

# PROPOSAL FOR PRIVATE EQUITY PROFESSIONAL AND MANAGEMENT LIABILITY INSURANCE

**NOTICE: THIS IS A CLAIMS-MADE AND REPORTED POLICY. EXCEPT AS MAY BE OTHERWISE PROVIDED HEREIN, THE COVERAGE UNDER THIS POLICY IS LIMITED TO LIABILITY FOR WRONGFUL ACTS FOR WHICH CLAIMS ARE FIRST MADE WHILE THE POLICY IS IN FORCE AND WHICH ARE REPORTED TO THE INSURER NO LATER THAN SIXTY (60) DAYS AFTER THE TERMINATION OF THE POLICY. THE LIMIT OF LIABILITY AVAILABLE TO PAY LOSS, INCLUDING JUDGMENT OR SETTLEMENT AMOUNTS, SHALL BE REDUCED BY AMOUNTS INCURRED FOR DEFENSE COSTS. FURTHER NOTE THAT AMOUNTS INCURRED FOR DEFENSE COSTS SHALL BE APPLIED AGAINST THE APPLICABLE RETENTION AMOUNT.**

**THIS POLICY DOES NOT PROVIDE FOR ANY DUTY OR OBLIGATION ON THE PART OF THE INSURER TO DEFEND ANY INSURED(S).**

**1. GENERAL INFORMATION**

a) Name of Insured Organization(s) \_\_\_\_\_

b) Address \_\_\_\_\_

c) Type of Private Equity:

<input type="checkbox"/> Private Equity <input type="checkbox"/> Venture Capital <input type="checkbox"/> Mezzanine Financing	<input type="checkbox"/> LBO Fund(s) <input type="checkbox"/> Fund of Funds <input type="checkbox"/> Other (please explain) _____
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d) State of Formation \_\_\_\_\_

e) Website Address \_\_\_\_\_

f) Listing of organizations proposed for coverage:

Insured Organization	Organization's Purpose (Fund, General Partner, Investment Manager, other)	Formation Date	Committed Capital	Contributed Capital	Number of Limited Partners	Number of Portfolio Companies

**2. REQUESTED COVERAGE**

Limit of Liability and Retention Amount \_\_\_\_\_

**3. SUBSIDIARY INFORMATION**

a) List all Subsidiary Organizations:

Name	Nature of Operation	Date Acquired/Created	% owned	State/Country of Formation

b) Coverage to include all subsidiaries? \_\_\_\_\_ Yes \_\_\_\_\_ No

(If Yes, include a complete listing of all Insured Person(s))

NOTE: The Policy excludes Portfolio Companies from the Definition of Subsidiary.

**4. INSURED ORGANIZATION INFORMATION**

a) Does any Insured Organization perform professional services for organizations other than Insured Organizations or Portfolio Companies? \_\_\_\_\_ If Yes, attach details.

b) Is any Insured Organization considering the formation of a new private equity fund in the next twelve (12) months? \_\_\_\_\_ If Yes, attach details.

c) Does any Insured Organization provide relief to their investors in the form of a clawback provision relative to fund performance? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, does this provision remain constant for all private equity funds? \_\_\_\_\_ Yes \_\_\_\_\_ No

d) Is an Advisory Board, Investment Committee, Management Committee or similar body involved in decision making? \_\_\_\_\_ If Yes, attach details.

e) Have there been any changes in senior management in the last five years? \_\_\_\_\_ If Yes, attach details.

**5. PORTFOLIO COMPANY INFORMATION**

a) Are portfolio companies required to carry Directors & Officers Liability Insurance? \_\_\_\_\_ Yes \_\_\_\_\_ No

b) Has any Insured Organization made distributions to their limited partners in the form of a portfolio company's securities? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If Yes, are recommendations made regarding further trading in such distributed securities? \_\_\_\_\_ Yes \_\_\_\_\_ No

c) Does the company require representation on a Portfolio Company board when making an investment? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If Yes, identify all individuals and their respective board seats by addendum to this application.

