

DESTINY MEDIA TECHNOLOGIES INC  
Form 10-K  
November 30, 2009

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 10-K**

(Mark One)

Annual Report Pursuant To Section 13 Or 15(D) Of The Securities Exchange Act Of 1934  
For the fiscal year ended **August 31, 2009**

Transition Report Under Section 13 Or 15(D) Of The Securities Exchange Act Of 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

COMMISSION FILE NUMBER **000-28259**

**DESTINY MEDIA TECHNOLOGIES INC.**

(Name of small business issuer in its charter)

**COLORADO**

(State or other jurisdiction of incorporation or  
organization)

**84-1516745**

(I.R.S. Employer Identification No.)

**570 Granville Street, Suite 800**  
**Vancouver, British Columbia, Canada**  
(Address of principal executive offices)

**V6C 3P1**  
(Zip Code)

**604-609-7736**

Issuer's telephone number

Securities registered under Section 12(b) of the Exchange  
Act:

**NOT APPLICABLE**

Securities registered under Section 12(g) of the Exchange  
Act:

**COMMON STOCK, PAR VALUE \$0.001 PER  
SHARE**

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

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Large accelerated filer  Accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

YES  NO

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter.

**38,092,659 common shares @ \$0.20 <sup>(1)</sup>= \$7,618,531**

(1) Closing price as quoted on the OTC Bulletin Board on February 27, 2009.

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

**52,059,647 Shares of \$0.001 par value common stock outstanding as of November 26, 2009.**

**DOCUMENTS INCORPORATED BY REFERENCE**

None

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**DESTINY MEDIA TECHNOLOGIES INC.  
FORM 10-K**

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**PART I**

**FORWARD LOOKING STATEMENTS**

The information in this Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These forward-looking statements involve risks and uncertainties, including statements regarding Destiny Media's capital needs, business strategy and expectations. Any statements contained herein that are not statements of historical facts may be deemed to be forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as "may", "will", "should", "expect", "plan", "intend", "anticipate", "believe", "estimate", "predict", "potential" or "continue", the negative of such terms or other comparable terminology. Actual events or results may differ materially. In evaluating these statements, you should consider various factors, including the risks outlined below, and, from time to time, in other reports Destiny Media files with the SEC. These factors may cause Destiny Media's actual results to differ materially from any forward-looking statements. Destiny Media disclaims any obligation to publicly update these statements, or disclose any difference between its actual results and those reflected in these statements. The information constitutes forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995.

**CURRENCY**

All dollar amounts in this Annual Report on Form 10-K are presented in United States dollars unless otherwise indicated.

**ITEM 1. DESCRIPTION OF BUSINESS.**

**OVERVIEW AND CORPORATE BACKGROUND**

Destiny Media Technologies, Inc. was incorporated in August 1998 under the laws of the State of Colorado. We carry out our business operations through our wholly owned subsidiary, Destiny Software Productions Inc., a British Columbia company that was incorporated in 1992, and MPE Distribution, Inc. a Nevada company that was incorporated in 2007. The Company, Destiny or we refers to the consolidated activities of all three companies.

Our principal executive office is located at #800-570 Granville Street, Vancouver, British Columbia V6C 3P1. Our telephone number is (604) 609-7736 and our facsimile number is (604) 609-0611.

Our common stock trades on the OTC Bulletin board under the symbol DSNY and on various German exchanges (Frankfurt, Berlin, Stuttgart and Xetra) under the symbol DME 935 410.

Our corporate website is located at <http://www.dsny.com>.

**OUR PRODUCTS**

Destiny develops and markets solutions which enable media owners to securely distribute their digital media content globally through the internet. The Company has two main product lines: MPE® enables content to be transferred permanently to authorized recipients, so they possess it the way they would CD or DVD. Clipstream® is analogous to radio or TV where content is streamed to the viewer in a transient manner.

**The MPE® Product Line**

MPE® enables the secure download of audio or video to a user's computer and consists of two products: Play MPE® and PODDS.

