

# OLD REPUBLIC UNION INSURANCE COMPANY

## FUND LIABILITY COVERAGE SECTION

### Important Notice

This is a claims made policy that applies only to **Claims** first made during the **Policy Period** or the **Extended Reporting Period**, if exercised. **Defense Costs** shall be applied against the Retention, if applicable. **Defense Costs** paid by the Insurer shall reduce and may completely exhaust the Limit of Liability of the **Policy**.

**Please read the entire Policy carefully.**

## I. INSURING CLAUSES

### A. Insured Person Liability

The Insurer shall pay on behalf of the **Insured Persons** of any **Fund Loss** for which the **Insured Persons** are not indemnified by an **Entity** or the **Fund** and which the **Insured Persons** become legally obligated to pay by reason of any **Claim** first made against the **Insured Persons** during the **Policy Period** or any applicable **Extended Reporting Period** for any **Wrongful Acts**.

### B. Insured Person Indemnification Liability

The Insurer shall pay on behalf of the **Fund Loss** for which the **Fund** grants indemnification to the **Insured Persons**, as permitted or required by law, and which the **Insured Persons** have become legally obligated to pay by reason of any **Claim** first made against the **Insured Persons** during the **Policy Period** or any applicable **Extended Reporting Period** for any **Wrongful Acts**.

### C. Fund Liability

The Insurer shall pay on behalf of the **Fund Loss** which the **Fund** becomes legally obligated to pay by reason of any **Claim** first made against the **Fund** during the **Policy Period** or any applicable **Extended Reporting Period** for any **Wrongful Acts**.

## II. COVERAGE EXTENSIONS

### A. Derivative Investigation Costs and Books and Records Costs

The Insurer shall pay on behalf of the **Fund**:

- (i) **Derivative Investigation Costs** for which the **Fund** becomes legally obligated to pay in response to a **Derivative Demand** first received, or a derivative lawsuit first made on behalf of the **Fund**, and
- (ii) **Books and Records Costs** for which the **Fund** becomes legally obligated to pay in response to a **Books and Records Request** first received,

during the **Policy Period**. The Insurer's maximum aggregate liability for all **Derivative Investigation Costs** and all **Books and Records Costs** covered pursuant to this Section II.A. shall be the respective Sublimit of Liability set forth in Item 5. of the Declarations, which amount shall be part of, and not in addition to, the otherwise applicable Limit(s) of Liability, and no Retention shall apply to such amount.

### B. Asset Protection Costs

The Insurer shall pay on behalf of the **Insured Persons** reasonable fees, costs, charges and expenses incurred by the **Insured Persons** to oppose any efforts by any **Enforcement Authority** or by a claimant

in a **Claim** to seize or otherwise enjoin the personal assets or real property of the **Insured Person** in connection with a **Claim** covered under this Coverage Section, or to revoke, overturn or set aside a court order relating to a **Claim** covered under this Coverage Section which in any way impairs the use of such assets or property; provided such fees, costs, charges and expenses are not indemnified by any **Fund** as described in the definition of **Non-Indemnified Loss** and are not otherwise covered under this Coverage Section. The Insurer's maximum liability under this Coverage Section for all such fees, costs, charges and expenses incurred by all **Insured Persons** shall be the Asset Protection Costs Sublimit of Liability set forth in Item 5. of the Declarations.

C. **Reputational Costs**

The Insurer shall pay on behalf of the **Insured Persons** the reasonable fees, costs, charges and expenses incurred by the **Insured Persons** in connection with using a public relations firm to mitigate the adverse effects to the reputation of the **Insured Person** from a **Claim** against the **Insured Person** which is covered under this Coverage Section, including without limitation from any negative public statement regarding the **Insured Persons** by an **Enforcement Authority** or by a **Fund** relating to such **Claim** or the **Wrongful Acts** alleged therein; provided such fees, costs, charges and expenses are not indemnified by any **Fund** as described in the definition of **Non-Indemnified Loss** and are not otherwise covered under this Coverage Section. The Insurer's maximum liability under this Coverage Section for all such fees, costs, charges and expenses incurred by all **Insured Persons** shall be the Reputational Costs Sublimit of Liability set forth in Item 5. of the Declarations.

D. **Outside Position Liability**

Subject to their other terms and conditions, Insuring Clauses A. and B. above include coverage for any **Insured Person** while serving in an **Outside Position**. Any such coverage shall be specifically excess of any indemnity and any valid and collectible insurance available from or provided by the **Outside Entity** in which the **Insured Person** serves in the **Outside Position**.