- d) Has any Insured(s) recommended the dismissal, or other adverse employment-related action against the management of a Portfolio Company?  
 Yes  No  
 If Yes, attach details.
- e) Is any formal documentation maintained relating to the decision and/or rationale behind the sale of a Portfolio Company's securities?  
 Yes  No  
 If Yes, attach details.
- f) Are any Portfolio Companies publicly owned?  
 Yes  No  
 If Yes, provide Ticker symbols.

**6. PREVIOUS INSURANCE (Private Equity Insurance)**

- a) Insurer \_\_\_\_\_
- b) Limit of Liability \_\_\_\_\_
- c) Retention Amount \_\_\_\_\_
- d) Provide details of any prior claims under such previous insurance (if none, so state)  
 \_\_\_\_\_  
 \_\_\_\_\_

**7. CONTINUITY & PRIOR KNOWLEDGE**

Continuity Date Requested \_\_\_\_\_

Please provide copies of all policies and applications or proposal forms submitted for those policies, dating back to the Continuity Date indicated above. If the Insurer elects to establish a Continuity Date, it shall only do so in reliance upon declarations, statements, representations made in or in connection with such prior applications or proposal forms (such declarations, statements, representations shall form a part of this proposal); and

Does any person or entity to which this insurance is intended have any knowledge or information of any act, error, omission, fact or circumstance which may give rise to a claim within the scope of this proposed insurance?

Yes  No (If Yes, provide complete details)

**RENEWAL APPLICANTS: QUESTION 8 NEED NOT BE ANSWERED.**

**IT IS UNDERSTOOD AND AGREED THAT QUESTION 8 MUST BE ANSWERED IN THE EVENT THAT A CONTINUITY DATE IS NOT GRANTED OR IS NOT REQUESTED.**

**IT IS UNDERSTOOD AND AGREED THAT IF SUCH KNOWLEDGE OR INFORMATION EXISTS, ANY CLAIM ARISING THEREFROM IS EXCLUDED FROM THIS PROPOSED INSURANCE.**

**8. PREVIOUS EXPERIENCE---PENDING & PRIOR LITIGATION**

- a) Has the Insured Organization(s), or anyone for whom insurance is intended, been involved in the following?
- 1) any antitrust, copyright or patent litigation?  Yes  No
  - 2) any civil or criminal action or administrative proceeding alleging a violation of any federal or state securities law or regulation?  Yes  No
  - 3) any representative actions, class actions or derivative suits?  Yes  No

(If Yes to any of the above, provide details)

- b) Are there any pending claims against any person or entity to which this insurance is intended which may fall within the scope of coverage afforded by any similar insurance presently or previously in effect?  
\_\_\_\_\_ Yes \_\_\_\_\_ No
- c) Has any person or entity to which this insurance is intended given notice under the provisions of any other previous or current similar insurance policy of any facts or circumstances which may give rise to a claim being made against any proposed Insured Organization(s) and/or Insured Person(s)?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

**IT IS UNDERSTOOD AND AGREED THAT IF ANY SUCH CLAIMS EXIST, OR ANY NOTICE SUCH AS DESCRIBED IN QUESTION 8 c) HAS BEEN GIVEN, THEN SUCH CLAIMS AND ANY CLAIMS ARISING FROM FACTS OR CIRCUMSTANCES WITH REFERENCE TO QUESTION 8. c) ARE EXCLUDED FROM THIS PROPOSED INSURANCE.**

**9. EMPLOYMENT PRACTICES LIABILITY (to be completed only if purchasing Insuring Agreement D)**

- a) Total number of Full-Time Employees: \_\_\_\_\_ Part-Time Employees: \_\_\_\_\_  
Non U.S. Employees: \_\_\_\_\_ Union Employees: \_\_\_\_\_  
Independent Contractors: \_\_\_\_\_ Leased Employees: \_\_\_\_\_

How many of these employees are located in the following states:

CA \_\_\_\_\_ NY \_\_\_\_\_ TX \_\_\_\_\_ FL \_\_\_\_\_

- b) Total number of employees with annual salaries in excess of \$50,000: \_\_\_\_\_

How many of these employees have annual salaries in excess of \$100,000? \_\_\_\_\_

- c) Does the Insured Organization have a formal human resources/personnel department? \_\_\_\_\_ Yes \_\_\_\_\_ No

Do you use an employment application for all job applicants? \_\_\_\_\_ Yes \_\_\_\_\_ No

Have you established an at-will employment agreement? \_\_\_\_\_ Yes \_\_\_\_\_ No

Are employment policies and procedures periodically reviewed by labor relations or outside legal counsel?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

Do you have a labor relations counsel? \_\_\_\_\_ Yes \_\_\_\_\_ No

- d) Is the Insured Organization involved in any labor/union negotiations or collective bargaining activities?