Security is provided by patented and patent pending technologies, which give record labels the choice of locking content so that only authorized devices can play it or allowing copies, but embedding tracking information so the source of unauthorized copies can be traced:

1. Digital Locking technology: "Digital Media Distribution Method and System" (US 20020146122, WIPO 01/65796) issued on Dec. 16, 2008. This method uniquely identifies a device and permits playback of content on the authorized machine and not on any other computer or device.
2. Digital Trace: "Methods for Watermarking Media Data" (US 20080098022) was published in April 2008 and is currently pending review. Using this method a trace is embedded in each digital file identifying the source of copies.

**A) Play MPE®**

<http://www.plaympe.com>

<http://www.myplaympe.com>

The Play MPE® service is currently our main offering in this line and is a system for securely moving pre-release music to radio stations, media, buyers, film and TV, DJ's, stadiums, VIP's and other trusted recipients. All four Major Record Labels (Universal Music Group, Warner Music Group, EMI and Sony Music) use the Play MPE® service commercially for sending their pre-release music.

The system is highly automated where label staff, each with their own access rights, collaborate using encoder tools to upload album artwork, broadcast quality music and video, meta data, photos, marketing materials, meta data and

localized copy, release dates and recipient lists. Optional email alerts that new music is available are automatically generated based

on selectable templates. The system detects whether a recipient is in the system and automatically sends them an email explaining how to download the software to access the new content.

Packages of new content (music, associated graphics, music video, liner notes, etc.) automatically appear in a library of available content, custom to each recipient. The recipient would use either a browser or custom player software developed by Destiny (Mac/Windows/iPhone) to stream or download the content in a locked format. If they have the rights, they can export into any standard industry format or burn to CD. Destiny has partnered with leading radio automation vendors so that song meta data can be exported into third party tools.

Proprietary Play MPE® player access software is currently available in twenty-four languages in versions for web browsers, the Mac, PC and the iPhone.

**B) Podds**

<http://www.podds.ca>

This online music store solution facilitates the sale of new music through proprietary player software with integrated e-commerce functionality. It was originally launched as a solution to sell music Destiny licensed to DJ's, clubs and internet enabled digital jukeboxes, but based on a low return on investment, management has reduced focus on this opportunity. The system remains as a proof of concept which is available to be licensed to third party music retailers who could license and rebrand the solution to securely sell music to their customers.

**The Clipstream® Product Line**

Clipstream® is an innovative "instant play" solution for playback of streaming audio and streaming video. Unlike Windows Media Player or Quicktime, there is no player that has to launch for the content to playback. Unlike Flash, multiple Clipstream® objects can play on the same page and the content can be uploaded to any website. Clipstream® uses up to 90% less bandwidth than these three solutions while providing a 98% playback rate, including across devices other than computers. Because there is no special player or server and everything is standards based, Clipstream® content never has to be re-encoded as technologies change.

The Clipstream® software suite enables audio or video content to be streamed so that the media plays instantly and automatically when the user initiates playback. Creating streaming video content with other technologies can be a complicated process and in most cases, users are required to purchase and maintain streaming servers. With Clipstream®, content owners simply encode the content into the Clipstream® format, then upload to an existing website. Clipstream® is a standards based technology built around the cross platform Java language, supported natively by most operating systems and devices.

Clipstream® encoded content plays instantly in most cases, without requiring the user to download CODECS or player software. This results in a much higher play rate for site owners and because there is no player executable, users are not exposed to viruses, trojan horses or unstable code that could crash their computer.

