

Investment Managers

DUAL

Wordings.



DUAL New Zealand Mind the Gap

Investment Managers Insurance Policy Wording

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Investment Managers Insurance Policy Wording

Section 1: Insuring Clauses

1.1 Fund and Investment Manager Professional Civil Liability

We agree to pay to or on behalf of the **insured** their **loss** arising from any **claim** for **civil liability** or arising from an **investigation** commenced by an **official body** first made against an **insured** during the **insurance period** in relation to the provision of **investment services**.

1.2 Fund and Investment Manager Directors' & Officers' Liability Cover

We agree to pay to or on behalf of each **insured person** their **loss** arising from a **claim** alleging a **wrongful act** or arising from an **investigation** commenced by an **official body** first made against an **insured person** during the **insurance period**, for which the **company** has not indemnified the **insured person**.

1.3 Fund and Company Reimbursement Cover

We agree to pay to or on behalf of the **company** an **insured person's loss** arising from a **claim** alleging a **wrongful act** or arising from an **investigation** commenced by an **official body** first made against an **insured person** during the **insurance period**, for which the **company** has indemnified the **insured person**.

1.4 Employment Practices Liability Cover

We agree to pay to or on behalf of the **company** its **loss** on account of a **claim** brought by an **employee** alleging an **employment practices breach** or arising from an **investigation** into an **employment practices breach** commenced by an **official body** first made against the **company** during the **insurance period**.

1.5 Internal Crime Cover

We agree to pay to the **company** its **direct financial loss** arising from an **internal crime** which is first **discovered** and reported to **us** during the **insurance period**.

1.6 External Crime Cover

We agree to pay to the **company** its **direct financial loss** arising from an **external crime** which is first **discovered** and reported to **us** during the **insurance period**.

1.7 Defence Costs in Addition

We agree to pay to or on behalf of the **insured** any **defence costs** in respect of a **claim** for **loss** covered by this **policy** in addition to the **indemnity limit**, in an amount not exceeding the same **indemnity limit**.

We will only pay **defence costs** however if:

- a. **we** incur them; or
- b. the **insured** incurs them after obtaining **our** agreement in writing and the **defence costs** are in **our** view reasonable and necessary.

We will not defend or continue to defend any **claim** to which the **policy** would provide indemnity, or pay or continue to pay any **defence costs** associated with such defence, once the **defence costs indemnity limit** has been exhausted.

1.8 Advancement of Defence Costs

We agree to pay for **defence costs** in respect of any **claim** covered under this **policy** as and when they are incurred prior to final resolution of the **claim**, and within 30 days of receipt by **us** of sufficiently detailed invoices for those costs.

The maximum amount of **defence costs** and other costs and expenses **we** will advance is the amount of any applicable sub-limit or the **indemnity limit**. Upon exhaustion of the applicable sub-limit or the **indemnity limit** **our** obligation to advance **defence costs** will cease.

However any **defence costs** that are paid will be repayable to **us** by the **insured** in the event and to the extent that it is determined under the **policy** that the **insured** was not entitled to the payment of the **defence costs**.

1.9 Securities Entity Cover

We agree to pay to or on behalf of the **company** their **loss** arising from a **securities claim** first made against the **company** during the **insurance period**.

1.10 Statutory Liability & Supplementary Legal Expenses Cover

We agree to pay to or on behalf of the **company** their **loss** arising from a **claim** or **investigation** first made or commenced by an **official body** during the **insurance period**.

Section 2: Automatic Coverage Clauses

Each Automatic Coverage Clause is subject to the Insuring Clauses and all other **policy** terms, conditions and exclusions. Coverage under each Automatic Coverage Clause is only up to the sub-limit stated in the **schedule**. The sub-limits applicable to these Automatic Coverage Clauses form part of and are not in addition to the **indemnity limit** unless stated otherwise.

2.1 Continuous Cover

Notwithstanding Exclusion Clause 6.13 (Prior Knowledge), we agree to provide cover in respect of any **claim** or **investigation** where the **insured**:

- a. first became aware, prior to the **insurance period** and after the **continuity date** that a claim or **investigation** might or could arise from facts or circumstances known to the **insured**; and
- b. through error or oversight failed to notify the previous insurer or insurers on risk of such facts or circumstances, under any like policy existing prior to the **insurance period**.

We have the absolute discretion to apply either the terms and conditions of the policy in place when the **insured** first became aware of the facts and circumstances, including but not limited to the indemnity limit and deductible, or the terms and conditions of this **policy**.

2.2 Court Attendance Costs

We will pay to or on behalf of the **insured** the **court attendance costs** of an **insured person** who is legally compelled to attend court as a witness in connection with a **claim** or **investigation** notified under and covered by this **policy**.

2.3 Discovery Period

In the event of non-renewal of this **policy** or in the event that a **transaction** occurs, the **insured** may request a **discovery period** of:

- a. 90 days, granted with no additional premium payable for all Insuring Clauses, Automatic Coverage Clauses or Additional Coverage Clauses originally purchased; or
- b. 12 months, for an additional premium of 100% of the expiring premium;

- c. up to 84 months, if a **transaction** takes place, on such terms and conditions, if any, and for such additional premium as **we** may reasonably decide.

During the **discovery period**, the **insured** may:

- a. give notice of any **claim** or **investigation**, arising from any actual or alleged **wrongful act**, or other acts, errors or omissions, or conduct, which occurred during the **insurance period** or prior to the date of a **transaction**, with respect to Insuring Clauses 1.1, 1.2, 1.3 or 1.4; or
- b. give written notice to **us** of any **direct financial loss** arising from an **internal crime** or **external crime** which was **discovered** during the **insurance period** or the **discovery period**, with respect to Insuring Clauses 1.5 or 1.6.

The **discovery period** will commence immediately after the **insurance period** or date of **transaction** (whichever is the earliest).

Cover is only available under this Automatic Coverage Clause if a request is made within 30 days of the expiration of the **insurance period** or the **transaction**, whichever is the earliest.

This Automatic Coverage Clause is not available if this **policy** is:

- i. renewed or replaced with any other like insurance policy; or
- ii. cancelled or avoided; or
- iii. if the premium for this **policy** is unpaid.

Any **discovery period** purchased under this Automatic Coverage Clause is non-cancellable by the **insured**, and the premium paid for the **discovery period** is fully earned by **us** and is non-refundable.

2.4 **New Funds**

We will pay:

- a. all **loss** arising from a **claim** or **investigation** first made during the **insurance period** involving a **new fund**; and
- b. all **direct financial loss** of a **new fund** resulting from an **internal crime** or **external crime**, which is **discovered** within the **insurance period**.

No cover is provided before the date at which they become a **new fund**.

2.5 **New Subsidiaries**

We will pay:

- a. all **loss** arising from a **claim** or **investigation** first made during the **insurance period** involving a **new subsidiary**; and
- b. all **direct financial loss** of a **new subsidiary** resulting from an **internal crime** or **external crime** which is **discovered** within the **insurance period**;

No cover is provided before the date at which they become a **new subsidiary**.

2.6 **Panel Counsel**

The **insured** is entitled to one (1) hour free advice from any one firm listed on **our** panel of solicitors relating to a matter which we have accepted as notification of circumstances which may give rise to a **claim** under this **policy**. **We** consent to that firm listed on **our** panel of solicitors being retained to act for an **insured** in respect of any **claim** covered by this **policy**.

2.7 **Public Relations Expenses**

- a. **We** will pay the **public relations expenses** of an **insured** up to the sub-limit specified in the **schedule**.

Additional Coverage Clauses Applicable To Insuring Clauses 1.1, 1.2 And 1.3

2.8 Automatic Run-off Cover for Retired Insured Persons

If an **insured person** retires from all employment or office with the **company** prior to the expiry of the **insurance period** and the **company** does not renew this **policy** and no **discovery period** is operable, then that **insured person** will automatically be entitled to an 84 month **discovery period** at no additional premium commencing at 4.00pm local time on the date which they retire from office with the **insured**.

The maximum **we** will pay in respect of any **loss** under this Additional Coverage Clause is the sub-limit specified in the **schedule**.

2.9 Estates, Heirs, Legal Representatives and Spousal Cover

We will pay the **loss** of:

- a. the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent or bankrupt **insured person**; or
- b. a legal or de facto spouse of an **insured person**; but only in respect of:
 - i) a **wrongful act** committed or allegedly committed by an **insured person**; or
 - ii) a **claim** for a **civil liability** in relation to acts committed or allegedly committed by an **insured person** while acting in their insured capacity.

The maximum **we** will pay in respect of any **loss** under this Additional Coverage Clause is the sub-limit specified in the **schedule**.

2.10 Former Subsidiaries and Funds

We will pay to or on behalf of the **company** all **loss** resulting from any **claim** for any **civil liability** in relation to the conduct of the **investment services** by a **subsidiary** or **fund** that ceased or ceases to be a **subsidiary** either before or during the **insurance period**.