III. **DEFINITIONS**

When used in this Coverage Section, either in the singular or the plural:

A. **Insured Persons** means:

1. any **Executive Officer**;
2. any one or more **Employees** of the **Fund** who is not described in subparagraph A. 1. above; provided such **Employees** shall not be considered **Insured Persons** for purposes of subparagraph a. of Exclusion 1. in Section IV. of this Coverage Section; and
3. solely with respect to Insuring Clauses A. and B., any one or more natural persons described in subparagraph A. 1. above while serving in an **Outside Position**.

B. **Insureds** means (1) the **Insured Persons**, and (2) the **Fund**.

C. **Wrongful Act** means any error, misstatement, misleading statement, act, omission, neglect or breach of duty actually or allegedly committed or attempted by any **Insured Persons** in their capacity as such or, with respect to Insuring Clause C., by a **Fund**, or any matter claimed against such **Insured Persons** by reason of their status as such.

IV. **EXCLUSIONS**

A. The Insurer shall not be liable for **Loss** on account of that portion of any **Claim**:

1. Entity vs. Insured

brought or maintained by or on behalf of the **Fund**, provided this Exclusion shall not apply to **Defense Costs** covered under Insuring Clause A. or to the following **Claims** against **Insured Persons**:

- a. any such **Claim** that is a derivative action brought or maintained on behalf of the **Fund** by one or more persons who are not **Insured Persons** and who bring and maintain the **Claim** without the active assistance or participation of, or solicitation by, the **Fund** or any **Insured Person**, other than assistance, participation or solicitation by **Insured Persons** that is protected pursuant to any whistleblower protection provision in any applicable federal, state, local or foreign law which protects such **Insured Persons**;
  - b. any such **Claim** brought or maintained while such **Fund** is in **Financial Impairment**, including without limitation any such **Claim** by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver, similar official or creditors committee for such **Fund**;
  - c. any such **Claim** brought and maintained outside the United States, Canada or any other common law country, including any territories thereof;
  - d. any such **Claim** against an **Independent Director** of the **Fund**; or
  - e. if in the opinion of independent legal counsel chosen jointly by the Insurer and the **Fund** and paid by the **Fund**, the failure to bring such **Claim** would result in a breach of duty on the part of such **Fund** or its **Insured Persons**; or
- B. The Insurer shall not be liable under Insuring Clause C. for **Loss** on account of that portion of any **Claim**:
1. Contract  
for any actual or alleged liability of the **Fund** under any oral or written contract or agreement, provided that this Exclusion shall not apply to the extent that such **Fund** would have been liable in the absence of such contract or agreement or to the extent such **Claim** is by or on behalf of an investor in a **Fund** in his, her or its capacity as such;
  2. Personal Injury  
based upon, arising out of, or attributable to any libel, slander or oral or written publication of defamatory or disparaging material; false arrest, detention or imprisonment; malicious prosecution or malicious use or abuse of process; wrongful entry or eviction; invasion of the right of private occupancy or privacy; loss of consortium; or assault or battery; provided, however, this Exclusion shall not apply to a **Claim** by or on behalf of an investor in a **Fund** in his, her or its capacity as such;
  3. Pollution  
based upon, arising out of, or attributable to (i) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or (ii) any direction or request that the **Entity** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; provided, however, this Exclusion shall not apply to a **Claim** by or on behalf of an investor in a **Fund** to the extent such **Claim** arises from the diminution in value of an investment in the **Fund**;
  4. Underwriter/Broker/Dealer  
based upon, arising out of, or attributable to any activities as an underwriter, broker or dealer, as defined in Section 2(11) of the Securities Act of 1933, as amended, or Sections 3(a)(4), 3(a)(5) and 3(a)(6) of the Securities Exchange Act of 1934, as amended; provided, however, this Exclusion shall not apply to the extent such **Claim** arises from the distribution of shares or interests in a **Fund**; or
  5. Investment Banking  
based upon, arising out of, or attributable to the rendering or failure to render advice or services to any customer or client of an **Insured** (except a **Portfolio Company**) in connection with a merger, acquisition, restructuring or divestiture; provided, however, this Exclusion shall not

apply to (i) any financial advice or any investment management activity or service provided in connection with investing in the securities of the entities involved in mergers, acquisitions, restructurings or divestitures but only to the extent such **Insured** is not providing such services to or on behalf of any entity involved in such merger, acquisition, restructuring or divestiture, or (ii) any **Claim** by or on behalf of an investor in a **Fund** relating to any investment in the securities of entities involved in a merger, acquisition, restructuring or divestiture.

6. Employment Practices, Discrimination and Sexual Harassment

based upon, arising out of, or attributable to an employment-related or any discrimination against or sexual harassment of any natural person who is not an **Insured Person**;

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