A) Licenses <a href="http://www.clipstream.com">http://www.clipstream.com</a>	E) Server licenses <a href="http://www.clipstreamserver.com">http://www.clipstreamserver.com</a>
B) On demand audio streaming <a href="http://www.clipstreamaudio.com">http://www.clipstreamaudio.com</a>	F) Telephone streaming <a href="http://www.audio-mail.com">http://www.audio-mail.com</a>
C) Internet Radio	G) Video Survey Solutions



<http://www.pirateradio.com>

<http://www.surveyclip.com>

D) Internet TV <a href="http://live.clipstream.com">http://live.clipstream.com</a>	H) Advertising Solutions <a href="http://www.clipstreamad.com">http://www.clipstreamad.com</a>
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**BUSINESS DEVELOPMENT****MPE®**

Play MPE® was first marketed to the recording industry as an alternative to the much higher cost physical (couriered envelopes) distribution of CD copies of their pre-release music. For several reasons, the concept was well received by our record label clients and by radio. The initial challenge was in changing the way the entire industry distributed and received their music. Record labels were initially unwilling to pay and commit to digital only transmission until radio adopted the system while radio was concerned about the volume of new content (songs) in the system. Consequently the Company initially provided the Play MPE® service free from charge while promoting the system to both radio and record labels. Full commercialization in the United States began in January 2008. Revenue from Play MPE® has consistently grown over the past four years with the larger increases coming in the most recent twelve to eighteen months.

2009 proved to be a pivotal year for both the Play MPE® service and the Company as the Play MPE® network expanded into Europe, Australia and Canada and showed continued growth in the US. The Company established agreements within the industry, while providing extensive technical advancements, enhancing the value of the Play MPE® service and providing additional barriers to entry for potential competitors. Some of the highlights for the year include:

- December 2008: Play MPE® enrolls in the internationally approved antipiracy certification program of the Content Distribution and Storage Association (CDSA)
- February 2009: Warner Music Group announced a global commercial contract to use Play MPE® representing our third (of four) US Major Record Labels under agreement
- February 2009: Patent Granted for locking security technology entitled *Digital Media Distribution Method and System*
- November 2008 - February 2009: Australian expansion includes EMI, Warner Music Group, Universal Music Group, and Shock Records (etc)
- March 2009: New versions of server system and encoder, under development since 2006, supporting new features including multiple server locations, real time backup, failover, label staff collaboration tools, and lists and content control and reuse across territories.
- April 2009: New player software for Windows and PC, available in 24 languages redesigned to support global expansion.
- May 2009: In the 3<sup>rd</sup> quarter of fiscal 2009, the Company showed its first operating profit on the strength of a 42% increase in revenue from the prior quarter and consistent increases in overall revenue.
- May 2009: Tracing security technology patent entitled *Methods for Watermarking Media Data* application expanded to include European Union and Japan.
- May 2009: Universal Music Group, based in the United Kingdom announced a new commercial agreement to use Play MPE® in 77 additional territories covering the globe outside of North America.
- August 2009: Revenue increased to \$872,549 for the 4<sup>th</sup> quarter ended August 31, 2009 resulting in income and earnings before interest taxes depreciation and amortization (EBITDA) \$302,749 for the quarter.
- September 2009: Apple approves Play MPE® iPhone App now available on iTunes. This proprietary player software provides Play MPE® industry recipients, including staff at Apple, extremely high quality broadcast quality audio files and playback which can be optionally downgraded to provide playback through iTunes.



## Clipstream®

Our traditional area of strength for sales in Clipstream® licenses is the market research community where it has become a standard for secure global questionnaires. Because of the cost of acquisition of a survey participant and the sensitivity of the content, the high play rate and security of the Clipstream® solution is critical. This area was adversely impacted by the economic conditions in 2009, but is expected to be an area of growth for the Company in 2010.

The main focus for Clipstream® in fiscal 2009 was the development of higher margin recurring service based offerings. The Clipstream® Cloud offering was originally expected to launch in 2009 but was delayed by diversion of resources to the new Play MPE® service infrastructure. The launch of this solution is expected to occur in the first half of fiscal 2010.

Development of professional service based versions of Clipstream® TV and Clipstream® Radio began in the second half of 2009 and these solutions are also expected to be available in fiscal 2010.