The maximum **we** will pay in respect of any **loss** under this Additional Coverage Clause is the sub-limit specified in the **schedule**.

Additional Coverage Clauses Applicable To Insuring Clause 1.1: Professional Civil Liability

2.11 Advisers and Agents (Vicarious Liability)

We will pay to or on behalf of the **insured** all **loss** resulting from any **claim** for **civil liability** arising from the conduct of any Qualified Financial Entity Adviser or agents of the **company** in the conduct of the **investment services** and for whose acts, errors or omissions the **company** is liable.

Cover under this Automatic Coverage Clause is not available to Qualified Financial Entity Adviser or agents in respect of their own liability.

The most **we** will pay in respect of any **loss** covered under this Automatic Coverage Clause is the sub-limit specified in the **schedule**.

2.12 Breach of Privacy

We will pay to or on behalf of the **insured** all **loss** on account of a **claim** for **civil liability** which alleges the loss or misuse of confidential or personal information, material or **data**, or invasion or breach of privacy of any client of

the **company** anywhere in the World or the breach of any law or regulation regulating the collection, management, confidentiality or disclosure of personal or confidential information of any client of the **company** or **fund** anywhere in the World.

The most **we** will pay in respect of any **loss** covered under this Automatic Coverage Clause is the sub- limit specified in the **schedule**.

2.13 Consumer Protection Legislation

We will pay to or on behalf of the **insured** all **loss** resulting from any **claim** for **civil liability** made against the **insured** for unintentional contraventions of the *Fair Trading Act 1986*.

The most **we** will pay in respect of any **loss** covered under this Automatic Coverage Clause is the sub- limit specified in the **schedule**.

2.14 Defamation

We will pay to or on behalf of the **insured** all **loss** resulting from any **claim** for **civil liability** for defamation committed in the conduct of the **investment services**.

The maximum **we** will pay in respect of any **claim** under the Automatic Coverage Clause is the sub-limit specified in the **schedule**.

2.15 Key Man Loss

We will pay to or on behalf of the **company** or **fund** all **key man loss** sustained during the **insurance period**.

The maximum **we** will pay in respect of any **loss** covered under this Automatic Coverage Clause is the sub-limit specified in the **schedule**.

2.16 Intellectual Property

We will pay to or on behalf of the **insured** all **loss** resulting from any **claim** for **civil liability** made against the **insured** arising from infringement or alleged infringement of any intellectual property right in the conduct of the **investment services**.

The maximum **we** will pay in respect of any **loss** covered under this Automatic Coverage Clause is the sub- limit specified in the **schedule**.

2.17 Lost Data

We will pay to or on behalf of the **insured** all **loss** resulting from any **claim** for **civil liability** for the unintentional destruction, misplacement, damage, deletion, corruption or loss of **data** while in the physical custody or control of the **insured**, provided that the discovery of the loss of **data** occurred during the **insurance period**.

The maximum **we** will pay in respect of any **loss** covered under this Automatic Coverage Clause is the sub-limit specified in the **schedule**.

2.18 Lost Documents

We will pay to or on behalf of the **insured** all **loss** arising from a **claim** for **civil liability** resulting from the loss of **documents**, which are in the care, custody or control of the **insured** and for which the **insured** is legally liable, which after diligent search cannot be found.

The maximum **we** will pay in respect of any **loss** covered under this Automatic Coverage Clause is the sub- limit specified in the **schedule**.

2.19 Mitigation Costs

We will reimburse the **company** their **mitigation costs**, incurred in taking action to limit or mitigate the **insured's** exposure to any actual covered claim, or potential **claim**, for **civil liability**, which would otherwise be covered under this **policy**. The **company** bears the burden of proving that the **claim** would otherwise have been covered.

The maximum **we** will pay in respect of any **loss** covered under this Automatic Coverage Clause is the sub-limit specified in the **schedule**.

2.20 Reinstatement of Indemnity Limit for Claims by Retail Clients

If a **claim** or **claims** covered under Insuring Clause 1.2 or 1.3 exhausts the **indemnity limit** of this **policy** and all excess layer policies which have been purchased in excess of this **policy** combined, the **indemnity limit** of this **policy** will be reinstated once only in respect to any separate and subsequent **claim** or **claims** which are brought by **retail clients** against an **insured**.

The total amount of the reinstatement will not exceed a total amount equal to the **indemnity limit** inclusive of **defence costs** and such reinstatement is only available where the subsequent **claim** or **claims** are based upon, or arise from facts and matters totally different and unrelated to any earlier **claim** or **claims**, which gave rise to the earlier exhaustion of the **indemnity limit**.

This Automatic Coverage Clause does not apply unless and until the **insured** has exhausted the limits of any policy which is in excess of the original **indemnity limit** for Insuring Clause 1.2 or 1.3 under this **policy**.

Additional Coverage Clauses Applicable To Insuring Clause 1.2: Directors' & Officers' Liability

2.21 Additional Limit for Non-Executive Directors

If the **indemnity limit** is exhausted by the payment by us of **loss**, **we** agree to pay an amount not exceeding 50% of the **indemnity limit**, in addition to the **indemnity limit**, on the following terms:

- a. this Automatic Coverage Clause is only available to **non-executive directors** of the **company**; and
- b. the **indemnity limit** and any other available insurance or source of indemnity available to the **non- executive director** has first been exhausted; and
- c. the maximum amount of **loss** paid by **us** under this Automatic Coverage Clause in respect of all **claims** and **investigations** for all **non-executive directors** will not exceed 50% of the **indemnity limit** in the aggregate; and

this Automatic Coverage Clause does not provide any cover to the **company** or any **fund**.

The most we will pay in respect of any **loss** covered under this Additional Coverage Clause is the sub- limit specified in the **schedule**.

2.22 Bail Bond Expenses

We will pay the **bail bond expenses** of an **insured person** up to the sub-limit specified in the **schedule**.

2.23 Deprivation of Asset Expenses

We will pay the **deprivation of asset expenses** of an **insured person** in the event that an interim or interlocutory court order is made against an **insured person** which seeks to confiscate, control, suspend or freeze rights of ownership of real property or personal assets of an **insured person** or creates a charge or security interest over real property or personal assets of an **insured person** up to the sub-limit specified in the **schedule**.

2.24 Extradition Costs

We will pay the **extradition costs** of an **insured person** up to the sub-limit specified in the **schedule**.

2.25 Insured Person Tax Liability

We will pay as **loss** an **insured person's** personal liability for the unpaid taxes of the **company** in the event that the **company** becomes insolvent and an **insured person** is ordered to pay the unpaid taxes of the **insured**, except

to the extent that such liability arises from the wilful intent of the **insured person** to breach any duty governing the payment of taxes.

The maximum **we** will pay in respect of any **loss** covered under this Additional Coverage Clause is the sub-limit specified in the **schedule**.

2.26 Outside Entity Executive Cover

We will pay the **loss** of an **outside entity executive** in the event that a **claim** is made against such **outside entity executive** or an **outside entity executive** is required to attend an **investigation** during the **insurance period** or any **discovery period**, in relation to the performance of their duties for an **outside entity**, in their capacity as an **outside entity executive**.

The maximum **we** will pay in respect of any **loss** covered under this Additional Coverage Clause is the sub-limit specified in the **schedule**.

2.27 Pollution Loss

We will pay the **loss** of an **insured person** in relation to the actual, alleged or threatened discharge of **pollution**, notwithstanding Exclusion Clause 3.1 (Bodily Injury and Property Damage) or Exclusion Clause 3.4(c) (Pollution and Radioactive Contamination) provided always that Exclusions 3.4(a) and (b) (Pollution and Radioactive Contamination) will always apply.

The maximum **we** will pay in respect of any **loss** covered under this Automatic Coverage Clause is the sub-limit specified in the **schedule**.

2.28 Prosecution Costs

We will pay the **prosecution costs** of an **insured person** up to the sub-limit specified in the **schedule**.

2.29 Shareholder Costs

We will pay as **loss** any adverse costs orders awarded against the **insured** in favour of a shareholder or group of shareholders of the **company** up to the sub-limit specified in the **schedule**.

2.30 Unincorporated Joint Venture Cover

We will pay the **loss** of an **insured person**, where the **insured person** was performing duties for or on behalf of an unincorporated joint venture of the **company** and at the direction of the **company** up to the sub-limit specified in the **schedule**.

2.31 Work Health & Safety Costs

We will pay the **loss** of an **insured person** resulting from any **claim** or **investigation** in relation to an occupational health and safety or work health and safety allegation, notwithstanding Exclusion 3.1, (Bodily Injury / Property Damage), up to the sub-limit specified in the **schedule**.

Additional Coverage Clauses Applicable To Insuring Clause 1.4 And 1.5: Internal And External Crime

2.32 Care, Custody & Control

We will pay the **direct financial loss** of a client or customer of the **company** in circumstances where the **company** or the **company's** Qualified Financial Entity Adviser and agents, had the care, custody or control of the **money**, **securities** or **property**, which is the subject of an **internal crime** or **external crime** up to the sub-limit specified in the **schedule**.