\_\_\_\_\_ Yes \_\_\_\_\_ No If Yes, please explain \_\_\_\_\_

- e) Does the Insured Organization have a written procedure for hiring and firing employees?

\_\_\_\_\_ Yes \_\_\_\_\_ No If Yes, please attach a copy.

- f) Does the Insured Organization have a written procedure for reviewing the performance of employees?

\_\_\_\_\_ Yes \_\_\_\_\_ No If Yes, please attach a copy and all pertinent forms.

- g) Does the Insured Organization have a clear procedure for employees to report sexual harassment and other employee-related complaints? \_\_\_\_\_ Yes \_\_\_\_\_ No If Yes, please attach a copy.

- h) Does a lawyer or human resource person review involuntary employment terminations prior to termination of an employee? \_\_\_\_\_ Yes \_\_\_\_\_ No

- i) Has there been a reduction of employees in the past twelve (12) months? \_\_\_\_\_ Yes \_\_\_\_\_ No

If Yes, what percentage? \_\_\_\_\_%

- j) Is a reduction of employees anticipated in the next twelve (12) months? \_\_\_\_\_ Yes \_\_\_\_\_ No

If Yes, what percentage? \_\_\_\_\_%

k) How many employees left employment in each of the past three (3) years? \_\_\_\_\_

If there were no terminations in a particular year, please write the word "none."

Year	Voluntary (Quit/Retired)	Involuntary (terminated by Insured Organization)
_____	_____	_____
_____	_____	_____
_____	_____	_____

l) Does the Insured Organization have any formal written compliance program as to the Americans with Disabilities Act?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

**RENEWAL APPLICANTS: QUESTIONS m) AND n) NEED NOT BE ANSWERED.**

m) Has any claim been made (including EEOC), or is any claim now pending against the Insured Organization, or any person proposed for insurance in the capacity of either Director, Manager, Officer, General Partner or employee of the Insured Organization, based upon or attributable to discrimination, wrongful termination or sexual harassment? \_\_\_\_\_ NONE \_\_\_\_\_ NONE EXCEPT FOR \_\_\_\_\_

n) After inquiry, is any person proposed for this insurance aware of any fact, circumstance or situation which may result in a claim against the Insured Organization or any of its Directors, Managers, Officers, General Partners or employees based upon or attributable to discrimination, wrongful termination or sexual harassment? \_\_\_\_\_ NONE \_\_\_\_\_ NONE EXCEPT FOR \_\_\_\_\_

**IT IS AGREED THAT IF KNOWLEDGE OF ANY SUCH FACT, CIRCUMSTANCE OR SITUATION EXISTS, ANY CLAIM SUBSEQUENTLY ARISING THEREFROM SHALL BE EXCLUDED FROM COVERAGE UNDER THE PROPOSED INSURANCE.**

**10. CORPORATE FIDUCIARY LIABILITY (to be completed only if purchasing Insuring Agreement E)**

a) Sponsor Organization \_\_\_\_\_

b) Address \_\_\_\_\_

c) Complete the following for all Plans. Under INVESTMENT PROCEDURE, insert appropriate number:

- 1) Custodial account, with investment discretion possessed by in-house trustee or sponsor;
- 2) Custodial account, with investment discretion possessed by a financial institution and in-house trustee or sponsor;
- 3) Custodial account, with a financial institution possessing full investment discretion;
- 4) Not a custodial account, with investment discretion possessed entirely by in-house trustees;
- 5) If there are any fully insured investments, please list the insurance company and the percentage of the assets invested;
- 6) Other, please attach explanation.