While the Company will continue to offer Clipstream® technology licenses, the fiscal 2010 sales focus will be on market research and these two new services currently under development:

### 1. Clipstream® Cloud Offering

Like a You Tube for Business , this solution will be an easy to use solution which allows business people to display and share rich media content without going through an IT department. Self serve accounts will be marketed directly to individuals who can purchase monthly recurring access plans with their corporate or personal credit cards while OEM versions of the system will be marketed to larger accounts that would be able to rebrand to their customer base.

Audio and video content would be automatically encoded into the Clipstream® format for streaming, while the original would still be available for download. A telephone based system would allow users to leave audio messages, which would be automatically converted into streaming audio content. Content types would not be restricted and users would be empowered to upload any digital content (web pages, photos, documents, etc.).

Users can choose from an included webpage or to embed the uploaded content into a website of their choosing. For example, a video could be posted in a discussion forum and would appear to be part of that discussion site but would be hosted by Clipstream® servers. Advertisers could create rich media ads including rollover audio and video that they could paste into the sites they advertised on.

The solution will feature the ability to create and maintain email lists, so that rich content can be sent to subscribers by the Clipstream® servers and access control and reporting will be available for each asset.

### 2. Internet Radio and Internet TV

Destiny currently markets Internet radio under the Radio Destiny brand as a software sale to hobbyists who broadcast using their own bandwidth. Destiny provides a directory (<http://www.stationdirectory.com>) to access these hobbyist signals.

Destiny also sells licenses for Internet TV software. Users can run the software on their local computer (requires a low cost TV tuner card) and access their signal globally and without player software from any web browser.

In fiscal 2010, the Company will be rolling out professional versions of these tools which automatically repeat the signals through Destiny's servers enabling radio and TV broadcasters to more easily and economically transmit their terrestrial signal at high volume to recipients through their company web page. These products will be marketed

through pop up download links in the Play MPE® network and directly to the head offices of the chains.

Ancillary services, such as the ability to log the broadcast stream to Destiny s servers to meet regulatory archiving requirements may be built out in future versions.

Marketing of the new Clipstream® solutions is expected to be viral and initially to existing customers and is expected to be largely sustained from Clipstream® sales. The goal is for these new business units to be profitable in 2010 and for growth in these units to be funded through positive cash flow

## **OUR BUSINESS OPERATIONS**

We lease 10,100 square feet of office space, with the lease expiring in August of 2010, and we currently have twenty full time employees and one part time employee. Our employees include our President and Chief Executive Officer, Chief Financial Officer, ten sales and technical support personnel, and five software developers. We also employ contractors as needed.

We manage our own server infrastructure and use the services of an external hosting facility. We have racks of server and storage hardware at three physical locations (two in Vancouver, Canada and one in London, England). Servers are highly redundant with RAID s, custom switches, redundant power supplies and multiple connections to the internet backbone. The primary access to customers is through the Vancouver primary server which connects into the backbone at one gigabit per second.

## **COMPETITION**

### **MPE®**

Although there are regional competitors in some geographic locations, the system is leading the industry towards becoming the global standard for distributing pre-release music digitally with all four US Major Record labels and hundreds of major independents and promoters commercially using Play MPE® with large growth seen across geographic lines. The Play MPE® service is currently being rolled out in Europe, Asia, Africa and South America and the plan to roll out the system to seventy-seven countries in fiscal 2010 has commenced.

The main competitor for our Play MPE® distribution service remains the physical distribution of music CDs and promotional security free digital distribution of MP3 s. The Company is not aware of a secure digital distribution competitor with a comparable or significant presence in the US or internationally.

Barriers to entry include the installed base of our encoder and player software, our brand familiarity, our partnerships with other industry participants, our lead time in developing our offering and our proprietary patented technologies and trade secrets. The MPE® system has been under development since 1999 and would take a number of years of development for a new competitor to provide a similar offering.