2.33 Computer Crime Costs

We will pay the **computer crime costs** of the **company** following an **internal crime** or **external crime** which is covered under this **policy** up to the sub-limit specified in the **schedule**.

For the purpose of this Automatic Coverage Clause only, Exclusion 3.14 (Confidential Information) does not apply.

2.34 Contractual Penalties

We will pay to or on behalf of the **company** for any contractual penalty assumed by and enforced against the **company** under a written contract between the **company** and a **third party**, which is payable as a direct consequence of an **internal crime** or **external crime** covered under this **policy** up to the sub-limit specified in the **schedule**.

2.35 Credit Card Fraud

We will pay the **direct financial loss** of the **company** caused as a result of a **credit card fraud discovered** during the **insurance period**, up to the sub-limit specified in the **schedule**.

2.36 Destruction or Disappearance of Money or Securities

We will pay the **direct financial loss** of the **company** caused by the destruction or disappearance of **money** or **securities** in the course of an **internal crime** or **external crime**, which is discovered during the **insurance period**, up to the sub-limit specified in the **schedule**.

2.37 Erroneous Transfer of Money or Securities Cover

We will pay the **direct financial loss** of the **company** caused by the wrongful retention by a **third party** of **money** or securities erroneously transferred to that **third party** which is **discovered** during the **insurance period** up to the sub-limit specified in the **schedule**. Our liability under this Automatic Coverage Clause is only payable once the **company** has taken all reasonable steps to recover the erroneously transferred **money** or **securities** from the **third party**.

2.38 Extortion

We will pay the **extortion costs** of the **company** caused by **extortion** committed by a **third party** during the **insurance period** up to the sub-limit specified in the **schedule**.

2.39 Future Loss Prevention Costs

We will pay the **future loss prevention costs** of the **company** up to the sub-limit specified in the **schedule**.

2.40 Identity Theft Expenses

We will pay the **identity theft expenses** of the **company** following an **identity theft** up to the sub-limit specified in the **schedule**.

2.41 Interest

We will pay to the **company** or **fund** any **interest** which otherwise would have been payable on **money** which has been misappropriated as a result of an **internal crime** or **external crime** up to the sub-limit specified in the **schedule**.

2.42 Loss Investigation Costs – Insured

We agree to reimburse the **company** for their **loss investigation costs** which they incur in order to provide a **proof of loss** to us, following the **discovery** of an **internal crime** or an **external crime** during the **insurance period** up to the sub-limit specified in the **schedule**.

2.43 Unincorporated Joint Venture Cover

We will pay the **direct financial loss** of the **company** sustained as a result of an **internal crime** or **external crime** perpetrated against an unincorporated joint venture, in which the **company** owns at least a 50% proprietary share, which is discovered within the **insurance period** up to the sub-limit specified in the **schedule**.

Section 3: Exclusions

Exclusions Applicable To All Insuring Clauses

We will not cover the **insured** or any **fund** or an **insured person** for any **claim** for **loss** including **defence costs** arising from or directly or indirectly based upon or attributable to any:

3.1 Bodily Injury / Property Damage

bodily injury or damage to or destruction of any tangible property, including loss of use of such tangible property. However, this exclusion will not apply to:

- a. a **claim** or **investigation** for mental anguish, anxiety and stress resulting from an employment practices breach;
- b. a **claim** or **investigation** covered under Automatic Coverage Clauses 2.27 (Pollution Loss), and 2.31 (Work Health & Safety Costs).

3.2 Employee-Related Benefits

- a. obligation, or actual or alleged breach of an obligation, under any law, regulation or **industrial instrument** providing for paid or unpaid leave of any kind;
- b. obligation, pursuant to any law, regulation, or **industrial instrument** providing for the payment of workers' compensation entitlements, disability benefits, unemployment benefits, unemployment insurance, retirement benefits, social security benefits;
- c. **employment related benefits** or amounts calculated by reference to any **employment related benefits**;
- d. costs incurred by the **company** to modify any building or property, or to provide any service, in order to make such building or property, more accessible for accommodating a disabled person;
- e. costs incurred by the **company** in connection with any educational or corrective measures undertaken under order of a Court or Tribunal of competent jurisdiction, arising from an **employment practices breach**;
- f. specified sums payable by the **company** to an **employee** pursuant to a contract of employment or **industrial instrument**; or
- g. **benefits**.

3.3 Fraudulent, Dishonest & Wilful Conduct

- a. gaining any personal profit or advantage to which the **insured** was not legally entitled;
- b. having improperly benefited from any **securities** transaction as a result of information that is/was not available to other sellers or purchasers of such **securities**;
- c. committing any dishonest, fraudulent, criminal or malicious act; or
- d. committing any wilful violation or wilful breach of any statute, law or regulation.

This Exclusion will only apply if it is established through a judgment or any other final adjudication adverse to the insured, or any admission by an **insured** that the relevant conduct did in fact occur.

This exclusion will not apply to:

- i. any **claims** brought by a **retail client**, but only in respect to awards of damages made in favour of the **retail client**;
- ii. any claim for **direct financial loss** under Insuring Clauses 1.5 (Internal Crime Cover) and 1.6 (External Crime Cover).

3.4 **Pollution and Radioactive Contamination**

- a. ionizing radiation or contamination by radioactivity from a nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly; or
- c. the actual, alleged or threatened discharge of **pollution**.

This exclusion will not apply to any **loss** to which Automatic Coverage Clause 2.27 (Pollution Loss) applies.

Additional Exclusions Applying To Insuring Clause 1.1: Professional Indemnity

3.5 **Assumed Liability**

We will not cover any **loss** directly or indirectly caused by, arising out of or in any way connected with any **claim** made against an **insured** for any breach of guarantee, warranty, agreement, contract or assumed liability which would not have otherwise attached to the **insured** in the absence of such guarantee, warranty, agreement, contract or assumed liability.

3.6 **Insured versus Insured**

We will not cover any **loss** in respect of any **claim** or **investigation** brought by or on behalf of any **insured** or **fund**, or successors or assigns of any **insured** or **fund**, unless such **claim** or **investigation** is brought by or on behalf of:

- a. an **employee** as a customer or client of the **company** or **fund** and is not solicited by or brought with the voluntary (instead of legally required) intervention, assistance or participation of any **insured** or **fund** against whom it is brought; or
- b. a **fund**, on advice from independent legal counsel selected by and at the expense of the **fund** (selection of such counsel being subject to the prior written approval of **us**) that, on the balance of probabilities, the failure to make such **claim** would be a breach of duty owed by the **directors** or **officers** of such **fund**.

3.7 **Proprietary Trading Loss**

We will not cover any **loss** resulting from any **claim** or **investigation**:

- a. where the **company** or **fund** is acting on its own behalf or as principal; or
- b. which arises from any underwriting agreement for the offer or sale of any **securities**.

Additional Exclusions Applying To Insuring Clauses 1.2 (Fund And Investment Manager Directors' And Officers Liability Cover) And 1.3: (Fund And Company Reimbursement Cover)

We will not cover the **insured** or any **fund** or an **insured person** for any **claim** for **loss** including **defence costs** arising from or directly or indirectly based upon or attributable to any:

3.8 Breach of professional duty

any **claim** or **investigation** based upon, directly or indirectly attributable to or in consequence of the provision of any **investment services** and/or advice, or the failure to provide such services or advice.

3.9 Consensual claim

any **claim** which is brought or maintained with the intervention, assistance or active participation (unless required by law) of an **insured person**.

3.10 ERISA

any **claim** or **investigation** based upon, attributable to, involving, contributed to by or which arise directly or indirectly from any actual or alleged violation of the responsibilities, obligations or duties imposed by the *Employee Retirement Income Security Act 1974 (USA)* or any amendments to that Act.

3.11 Fines and Penalties

any **claim** arising from or directly or indirectly, attributable to or in consequence of any liability to pay:

- a. taxes, fines, penalties or liquidated damages; or
- b. punitive, exemplary, aggravated or additional damages resulting from the multiplication of compensatory damages of any kind awarded against an **insured person** arising out of a **claim** made and/or action instituted in the United States of America or Canada.

3.12 Insured v Insured

any **claim** which is brought by, on behalf of or for the benefit of the **company**; provided, however, that this Exclusion shall not apply to:

- a. **defence costs**;
- b. any **claim** brought or maintained by the **company** for contribution or indemnity, if the **claim** directly results from another **claim** otherwise covered under the **policy**;
- c. any **claim** brought or maintained by any external administrator to the **company** (including but not limited to a liquidator, receiver, administrator or other external administrator) where such external administrator is appointed by a Court and such **claim** is brought without the solicitation, assistance or co-operation of any **insured person**;
- d. a derivative action on behalf of the **company** brought by persons who are not **insured persons** and without the solicitation, assistance or co-operation of any **insured**; or
- e. a **claim** by a regulatory body in the name of the **company** provided the action is brought or maintained without any direct or indirect consent, solicitation, co-operation or enticement from any **insured person**.