FULL NAME OF PLAN(S)	INVESTMENT PROCEDURE	YEAR CREATED	TOTAL ASSETS	VESTED BENEFITS
a. _____	_____	_____	_____	_____
b. _____	_____	_____	_____	_____
c. _____	_____	_____	_____	_____
d. _____	_____	_____	_____	_____

d) Have any plans requested, or do any plans contemplate filing a request for, a waiver of contributions?  
\_\_\_\_\_ Yes \_\_\_\_\_ No If Yes, please give details \_\_\_\_\_

- e) Do any plans intend to merge within the next twelve months?  
 Yes  No If Yes, please give details \_\_\_\_\_  
 \_\_\_\_\_
- f) Have any plans filed for, or do any plans contemplate, termination?  
 Yes  No If Yes, please give details \_\_\_\_\_  
 \_\_\_\_\_
- g) Are all plans adequately funded in accordance with the Employee Retirement Income Security Act of 1974 ("ERISA") as amended and attested to by an actuary?  Yes  No If No, please give details  
 \_\_\_\_\_  
 \_\_\_\_\_
- h) NAME OF: YEARS EMPLOYED
- |    |                                         |       |
|----|-----------------------------------------|-------|
| 1) | Enrolled Actuary _____                  | _____ |
| 2) | Independent Investment Manager(s) _____ | _____ |
| 3) | C.P.A. _____                            | _____ |
| 4) | Legal Counsel _____                     | _____ |
- i) Does the applicant have an Employee Stock Ownership Plan?  Yes  No If Yes:
- 1) What is the Applicant's total number of common shares/partnership units outstanding? \_\_\_\_\_
  - 2) What is the total number of shares/units owned by the ESOP? \_\_\_\_\_
  - 3) Who votes on the shares held by the ESOP? \_\_\_\_\_
  - 4) How and when can the Applicant's employees "cash out"? Does the sponsor company offer to "buy back" the shares and at what price? \_\_\_\_\_
  - 5) Were the assets of the Applicant's plan valued by an independent third party?  Yes  No  
 If Yes, please attach the most recent valuation report along with the prior valuation.
- j) Does any Defined Contribution/401 (k) Plan include company stock?  Yes  No If Yes:
- 1) What percentage of plan assets are invested in company stock? \_\_\_\_\_
  - 2) Are the plan's holdings a result of:
    - \_\_\_\_\_ matching contributions by the employer
    - \_\_\_\_\_ purchase of company shares by an independent fiduciary, or
    - \_\_\_\_\_ a directive investment by the plan participant
  - 3) Does the plan require any elective employee contributions be invested in company stock?  
 Yes  No If Yes, provide details.
  - 4) Does the company match employee contributions?  Yes  No  
 With Company Stock?  Yes  No  
 If matched in company stock, are there any restrictions on the disposition of the match?  
 Yes  No If Yes, provide details.
  - 5) Are there any restrictions on the disposition of company stock held in the plans?  Yes  No  
 If Yes, provide details.
  - 6) Does the company limit the amount of stock an employee can have in the 401 (k)?  Yes  No  
 If Yes, provide details.
- k) Are there any known violations of ERISA?  
 YES  NO  If YES, please give details \_\_\_\_\_  
 \_\_\_\_\_
- l) Is any person or entity serving in any capacity for the plans in violation of Section 411 of ERISA?  
 YES  NO  If YES, please give details \_\_\_\_\_  
 \_\_\_\_\_

**RENEWAL APPLICANTS: QUESTIONS m), AND n) NEED NOT BE ANSWERED.**

- m) Has there been or is there now pending any claims or suits against the plans, fiduciaries or Sponsor Organization proposed for this insurance in their fiduciary capacities?  
 YES \_\_\_\_\_ NO \_\_\_\_\_ If YES, please give details \_\_\_\_\_  
 \_\_\_\_\_
- n) Does any prospective insured have knowledge or information of any act, error or omission which might give rise to a claim under the proposed insurance?  
 YES \_\_\_\_\_ NO \_\_\_\_\_ If YES, please give details \_\_\_\_\_  
 \_\_\_\_\_

**IT IS AGREED THAT IF KNOWLEDGE OF ANY SUCH FACT, CIRCUMSTANCE OR SITUATION EXISTS, ANY CLAIM SUBSEQUENTLY ARISING THEREFROM SHALL BE EXCLUDED FROM COVERAGE UNDER THE PROPOSED INSURANCE.**

**I) REQUESTED MATERIALS**

**Information for Insuring Agreements A, B and C:**

- a) Copy of each offering memorandum and formative agreement for each Private Equity Fund.
- b) Most recent year-end audited and interim financial statements for each Private Equity Fund and all other entities seeking coverage.
- c) Reports to limited partners (if available).
- d) Parts I and II of the ADV, if applicable.

