does not arise in whole or in part from the rendering or failure to render **Professional Services**.

8.34 **Management Liability Claim** means:

- a. A written demand for monetary **Damages**;
- b. A civil proceeding commenced by the service of a complaint or similar pleading;
- c. A criminal proceeding commenced by a return of an indictment;

brought against any **Senior Manager** for a **Covered Act** by such **Senior Manager** solely in his or her insured capacity as such, and which does not arise in whole or in part from the rendering or failure to render **Professional Services**.

8.35 **Pending Or Prior Litigation** means any demand, suit, arbitration, administrative, regulatory, criminal, civil or other proceeding pending against, or order, decree or judgment entered for or against any of **you**, on or prior to the Pending Or Prior Date shown in the Schedule below, or any of the same or substantially the same underlying or alleged facts, circumstances, situations, transactions, events or **Covered Acts**.

8.36 **Pollutants** means any solid, liquid, gaseous or thermal irritants or contaminants, including smoke, soot, vapor, fumes, acids, chemicals, alkalis, asbestos, asbestos products or waste. Waste includes materials to be reconditioned, recycled or reclaimed.

8.37 **Senior Manager** means any natural person who is, was, or hereafter becomes a partner, principal, manager, officer, director, trustees, in-house general counsel or in-house chief compliance officer of the **Insured Organization** or **Predecessor In Interest**, but only in regards to a **Management Liability Claim** rendered on behalf of the **Insured Organization** or **Predecessor In Interest** during such time such person is a partner, principal, manager, officer, director, trustees, in-house general counsel or in-house chief compliance officer of the **Insured Organization** or **Predecessor In Interest**.

7. For purposes of this endorsement the following exclusions are added to 7. EXCLUSIONS for purposes of this endorsement:

1. Any **Management Liability Claim** or **Insured Organization Claim**:

a. Brought or maintained by or on behalf of any of **you**, or by any entity that owns more than fifty percent (50%) of the outstanding securities of the Insured Organization except for:

(1) A **Management Liability Claim** that is a derivative action brought or maintained on behalf of an **Insured Organization** by one or more persons who are not **you** and who bring and maintain such **Management Liability Claim** without the solicitation, assistance or participation of any of **you**; or

(2) A **Management Liability Claim** brought or maintained by **you** for contribution or indemnity, if such **Management Liability Claim** arises from or is based upon a **Claim** under any coverage part of this policy.

b. Based upon, arising from, attributable to, related to, or in any way involving, directly or indirectly, any of the following even if acting or operating concurrently or in any sequence with

an otherwise covered basis for a **Management Liability Claim** or **Insured Organization Claim**:

- (1) Any willful, wanton, reckless or intentional wrongdoing or any fraudulent, dishonest, criminal or malicious **Covered Act** by any of **you**. This exclusion shall not apply if **you** were unaware of such misconduct and, with the exercise of reasonable care, could not have been aware of such misconduct. Each of **you** agrees that if **we** have no liability under this policy to pay covered **Damages** because of this **Exclusion 1.**, **you** will repay **us** all **Claims Expenses** paid by **us** relative to the **Management Liability Claim** or **Insured Organization Claim**;
- (2) Any profit, advantage or remuneration gained by any of **you** to which **you** are not legally entitled, including but not limited to, any profit or advantage as a result of commingling funds or accounts. This exclusion shall not apply if **you** were unaware of such profit, advantage or remuneration and, with the exercise of reasonable care, could not have been aware of such misconduct. Each of **you** agree that if **we** have no liability under this policy to pay covered **Damages** because of this **Exclusion 2.**, **you** will repay **us** all **Claims Expenses** paid by **us** relative to the **Management Liability Claim** or **Insured Organization Claim**;
- (3) Any fact, circumstance, situation, transaction, event or **Covered Act** that, before the inception date of this insurance, was the subject of any notice given under the insurance of which this coverage endorsement is a direct or indirect renewal or replacement;
- (4) Any **Pending Or Prior Litigation**;
- (5) Libel, slander, oral or written publication of defamatory or disparaging material, invasion of privacy, covered entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium;
- (6) Any employment-related **Covered Act**, or in consequences of the any actual or alleged discrimination or sexual harassment;
- (7) The actual or alleged rendering or failure to render any **Professional Services**;
- (8) An actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (**ERISA**), as amended, or similar provisions of any federal, state, or local statutory law or common law as respects any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to employees of an **Insured Organization**;
- (9) Any **Covered Act** of a **Senior Manager** in his or her capacity as a director, officer, trustee, governor, general partner, managing general partner, venture partner, administrative general partner, manager, managing partner, regent, partner, or employee of any entity other than the **Insured Organization**;
- (10) A demand for an accounting of profits made from the purchase or sale of **Securities** of the **Insured Organization** by a **Senior Manager** within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any federal, state or local statutory law or common law; or

(11) Damage to or destruction of any data or tangible property, including **Damages** for loss of use thereof;

(12) Anti-trust, price fixing or discrimination, restraint of trade, monopolization, unfair trade practices, predatory pricing or false advertising;

(13) Any violation of the responsibilities, obligations or duties imposed by any law governing wage, hour or payroll, including the Fair Labor Standards Act;

(14) Any:

(a) discharge, emission, release, dispersal or escape of any **Pollutants** or any threat thereof;

(b) treatment, removal or disposal of any **Pollutants**; or

(c) regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**,

including any **Claim** for financial loss to an **Insured Organization**, its securityholders or its creditors based upon, arising from or in consequence of any matter described in paragraphs (a), (b), or (c) above

2. Any **Insured Organization Claim** based upon, arising from, or in consequence of:

a. Any **Claim** made against a **Senior Manager** arising from a **Covered Act** committed, attempted, or allegedly committed or attempted during any time when the **Senior Manager** was not acting on behalf of **you** or **your Predecessor In Interest**;

b. The actual or alleged liability of an **Insured Organization** assumed in any written or oral contract or agreement, provided that this provision 7.2.b. shall not apply to the extent that such **Insured Organization** would have been liable in the absence of the contract or agreement; or

c. The actual or alleged infringement of copyright, patent, trademark, trade name, trade dress, service mark or misappropriation of ideas or trade secrets.

8. For purposes of this endorsement the following condition is added to Section 9. CONDITIONS:

9.18 Presumptive Indemnification

If the **Insured Organization**:

1. Fails or refuses, other than for reason of **Financial Impairment**, to indemnify the **Senior Manager** for **Damages**; and

2. Is permitted or required to indemnify the **Senior Manager** for **Damages** to the fullest extent permitted by law;

then, notwithstanding any other conditions, provisions or terms of this insurance to the contrary, any payment **we** make for such **Damages** shall be subject to the applicable Deductible set forth in the Schedule below and all of the exclusions of this insurance.

For the purposes of this endorsement, the **Retroactive Date** is the date set forth below. If no date is set forth below, then the prior acts date is the date set forth on the Declarations, if any.

_____ at 12:01 a.m.

SCHEDULE

	<u>Limits Of Liability</u>	<u>Deductible</u>
Senior Manager Liability Coverage:	\$	\$ 0
Company Reimbursement Coverage:	\$	\$
Entity Liability Coverage:	\$	\$
<u>Dates Applicable To Coverage Under This Endorsement</u>		
Retroactive Date:	*	
Pending Or Prior Date:	*	

All other terms and conditions of this policy remain unchanged.