3.13 SEC

any **claim** or **investigation** based upon, attributable to, involving, contributed to, by or which arise directly or indirectly from any actual or alleged violation of the *Securities Act of 1933*, the *Securities Exchange Act of 1934*, any rules of the Securities and Exchange Commission adopted thereunder, or any Federal, State, or Provincial Law similar to the foregoing including amendments, in the USA or Canada.

Additional Exclusions Applying To Insuring Clauses 1.4 (Internal Crime) And 1.5 (External Crime)

3.14 Confidential Information

We will not cover any **direct financial loss** in any way connected with the accessing, use or dissemination of any confidential information including, but not limited to, trade secrets, computer programs, customer information, intellectual property or processing methods.

3.15 Consequential Loss

We will not cover any indirect or consequential loss except where expressly provided for in the Automatic Coverage Clauses of the **policy**.

This Exclusion does not apply to losses arising from business disruption, system failures, failure of transaction processing or process management with respect to an **AIF** only, in accordance with Article 12(2) in Section 3 of the *Commission Delegated Regulation (EU) No 231/2013* dated 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council dated 8 June 2011 (including any amendments).

3.16 Fraudulent Computer Program Features

We will not cover any **direct financial loss** in any way connected with, or resulting from fraudulent features contained in computer programs developed for sale to, or were sold to, multiple customers at the time of their acquisition from a vendor or consultant, unless:

- a. the features were inserted after the date of acquisition; or
- b. at the time of **discovery** the fraudulent features were contained solely on the computer programs of the **company** and not on those sold to any other customer.

3.17 Plastic Cards

We will not cover any **direct financial loss** in any way connected with the fraudulent alteration of any written instrument required in connection with a debit, credit, bank, VISA, MasterCard, American Express or other like credit card, except for **direct financial loss**, which is covered under Automatic Coverage Clause 2.35 (Credit Card Fraud).

3.18 Profit Loss and Inventory Computation

We will not cover any **direct financial loss** in any way connected with a profit and loss computation or comparison of inventory records, which is the sole means of proving that a **direct financial loss** has been sustained.

3.19 Voluntary Surrender

We will not cover any **direct financial loss** in any way connected with the voluntary giving or surrendering of **money, securities** or other tangible property in any exchange or purchase except where Automatic Coverage Clause 2.37 (Erroneous Transfer of Money or Securities Cover) applies.

3.20 Territorial Limits

We will not cover any **claim** or **investigation** brought and maintained outside of the **territorial limits** or any **direct financial loss** sustained outside of the **territorial limits**.

Additional Exclusions Applying To Insuring Clause 1.9 (Securities Entity Cover)

3.21 Securities Claim Specific

We will not cover the **company** for **loss** in connection with a **securities claim** directly or indirectly based upon or attributable to any:

- a. express representations, contracts, agreements, warranties or guarantees made by the **company**, provided, however, that this Exclusion will not apply if the **company** would have had such liability in the absence of such representations, contracts, agreements, warranties or guarantees; or
- b. allegation that the consideration for the acquisition or completion of the acquisition of all or substantially all the ownership, interest or assets of a **company**, business or other enterprise is inadequate. **Loss** does not include any amount of any judgement or settlement representing the amount by which such price or consideration is effectively increased or decreased nor any amount for the claimant's costs and expenses, which relate to such allegations.

Additional Exclusions Applying To Insuring Clause 1.10 (Statutory Liability & Supplementary Legal Expenses)

3.22 Certain Acts

We will not cover the **company** for any form of **loss** resulting from any **claim** or **investigation** arising out of or in any way connected with any actual or alleged breach or contravention of the responsibilities, obligations or duties imposed by:

- a. any law regulating the conduct of directors or officers; or
- b. *the Fair Trading Act 1986* or any similar law.

3.23 Insured Conduct

We will not cover the **company** for any form of **loss** resulting from any **claim** or **investigation** arising out of or in any way connected with any actual or alleged activities outside the **company's investment services**.

3.24 Territorial Limits

We will not cover the **company** for any form of **loss** resulting from any **claim** or **investigation** first made outside of the **territorial limits**.

Section 4: Conditions Applying To This Policy

4.1 Alteration to Risk

If during the **insurance period** a **transaction** occurs then the cover under the **policy** will only apply to **wrongful acts, internal crime** or **external crime** committed prior to the effective date of the **transaction**.

If, during the **insurance period**, the **company** decides to make a public offering of its **securities** in any jurisdiction the **company** will provide us with any prospectus or offering statement for **our** review and assessment. **We** will be entitled to amend the terms and conditions of any **policy** and/or charge an additional premium reflecting any potential increase in exposure, which we deem reasonable.

The **insured** will give **us** written notice of the above listed events as soon as reasonably practicable.

If a **fund** raises additional capital, or increases their funds under management above twenty-five percent (25%) of the **fund's** total funds under management at the time of the commencement of the **insurance period**, **we** reserve the right to charge such additional premium as we deem necessary and alter the terms of this **policy** as **we** see fit.

4.2 Co-operation

The **insured** will, at the **insured's** own cost, frankly and honestly provide **us** with all information, documentation, evidence and assistance reasonably required by **us** and/or any lawyers, investigators or other professionals, who may be appointed by **us**.

The **insured** will, at their own cost, do all things reasonably practicable to minimise any **loss**, including but not limited to the **insured's** liability in respect of any **claim**.

Each **insured** will provide **us**, at their own cost, with all information, assistance and co-operation which **we** reasonably require, and in the event of a **claim** or potential **claim**, each **insured** agrees that they will not do anything that could foreseeably prejudice **our** position or **our** potential or actual rights of recovery.

4.3 Legal Representation and Settlement

With respect to Insuring Clauses 1.2 (Fund and Investment Manager Directors' & Officers' Liability Cover) 1.3 (Fund and Company Reimbursement Cover) and 1.9 (Securities Entity Cover) it will be the duty of the **insured** to defend **claims** and arrange for legal representation at **investigations**.

With respect to Insuring Clauses 1.1 (Fund and Investment Manager Professional Civil Liability), 1.4 (Employment Practices Liability Cover) and 1.10 (Statutory Liability & Supplementary Legal Expenses) it will be **our** duty and not the duty of the **insured** to defend **claims** and arrange for legal representation at **investigations**.

The **insured** will not admit liability, settle any **claim**, make any admission, offer any payment or assume any obligation in connection with any **claim** or **investigation**, incur any **defence costs**, **investigation costs** or other **loss** covered by this **policy**, without **our** prior written consent, which will not be unreasonably withheld or delayed. **We** will not be liable for any settlement, **defence costs** or other form of **loss**, admission, offer, payment or assumed obligation to which **we** have not given **our** prior written consent. However, where an **insured** has a statutory obligation to notify an **official body** of facts or circumstances, this clause will not apply.

We will have the right and will be given the opportunity to associate with each **insured** and participate in the defence of any **claim** or **investigation** including the negotiation and settlement of a covered **claim**.

With respect to any **claim** or **investigation** involving more than one **insured**, the **insureds** agree that **we** have the right to require such **insureds** to retain separate legal representation.

We reserve the right to settle any **claim** brought by a **retail client** at our discretion and to assume conduct of the defence of the **claim**.

If **we** are of the view that a **claim** or **investigation** may not exceed the deductible, **we** may require the **insured** to conduct the defence of the **claim** or **investigation**.

4.4 Presumptive Indemnification

Where the **company** is not prohibited by law from indemnifying an **insured person** and is not insolvent, then it is agreed that the **company** will indemnify the **insured person** for all **loss**. In the event that a **deductible** applies, the **company** will pay the **deductible** directly to **us** and **we** will pay the **insured person's loss** on their behalf and will be entitled to claim an input tax credit which may be available.

4.5 Order of Payments & Convergence of Coverage

If the payment of **loss** is to be made where such **loss** in the aggregate exceeds the remaining available **indemnity limit**, **we** will:

- a first pay such loss for which the **company** does not indemnify an **insured person**; then

- b. to the extent of any remaining amount of the **indemnity limit** available after payment under above, pay such **loss** for which coverage is provided under any other provision of this policy.

We will otherwise pay **loss** covered under this **policy** in the order in which such **loss** is presented to **us** for payment.

If a **loss** or **direct financial loss** can be covered under more than one Insuring Clause, then **we** will assess coverage and pay claims in the following order of priority:

- a. firstly, Insuring Clause 1.1 (Fund and Investment Manager Professional Civil Liability);
- b. secondly, Insuring Clauses 1.2 (Fund and Investment Manager Directors' & Officers Liability Cover) and 1.3 (Fund and Company Reimbursement Cover);
- c. thirdly, Insuring Clause 1.4 (Employment Practices Liability Cover);
- d. fourthly, Insuring Clauses 1.5 (Internal Crime Cover) and 1.6 (External Crime Cover); and
- e. fifthly, the remaining insuring clauses.