**Information for Insuring Agreement D:**

- e) A completed Employment Practices Liability Addendum.
- f) A copy of the Insured Organization's Personnel Manual.

**Information for Insuring Agreement E:**

- g) A completed Fiduciary Liability Addendum.
- h) Latest 5500 for each funded plan.
- i) Latest CPA audited financial statement with portfolio, for each funded plan.
- j) Latest CPA audited financial statement for the Sponsor Organization.

Completion of this proposal does not bind the undersigned to purchase or the Insurer to issue a policy, but it is agreed that this proposal form, together with all attachments to this proposal form, and any other materials submitted to the Insurer shall be the basis of the contract should a policy be issued, and this proposal form, including any attachments and any material submitted herewith, will be deemed attached to and form part of this Policy.

Any person who knowingly, or knowingly assists another, files an application for insurance or claim containing any false, incomplete or misleading information for the purpose of defrauding or attempting to defraud an insurance company may be guilty of a crime and may be subject to criminal and civil penalties and loss of insurance benefits.

NOTICE TO COLORADO APPLICANTS: "It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the

purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies."

**NOTICE TO DISTRICT OF COLUMBIA APPLICANTS:** "WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant."

**NOTICE TO FLORIDA APPLICANTS:** "Any person who knowingly and with intent to injure, defraud or deceive any insurer files a statement of claim or an application containing any materially false, incomplete or misleading information is guilty of a third degree felony."

**NOTICE TO HAWAII APPLICANTS:** "For your protection, Hawaii law requires you to be informed that presenting a fraudulent claim for payment of a loss or benefit is a crime punishable by fines or imprisonment, or both."

**NOTICE TO KENTUCKY APPLICANTS:** "Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime."

**NOTICE TO LOUISIANA APPLICANTS:** "Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime any may be subject to fines and confinement in prison."

**NOTICE OF MAINE APPLICANTS:** "It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or denial of insurance benefits."

**NOTICE TO NEW JERSEY APPLICANTS:** "Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties."

**NOTICE TO NEW MEXICO APPLICANTS:** "Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil and criminal penalties."

**NOTICE TO NEW YORK APPLICANTS:** "Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed \$5,000 and the stated value of the claim for each such violations."

**NOTICE TO OHIO APPLICANTS:** "Any person who, with intent to defraud or knowing that he is facilitating fraud against an insurer, submits an application or files a claim containing false or deceptive statement is guilty of insurance fraud."

**NOTICE TO OKLAHOMA APPLICANTS:** "WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony."

**NOTICE TO PENNSYLVANIA APPLICANTS:** "Any person knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

**NOTICE TO TENNESSEE AND VIRGINIA APPLICANTS:** "It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the insurer. Penalties include imprisonment, fines and denial of insurance benefits."



The undersigned authorized Insured Person(s) of an Insured Organization(s) represents that the statements set forth herein are true. The undersigned authorized Insured Person(s) agrees that if the information supplied on this proposal form changes between the date of this proposal form and the inception date of the Policy, he/she (undersigned) will immediately notify the Insurer of such changes, and the Insurer may withdraw or modify any outstanding quotations and/or agreements to bind the insurance.

The Insured Organization(s) and the Insured Person(s) agree that the statements made in this proposal form are the representations of the Insured Organization(s) and the Insured Person(s) and that they shall be deemed material to the acceptance of the risk or the hazard assumed by the Insurer under this Policy and that this Policy is issued in reference upon the truth of such representations.

The proposal form must be signed by the Chief Executive Officer, President or highest-ranking executive officer of the Insured Organization(s).

\_\_\_\_\_  
Chief Executive Officer (or highest-ranking executive officer)      Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Producer Name

\_\_\_\_\_  
Producer Address