4.6 Subrogation & Recoveries

Where **we** have paid any amount of **loss** or **direct financial loss** under a policy, **we** become entitled to assume any rights available to the **insured** against any party to the extent of **our** payment. On **our** request, the **insured** will assign all rights of recovery against any person or entity, but only to the extent that payment has been made under a **policy**.

The **insured** must, at its own cost, assist **us** and provide information as **we** may reasonably require, to exercise **our** rights of recovery and/or subrogation. This may include providing and signing statements and other documents and the giving of evidence.

Where a recovery is made, the proceeds of such a recovery will be applied as follows:

- a. firstly, to the satisfaction of all costs incurred in effecting the recovery;
- b. secondly, to the **insured** for the amount of **loss** in excess of the **indemnity limit** specified in the **schedule** which is also in excess of any excess insurance purchased over this **policy**;
- c. thirdly, to us and any excess insurers amounts paid under the **policy** and such excess policies;
- d. finally, to the **insured** for the amount paid in respect of the **deductible**.

Conditions Applying To Insuring Clauses 1.5 (Internal Crime Cover) And 1.6 (External Crime Cover)

4.7 Proof of Loss

Following **discovery** and subsequent notification of a **direct financial loss** to **us**, the **insured** must:

- a. provide **us** with affirmative **proof of loss** with full particulars within 6 months of the **direct financial loss** being first **discovered**; and
- b. provide **us** with all requested information and documents and co-operate with **us** in all matters pertaining to the **direct financial loss**.

4.8 Valuation of Loss

With respect to any **direct financial loss** covered under this **policy**, **we** are not liable for more than:

- a. the actual market value of **securities, money** or **property** at the close of business on the day the **direct financial loss** was first **discovered** (determined by the value published in the New Zealand Stock Exchange),

- or the actual cost of replacing the **securities, money** or **property**, whichever is less.
- b. the actual cash value of other tangible property (not referred to in (a) above) at the close of business on the day the **direct financial loss** was first **discovered**, or the actual cost of replacing the property with property of like quality or value, whichever is less.
 - c. the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of **data** furnished by the **company** in order to reproduce books of account and other records for any **direct financial loss** covered under Automatic Coverage Clause 2.33 (Computer Crime Costs).
 - d. the cost of labour for the actual transcription or copying of electronic **data** furnished by the **company** in order to reproduce such electronic **data**.
 - e. with respect to Artwork, the average valuation of two licensed independent artwork valuers, selected by **us**.

4.9 Investment Services

We will not cover the **insured** under Insuring Clauses 1.5 (Internal Crime Cover) and/or 1.6 (External Crime Cover) for any form of **loss** resulting from a **claim** or **investigation** arising out of or in any way connected with the **insured** or any **fund** in respect of the provision of **investment services**.

Section 5: Definitions

In this **policy**:

- 5.1 Accountant** or registered tax agent means a person who is not an **insured** and is recognised by Chartered Accountants Australia and New Zealand (formerly the Institute of Chartered Accountants) or similar, or any other person registered by the Inland Revenue Department as a tax agent.
- 5.2 Act of Parliament** means any Act of the New Zealand Parliament, including any amendment to or re- enactment, and any code, rules, regulations, bylaws or other subordinate legislation made under such Act; other than those excluded under Exclusion 3.22 (Certain Acts) and subject to the definition of **loss**.
- 5.3 AIF** means an alternative investment fund to which the Directive 2011/61/EU of the European Parliament and of the Council (dated 8 June 2011) and Commission Delegated Regulation (EU) No 231/2013 (dated 19 December 2012) apply.
- 5.4 Bail bond expenses** means the reasonable premium (but not collateral) for a bond or other financial instrument to guarantee an **insured person's** contingent obligation for bail required by a court hearing a **claim** in relation to a **wrongful act** committed or allegedly committed by such **insured person**.
- 5.5 Benefits** means any amount payable to a beneficiary of a superannuation fund, pension fund or endowment fund.
- 5.6 Bill of exchange** means an unconditional order in writing, addressed by one person to another, signed by the addresser, requiring the addressee to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.
- 5.7 Certificate of deposit** means a written acknowledgement by a financial institution of a deposit with a promise to pay such deposit to any person or to his order.
- 5.8 Civil liability** means a legally enforceable civil obligation to a **third party**.
With respect to an **AIF, civil liability** includes any damages, compensation or penalties payable or allegedly payable as a result of any actual or alleged misstatement, misleading statement, act, error, omission, neglect, breach of trust, breach of fiduciary duty or breach of regulations committed or attempted or allegedly committed or attempted as defined in Article 12(1) and 12(2) in Section 3 of the Commission Delegated Regulation (EU) No

231/2013 dated 19 December 2012 supplementing Directive 2011/61/EU of the European parliament and of the Council dated 8 June 2011 (including any amendments), whether by conduct or omission described in Article 12(2) or otherwise.

5.9 Claim means:

- a. a written demand for monetary damages or non-pecuniary relief;
- b. a civil proceeding or counter-claim commenced by the service of a writ, complaint, summons, statement of claim, or similar originating process;
- c. an alternative dispute resolution proceeding, a formal administrative or regulatory proceeding including any arbitration, mediation, conciliation or other alternative dispute resolution proceeding commenced in writing; or
- d. a criminal proceeding commenced in writing.

For the avoidance of doubt, **claim** includes, but is not limited to, **claims** brought by **retail clients**.

5.10 Company means the entity or entities specified in the **schedule** and any **subsidiaries**.

5.11 Computer systems means a computer and all networks, input, output, processing, storage or communication facilities, which are connected, directly or indirectly to such a device.

5.12 Continuity date means the date specified in the **schedule**.

5.13 Counterfeiting means any act, which causes the **company** to act upon or give value for a negotiable instrument that is an imitation of an authentic negotiable instrument and which deceives the **company** into believing that the imitation is an authentic negotiable instrument.

5.14 Court attendance costs means the travel costs to and from a witness' usual place of residence to the location of a Court or Tribunal to give evidence and the sum of \$500 per day while the **insured person** is legally obliged to attend such Court or Tribunal.

5.15 Credit card fraud means the fraudulent alteration of any written instrument required in connection with a credit card or debit card issued to any **employee** or **director** or **officer** or the **insured**.

5.16 Crisis means any of the following unforeseen specific events where, in the reasonable opinion of the chief executive officer (or equivalent) of the **company**, the event has the potential to cause an impending decrease in excess of 25% of the combined annual revenue of the **company** if left unmanaged;

- a. the sudden, unexpected death or disability of a **director** or **officer**;
- b. the discharge or enforced resignation (other than in accordance with planned retirement) of a key investment manager;
- c. loss of a major customer, investment mandate or credit facility;
- d. **employee** workplace violence;
- e. the first apparent unauthorised intrusion into any **insured's** computer system or network;
- f. a man made disaster;
- g. any criminal investigation in respect of an **insured person**.

Crisis is specific and does not include an event which affects the **insured's** industry in general.

5.17 Crisis loss means the reasonable and necessary fees, costs and expenses for external crisis management services provided in response to a **crisis** within the first thirty (30) days after the **crisis**.

- 5.18** **Data** means:
- a. information such as text, numbers, sounds and images that can be processed by any form of electronic device; or
 - b. deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method but will not include **money** or **securities**.
- 5.19** **Deductible** means the amounts specified in the **schedule** in respect of each Insuring Clause and Automatic Coverage Clause.
- 5.20** **Defence costs** means the reasonable costs, charges, fees (including but not limited to legal fees) and expenses reasonably incurred by an **insured**, with **our** prior written consent in investigating or defending a **claim** but does not include regular or overtime wages, salaries or fees of the directors, **officers** or **employees** of the **company** incurred in attending, defending, investigating or monitoring **claims**.
- 5.21** **Deprivation of assets expenses** means the payment of the following services directly to the provider of such services:
- a. schooling;
 - b. housing;
 - c. utilities; or
 - d. personal Insurance.
- Such expenses will only be payable after the exhaustion of any personal allowance which has been directed by a Court to meet such payments. Expenses will be payable 30 days after the triggering of a **claim** or **investigation** covered by the **policy** and for a period of up to 12 months.
- 5.22** **Direct financial loss** means the direct financial loss of the **company** resulting directly from an **internal crime** or **external crime**. **Direct financial loss** also includes:
- a. contractual penalties;
 - b. computer crime costs;
 - c. **future loss prevention costs**;
 - d. **interest**;
 - e. **loss investigation costs**;
 - f. **public relations expenses**; or
 - g. **extortion costs**;
- as covered under the applicable Insuring Clause or Automatic Coverage Clause and subject to any sub-limits that may be applicable.
- Direct financial loss** does not include:
- i. salaries, commissions, fees, bonuses, promotions, awards, profit sharing, superannuation or other employment benefits paid or payable by the **company** or earned in the normal course of employment;
 - ii. fines or penalties (whether civil or criminal) imposed by law, punitive, aggravated, exemplary or multiple damages, or matters uninsurable under the laws governing this **policy**;
 - iii. any loss of income (such as interest and dividends) or profit, other than that covered under Automatic Coverage Clause 2.41 (Interest);
 - iv. any costs, fees or other expenses incurred by the **company** in establishing a right under this **policy** (except where provided for under Automatic Coverage Clause 2.42 (Loss Investigation Costs – Insured)).

- 5.23** **Director** means any natural person who was, now is or during the **insurance period**, becomes:
- a. any director or **non-executive director**, alternate director, shadow director or de-facto director of the **insured**;
 - b. any member of a compliance committee, investment committee or investment advisory committee member of the **company** or **fund**;
 - c. a trustee of a **fund** established as a trust; or
 - d. a general partner of a **fund** established as a limited partnership.
- 5.24** **Discovered** or **discovery** means when any **director** or **officer** (who is not in collusion with an **employee** or **third party** who has committed or is attempting to commit an **internal crime** or **external crime**) becomes aware of any facts, which would cause a reasonable person to believe that a **direct financial loss** which may be covered by this **policy** has been or may be incurred, even though the exact amount or details of the **loss** are not known at that time. Such awareness constitutes discovery by the **insured**.
- 5.25** **Discovery period** means the period of time purchased under Automatic Coverage Clause 2.3 (Discovery Period). The **discovery period** will be applied to the **policy** by way of Endorsement.
- 5.26** **Document** means any cheque, **bill of exchange**, **draft**, **certificate of deposit**, **letter of credit**, **promissory note**, withdrawal order, or receipt for the withdrawal of funds or **property**, money order, orders upon public treasuries, bonds, or any similar instruments of value serving the same purpose.
- 5.27** **Draft** means a **bill of exchange** payable on demand drawn by or on behalf of a financial institution upon itself.
- 5.28** **Employee** means any:
- a. natural person under contract of employment with or under the direct control and supervision of the **insured**;
 - b. **director** or **officer** when performing acts within the scope of the usual duties of an employee as described in (a) above;
 - c. natural person assigned to perform duties within the scope of the usual duties of an employee as described above, within the **premises** for the **company** by any agency supplying temporary personnel on a contingent or part time basis;
 - d. guest student pursuing studies or duties with the **company** at their **premises**;
 - e. employee of a parent or related company of **company** solely whilst performing duties on behalf of the **insured**;
 - f. in respect of Insuring Clauses 1.4 (Internal Crime Cover) and 1.5 (External Crime Cover) only, **employee** is extended to also include:
 - i. a solicitor retained by the **company** whilst they are performing legal services for the **company** pursuant to a written contract; or
 - ii. a consultant retained by the **company** whilst they are performing consulting services for the **company** pursuant to a written contract.
- Employee** does not include any independent broker, independent financial adviser or similar agent or representative, remunerated on sales or commission basis unless specifically agreed by **us** and endorsed to the **policy**.
- 5.29** **Employment practices breach** means any of the following employment-related matters:
- a. actual or alleged unfair or wrongful dismissal;
 - b. termination or discharge of employment (either actual or constructive, including breach of an implied contract);

- c. wrongful failure to employ or promote;
- d. wrongful deprivation of career opportunity or demotion;
- e. negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference);
- f. failure to grant tenure; or
- g. misrepresentation, discrimination, harassment, retaliation (including lockouts), humiliation, defamation or invasion of privacy; which relate solely to the **company** and its past, present or prospective **employees** or an **insured**.

5.30 **Employment related benefits** includes but is not limited to:

- a. non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;
- b. shares, share options or any entitlement or right under any employee plan of any description;
- c. participation in any share option or share option plan, or participation in any employee plan of any description;
- d. severance or redundancy payments or entitlements;
- e. any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- f. bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme);
- g. payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event;
- h. any paid or unpaid entitlements in relation to a notice period; or
- i. remuneration for services rendered.

5.31 **External crime** means:

- a. **counterfeiting**;
- b. **forgery**; or
- c. **theft**;

by a **third party**.

5.32 **Extortion** means a written or verbal threat by a **third party** to physically injure **employees** or **insured persons**, or to damage or destroy tangible property (including computer systems, data and software) owned by the **company** or for which the **company** is legally liable.

5.33 **Extortion costs** mean the reasonable:

- a. fees and expenses of an independent negotiator or crisis consultant;
- b. travel and accommodation expenses incurred by an **insured** in dealing with a case of **extortion**.

5.34 **Extradition costs** means:

- a. the reasonable fees, costs and expenses (except remuneration of any **insured**, costs of their time or overheads of any **insured**) incurred by or on behalf of an **insured person** in challenging, resisting and/or defending a **claim** seeking the extradition of such **insured person**, including any appeal from such **claim**; and
- b. the reasonable fees, costs and expenses of any accredited:

- i. counsellor; or
- ii. **accountant;**

retained by an **insured person** in connection with an extradition proceeding, during the **insurance period**, with **our** prior written consent (which will not be unreasonably withheld or delayed).

- 5.35** **Forgery** means the signing or endorsing or copying of the signature in the name of another genuine person without authority and with the intent to deceive, which causes the **company** a **direct financial loss**. It does not include signing or endorsing in whole or in part of one's own name, with or without authority, in any capacity, for any purpose.
- 5.36** **Fund** means any trust, investment trust, investment management company, managed investment scheme, mandate, partnership, fund (including any sub-fund or subsidiary), **AIF** or other similar entity specifically listed in the **proposal** or listed by Endorsement to the **policy**, provided any such **fund** is managed by the **company** at the time that:
- a. for the purposes of Insuring Clause 1.1 (Fund and Investment Manager Professional Civil Liability), the facts leading to the **civil liability** occurred;
 - b. for the purposes of Insuring Clauses 1.2 (Fund and Investment Manager Directors' & Officers Liability Cover) and 1.3 (Fund and Company Reimbursement Cover), the **wrongful act** on which a **claim** is based occurs, or events leading to the **investigation** occurs;
 - c. for the purposes of Insuring Clauses 1.6 (Internal Crime) and 1.7 (External Crime) an **internal crime** or **external crime** is **discovered**.
- 5.37** **Future loss prevention costs** means the reasonable costs of the **company** engaging an external consultant to investigate the cause of a **direct financial loss** covered under this **policy**, and to provide a report detailing to the company ways in which the **company** can prevent future potential **internal crime** or **external crime** from occurring. **Future loss prevention costs** are only payable once indemnity has been granted under this **policy** and any **direct financial loss** has been paid by **us**.
- 5.38** **Identity theft** means the theft, duplication of or fraudulent use of **data**, which belongs to an **insured person**, in order to create a false identity.
- 5.39** **Identity theft expenses** means the reasonable legal fees, costs and expenses incurred and paid by the **insured**, with our prior written consent (which will not be unreasonably withheld or delayed):
- a. when applying for civil or criminal proceedings to be dismissed or withdrawn on the basis that the alleged liability resides with a third party perpetrator of an **identity theft** fraud and not the **fund, insured**, or its **directors** or **officers**;
 - b. to correct or reinstate public records after an **identity theft** has occurred;
 - c. for **public relations expenses** to address the adverse publicity or reputational injury due to an **identity theft**.
- 5.40** **Indemnity Limit** means the amounts specified in the **schedule**.
- 5.41** **Industrial Instrument** means:
- a. an award, modern award, enterprise agreement, collective or individual agreement, minimum wage order or any other industrial instrument;
 - b. any other collective agreement;
 - c. a verbal or written contract of employment; which regulates the terms and conditions of employment.
- 5.42** **Insurance period** means the period of insurance specified in the **schedule**.
- 5.43** **Insured** means the **company**, a **fund** or any **insured persons**.

- 5.44** **Insured person** means:
- a. any past, present or future **director** or **officer** of the **company** or **fund**;
 - b. the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent, bankrupt or insolvent **insured person** in (a) above, but only in respect of a **wrongful act** committed by an **insured person**;
 - c. a legal or de facto spouse, domestic partner of an **insured person** in (a) above, but only in respect of a **wrongful act** committed by an **insured person**;
 - d. an **outside entity executive**;
 - e. an **employee** of the **company** but only whilst acting in the capacity as a member of a committee convened by the **company** and at the **insured's** specific request, but only in relation to **wrongful acts** committed in the course of the **employee's** performance of their duties on behalf of the committee, where the committee has the specific purpose of advising the board of directors of the **insured**;
 - f. an **employee** of the **company** who is concerned in or takes part in the management of the **insured**;
 - g. with respect to an **employment practices breach** only, an **employee**; or
 - h. a co-defendant with a **director** or **officer** of the **company** or **fund** in a **claim**, but only to the extent that the co-defendant was acting for or on behalf of an **insured**.
 - i. an **employee** of the **company**.

Insured person does not include:

- i. a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made for **insured**;
- ii. a company or other corporate.

5.45 **Interest** means the actual bank interest rate which would have been paid on **money** which has been lost as a result of an **internal crime** or **external crime**. Interest is calculated from the date of the **internal crime** or **external crime** and will run until indemnity is granted under this **policy**. The bank interest rate which is to be used, is the interest rate of the **insured's** bank account, which the **money** would have been held in, but for the **internal crime** or **external crime** at the time of **discovery**.

5.46 **Internal crime** means any fraudulent or dishonest act committed by an **employee** (acting alone or in collusion with others), which results in:

- a. the **employee** making an improper financial gain for themselves or for a **third party**; or
- b. the **company** suffering a **direct financial loss**.

5.47 **Investigation** means any official investigation, inquiry or examination by an **official body** concerning either:

- a. the affairs of an **insured** or a **fund** or possible misconduct by any **insured person** in the performance of or failure to perform **investment services**, which is commenced in writing; or
- b. the affairs of the **company** or conduct of an **insured person**, which is commenced in writing; or
- c. an onsite attendance regarding a work health and safety matter; or
- d. A raid or onsite visit to the **premises** or an **insured person's** place of residence that involves the production, review, copying or confiscation of **property** or **data**, or interviews of any **insured person** or **employees**.

An **investigation** does not include:

- i. a routine regulatory supervision, inspection, compliance review; or
- ii. investigation examination or inquiry which focuses on an industry rather than the **insured**.

5.48 **Investigation costs** means reasonable fees costs and expenses (except remuneration of any **insured**, cost of their time or costs or overheads of the **insured**) incurred with **our** prior written consent (which will not be unreasonably withheld or delayed) by or on behalf of an **insured** in preparing for, attending or producing documents or responding to an **investigation**.

5.49 **Investment services** means:

- a. services rendered in the capacity of a responsible entity;
- b. services rendered in the capacity as a trustee;
- c. asset management services;
- d. fund management services;
- e. financial, economic or investment advisory services; or
- f. those services specified in the **schedule**;

for or on behalf of the **company** or a **fund**.

5.50 **Key man loss** means reasonable costs and expenses incurred by the **company** or a **fund** with **our** prior written consent (and which will not be delayed or unreasonably withheld) in order to procure public relations services and/or executive search services and in order to manage the public communication of, and limit the disruption to the **investment services** that is directly caused by the permanent disability or death of any principal, partner or director of the **company** or **fund**, which takes place during the **insurance period**.

5.51 **Letter of credit** means an agreement in writing by a financial institution made at the request of a customer that the issuer will honour **drafts** or other demands for payment upon compliance with the conditions specified in the Letter of Credit.

5.52 **Litigation** includes, but is not limited to, any civil, criminal, administrative or regulatory proceeding as well as any official investigation, examination, enquiry, arbitration or adjudication.

5.53 **Loan** means:

- a. any loan or transaction in the nature of, or amounting to, a loan or extension of credit, including a lease, made by or obtained by or from a **company** or **fund**;
- b. any note, account, invoice, agreement or other evidence of debt, assigned or sold by or to, or discounted or otherwise acquired by a **company** or **fund**;
- c. any payments made or withdrawals from a **company** or **fund** customer's account involving an uncollected item and any other similar transaction.

5.54 **Loss** means the total amount which an **insured** becomes legally obligated to pay on account of a **claim** or **investigation**. **Loss** includes, but is not limited to:

- a. damages, judgments, settlements and adverse costs orders;
- b. **extortion costs**;
- c. **extradition costs**;
- d. **public relations expenses**;
- e. **bail bond expenses**;
- f. **deprivation of assets expenses**;
- g. **prosecution costs**;
- h. **investigation costs**;

- i. **court attendance costs;**
- j. pecuniary penalties awarded against an **insured person** in and under the laws of the jurisdictions of Australia and New Zealand, provided that **we** are not legally prohibited from paying such pecuniary penalties;
- k. awards of damages made pursuant to any external dispute resolution scheme approved by the FMA, including but not limited to the Insurance and Financial Services Ombudsman or any successor entity;
- l. **crisis loss.**

However, **loss** does not include:

- i. fines or penalties (whether civil or criminal) which are uninsurable at law in the jurisdiction in which the **claim** was brought or the laws which govern this **policy**;
- ii. any amount which **we** are legally prohibited from paying;
- iii. taxes, except those payable under Automatic Coverage Clause 2.25 (Insured Person Tax Liability);
- iv. the past and future economic loss of an **employee**;
- v. any costs of reinstating an **employee**;
- vi. any **employee related benefits** or **benefits**;
- vii. the remuneration of any **insured**, the cost of their time or costs or overheads of any **insured**.
- viii. any costs any costs and expenses of any kind associated with i)-vii) above.

5.55 **Loss investigation costs** means the reasonable fees, costs and charges of an **accountant** or **loss investigator** retained to assist the **company** in providing **us** with a **proof of loss** under this **policy**. **Loss investigation costs** do not include any internal overheads, time costs, profit margins, internal staff costs, wages or salaries or the **company** incurred in order to provide a **proof of loss**.

5.56 **Loss investigator** means a suitably qualified external consultant, who is not an **insured**, who is retained to assist the **company** in providing **us** with a **proof of loss**.

5.57 **Mitigation costs** means the reasonable and necessary costs and expenses incurred by the **company** in taking such action to mitigate an **insured's** exposure to any actual covered **claim** or potential **claim** which would otherwise be covered under Insuring Clause 1.1 (Fund and Investment Manager Professional Civil Liability). **Mitigation costs** do not include:

- a. internal and overhead expenses of the **company** or a **fund**, including wages and time costs;
- b. employment related benefits;
- c. an increase in liability against an **insured**, which is caused as a direct result of an **insured** attempting to mitigate a **claim** or potential **claim**; or
- d. any costs not authorised by **us**.

5.58 **Money** means either local or foreign currency, coins, bank notes, cheques, traveller's cheques, registered cheques, postal orders, money orders, bullion, or crypto-currencies (including Bitcoin).

5.59 **New fund** means any **fund** (including sub-funds and subsidiaries of sub-funds) sponsored or established by the **company** during the **insurance period**, provided that:

- a. the **new fund** is not regulated by the United States of America's Securities and Exchange Commission or a **fund** offered for the benefit of residents of the United States of America, or a partnership or corporation organised under the laws of the United States of America;
- b. the **new fund's** investment strategies are not materially different in nature to those of the existing **fund's** investment strategies as provided in the **proposal**; and

c. the **new fund's** total gross assets are less than 25% of the total funds under management of the **insured**.

5.60 **New subsidiary** means a subsidiary (including subsidiaries of subsidiaries), which becomes a **subsidiary** during the **insurance period**, provided that such entity, at the date of acquisition or creation:

- a. has total gross assets of less than 25% of the consolidated total gross assets of the **company** at the inception date of this **policy**; or
- b. has total gross assets under management of less than 25% of the consolidated total gross assets under management of all **insured entities** at the inception date of this **policy**; or
- c. is not incorporated, domiciled in or providing **investment services** in the United States of America and is not registered as an investment advisor with the United States Securities and Exchange Commission; or
- d. the new **subsidiary's** business activities are not materially different in their nature to those of the **insured entities** as provided in the **proposal**.

5.61 **Non-executive director** means a **director** who serves on behalf of the **insured, fund** or **outside entity** in a non-executive capacity and is not engaged in the day to day affairs of the **insured, fund** or **outside entity**.

5.62 **Not for profit** means any entity which has a written constitution which prohibits the distribution of profits or assets amongst its members during the lifetime of the entity or upon its winding up.

5.63 **Officer** means any company secretary, chief financial officer, chief executive officer, chief operations officer, general counsel, responsible officer or an **employee** who is concerned in, or takes part in, the management of the **company** regardless of the name that is given to their position.

5.64 **Official body** means any regulator, government or administrative body or agency, official trade body, professional body or self regulatory body legally empowered to investigate the affairs of the **insured, fund, outside entity**, unincorporated joint venture or the conduct of an **insured person** in their insured capacity.

5.65 **Official detention** means the confinement of an **insured person** in secure custodial premises, operated by or on behalf of a government or judicial agency in connection with a **claim** against such **insured person** where final adjudication of the **claim** has not yet been determined.

5.66 **Other insurance** means the other insurance policy or policies specified in the **schedule**.

5.67 **Outside entity** means:

- a. any **not for profit** organisation;
- b. any entity named in the **proposal** in which the **principle organisation** or **fund** owns on, before or after the inception of the **insurance period**, up to 50% of issued and outstanding voting shares;
- c. any entity which has been listed by endorsement to this **policy**.

5.68 **Outside entity executive** means a natural person who is an **employee, director** or **officer** of the **insured**, who serves at the specific request of the **company** as a **director, officer**, trustee, governor or equivalent of an **outside entity**.

5.69 **Policy** means this Investment Managers Insurance policy wording, the **schedule**, the DUAL Mind the Gap General Conditions and Exclusions, the **proposal** and any endorsement/s attaching to and forming part of the policy either at commencement or during the **insurance period**.

5.70 **Pollution** means any substance, solid, liquid, gaseous, biological, radiological or thermal irritant, toxic or hazardous substance or contaminant including, but not limited to asbestos, lead, smoke, vapours, dust, vapour, fibre, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and waste materials. Waste materials include, but are not limited to, recycled, reconditioned or reclaimed materials.

- 5.71** **Premises** means the interior of any building or buildings occupied by the **company** in conducting its **investment services**.
- 5.72** **Proof of loss** means documented evidence that the **company** has sustained a **direct financial loss**. A **proof of loss** can include the following, however these items should not be seen as limiting the information which could form part of the **proof of loss**:
- a. the name of the entity claiming under the **policy**, and details of their relationship to the **insured**;
 - b. the policy number of the **policy**;
 - c. the name of the alleged **employee** or **third party** (if known);
 - d. a description of the events which led to the **discovery** of the **direct financial loss**;
 - e. a chronology of all relevant facts known;
 - f. a description of the alleged **employee** or **third party's** modus operandi;
 - g. Statutory Declarations from witnesses to the **internal crime** or **external crime**;
 - h. documentary evidence to support that the **company** has sustained a **direct financial loss**, including but not limited to: receipts, bank statements, requisitions, invoices, cash receipts, cheques or cheque butts;
 - i. photographs, video or closed circuit television footage of the **internal crime** or **external crime** occurring;
 - j. any internal **investigation** reports;
 - k. police report/s and/or any statement/s made to the police;
 - l. a signed confession; and/or
 - m. any other document or other form of evidence which may be relevant to the proof of a **direct financial loss** or quantification of a **direct financial loss**.
- 5.73** **Promissory note** means an unconditional promise in writing by one person to another signed by the maker agreeing to pay, on demand or at a fixed or determinable future time, a sum certain in **money** to or to the order of a specified person or to the bearer.
- 5.74** **Property** means:
- a. **money**;
 - b. any **document**;
 - c. any **securities**;
 - d. all other negotiable and non negotiable instruments or contracts representing **money** or other property (real or personal);
 - e. physical media upon which electronic **data** are stored and recorded.
- 5.75** **Proposal** means each and every signed proposal form; including the declarations, statements and representations therein, its attachments and all other information which is either submitted to **us** in hard copy or electronic format or incorporated in the proposal form by reference.
- 5.76** **Prosecution costs** means any reasonable fees, costs and expenses incurred by an **insured person** with our prior written consent (which will not be unreasonably withheld or delayed), to bring legal proceedings:
- a. in respect of a **claim**, to obtain the discharge or revocation of:
 - i. a temporary or permanent disqualification of such **insured person** from managing a corporation (including as a senior manager or responsible officer) during the **insurance period**; or

- ii. a judicial order entered during the **insurance period** imposing:
- iii. confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such **insured person**;
- iv. a charge or security interest over real property or personal assets of such **insured person**;
- v. restriction of such **insured person's** liberty to a specified domestic residence or **official detention**; or
- vi. deportation of an **insured person** following revocation of otherwise current and valid immigration status for any reason other than such **insured person's** conviction of a crime.
- vii. in respect of an **investigation**, to obtain injunctive relief where an **insured person** alleges an **official body** is acting or proposes to act beyond power or in breach of the rules of natural justice during the course of an **investigation**.

5.77 Public relations expenses means the reasonable fees, costs and expenses of a public relations firm or consultant, or crisis management firm, or law firm retained by an **insured** with our prior written consent (which will not be unreasonably withheld or delayed) to prevent or limit adverse effects or negative publicity in respect of:

- a. a **claim**; or
 - b. an **investigation**; or
 - c. a **crisis**; or
 - d. an **internal crime**; or
 - e. an **external crime**;
- covered by this **policy**.

5.78 Retail client/s has the definition prescribed to it in section 49 of the *Financial Service Providers (Registration and Dispute Resolution) Act 2008* as may be amended from time to time.

5.79 Retired insured person means any **director** or **officer** who ceases to hold such office prior to the expiry of the **insurance period**, other than by reason of a **transaction** or the insolvency, liquidation, receivership or administration of the **insured**.

5.80 Schedule means the schedule attached to this **policy** or any **schedule** subsequently substituted for it during the **insurance period** and duly signed, stamped and dated by **our** authorised representative.

5.81 Securities means a bond, debenture, note, share, preference share, warrant, option, **promissory note** or other equity, debt or hybrid security.

5.82 Securities claim means a:

- a. a written demand for monetary damages or non-pecuniary relief;
- b. a civil proceeding or counter-claim commenced by the service of a writ, complaint, summons, statement of claim, or similar originating process;
- c. an alternative dispute resolution proceeding, a formal administrative or regulatory proceeding including any arbitration, mediation, conciliation or other alternative dispute resolution proceeding commenced in writing; or
- d. a criminal proceeding commenced in writing;

alleging a **wrongful act** in connection with the purchase or sale of, or offer to purchase or sell, **securities of the company**.

5.83 Single employer fund means any single employer superannuation fund established for the benefit of **employees**. **Single employer fund** does not include any self-managed, industry or master superannuation funds.

- 5.84** **Subsidiary** means:
- a. any legal entity in which the **company** owns or controls, directly or indirectly, more than 50% of the outstanding **securities** or voting rights of the **company** representing the present right to vote for election of directors; or any entity which is deemed to be the **company's** subsidiary under any applicable legislation, law or International Accounting Standard.
 - b. any legal entity that ceases to be a **subsidiary** of the **company** during the **insurance period** or prior to commencement of the **insurance period**, provided that the cover provided will only apply in respect of a **wrongful act** that occurred whilst the entity was a **subsidiary** of the **company**, or a **direct financial loss** which is **discovered** whilst the entity was a **subsidiary** of the **company**.
 - c. any legal entity which is created or acquired by the **company** during the **insurance period**, provided that the legal entity:
 - i. has total gross assets which are less than 25% of the total gross assets of the **insured**; or
 - ii. has gross annual turnover of less than 25% of the total gross annual turnover of the **insured**; or
 - iii. has total gross assets which are less than 25% of the total gross assets of the **company** in the United States of America or Canada.

The cover provided in this **policy** will only apply in respect of a **wrongful act** occurring after the date of creation or acquisition, or a **direct financial loss** which is **discovered** after the date of creation or acquisition of such **subsidiary**.

5.85 **Territorial limits** means anywhere in Australia or New Zealand unless otherwise agreed by **us**.

5.86 **Theft** means the unlawful taking by a person of the **insured's property, money** or **securities**.

5.87 **Third party** means any legal or natural person other than:

- a. an **insured person** or **employee**; or
- b. a person acting in collusion with an **employee**; or
- c. a person who has a proprietary interest in the **insured**.

5.88 **Trading** means trading or other dealings in **securities**, contracts for difference, commodities, futures, options, swaps, foreign or federal funds, currencies, foreign exchange and the like.

5.89 **Transaction** means any one of the following events:

- a. the **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 and/or entities acting in concert other than another **company** or **fund**; or
- b. any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **company** or control the appointment of directors who are able to exercise a majority of votes at Board meetings of the **company**; or
- c. the merger, consolidation or other combination of any **fund** with any other unrelated fund not currently covered under this **policy** but only in relation to such **fund**; or
- d. the investment advisor and/or the **company** ceasing to provide **investment services** to a **fund** but only in relation to such **fund** and only to the extent that such **investment services** relate to such fund; or
- e. the appointment of an administrator, receiver, receiver and manager or liquidator to the **insured**; or
- f. the voluntary winding up and deregistration of the **company**.

- 5.90** **Trustee** means an **insured** if validly appointed to act, and while acting in the capacity, as a trustee of a **single employer fund**.
- 5.91** **Trustee breach** means a **wrongful act** committed or allegedly committed:
- a. by an **insured person** in their capacity as a **trustee**, or as a **director** or **officer** of the **company** acting as corporate **trustee**; or
 - b. by any other person for which an **insured person** referred to in (a) above is legally liable; but only in respect of the administration of a **single employer fund**.
- 5.92** **We/us/our** means DUAL New Zealand Limited, as agent of the Underwriters specified in the **schedule**.
- 5.93** **Wrongful act** means any actual or alleged breach of an **Act**, duty, breach of trust, breach of fiduciary duty, neglect, error, omission, misstatement, misleading statement, or other act, error or omission, committed or attempted by:
- a. for the purposes of Insuring Clauses 1.1 to 1.4 an **insured person**, individually or otherwise, in their insured capacity as an **insured person** and includes an **employment practices breach** or a **trustee breach**; or
 - b. for the purposes of Insuring Clauses 1.5 and 1.6 only, an **insured** in their insured capacity.