### **Clipstream®**

Our principal competitor for Clipstream® is Adobe Flash and to a lesser extent, the player solutions provided by Apple and Microsoft. Flash is recognized as the dominant player in the space, with a near monopoly over instant play streaming video. Clipstream® has a number of economic and usability advantages that make it extremely compelling in certain circumstances, but the margins on streaming licenses are low. The corporate strategy is to license Clipstream® to niches where its cost, security and performance advantages are extremely beneficial, while creating new service offerings that embrace competing technologies while extending them with the benefits of Clipstream®. The Clipstream® Cloud, a hosted solution featuring automated encoding and reporting uses up to 90% less bandwidth than hosting solutions provided by other technologies, so the Company will be positioned to provide the same service at a much lower internal cost than competitors.

Competitors for the new Clipstream® Cloud hosting solutions will include video encoding companies, Internet hosting companies and file sharing companies such as Yousendit and Rapidshare. All are substantially larger than we are and have significantly greater financial resources available and have increased their commitment to and presence

in the streaming media industry. We anticipate they will continue to increase the competitive pressure in the overall market for streaming media software. This increased competition could lead to increased pressure to decrease the price of streaming media

software. This pressure on price could force us to reduce the price that we are able to charge our customers for our software products.

#### Clipstream® Advantages

- A Clipstream® powered website does not require that its visitors download and install player software. Clipstream® just plays. Other solutions require intrusive codecs and new versions of their player in the background.
- As Clipstream® is playerless, management estimates that at least 10% more visitors see the rich media content
- Clipstream® playback takes minimal CPU and memory resources, so the viewer's computer is free for other tasks. This means that many Clipstream® objects can appear on the same page. Other solutions often restrict to one piece of content per page.
- The Clipstream® solution is less intrusive and, as a result, safer for users. Alternative solutions control a user's device and can be used by malicious sites to install malware. Because it is restricted to the safe Java sandbox, Clipstream® content will never crash or compromise your machine.
- Clipstream® content is uploaded to any brand of web server and just works. Alternative solutions require that you purchase, install and configure streaming server systems, running on dedicated hardware.
- Clipstream® plays on any Java enabled device, so playback is not restricted to computers. This cross platform approach means the same object will work for any browser on any brand of computer or device at any bitrate. (An autodetect procedure automatically delivers the highest possible stream quality).
- Because there is no player, Clipstream® encoded media never becomes obsolete and never has to be re-encoded. Content encoded in Clipstream® ten years ago still plays today. Other solutions launch new player software without backwards compatibility.
- Clipstream® media will automatically cache because it is an ordinary web component, just like a graphic or a block of text. This means that Clipstream will save up to 90% on bandwidth cost (over 90% for ads), while providing much more reliable playback. This standards based approach means that there is no limit to simultaneous streams.
- Clipstream® components can be uploaded to the cloud for third party hosting. Player solutions require complicated server farms to handle more than a few thousand simultaneous visitors.
- Clipstream® objects can be embedded into databases for long term storage and easy context sensitive retrieval. Every aspect of the Clipstream® engine can be accessed by web authoring tools to create a customized look and feel
- Dozens of parameters provide functionality not available from any other streaming solution. For example, Clipstream® provides the only technology available to link every pixel or group of pixels in a banner to a different audio stream. This technology can be used for audio navigation of a website or to provide ads that do not require the visitor to leave the host site to listen to an ad.

We must continue to innovate and improve the performance of our software products to compete in the media technologies market, to maintain our customer base and to increase our customer base. We anticipate that consolidation will continue in this industry and related industries such as computer software, media and communications. Consequently, competitors may be acquired by, receive investments from or enter into other commercial relationships with, larger, well-established and well-financed companies. There can be no assurance that we will be able to establish or sustain a leadership position in these market segments. We are committed to working toward market penetration of our brand, products and services, which, as a strategic response to changes in the competitive environment, may require pricing, licensing, service or marketing changes intended to extend our current brand and technology. Price concessions or the emergence of other pricing or distribution strategies by competitors may reduce the prices that we may charge our customers for our software products. In addition, many of our current and potential competitors have greater name recognition, larger overall installed bases, more employees and significantly greater financial, technical, marketing, public relations and distribution resources than we do. These competitive factors may have a material adverse effect on our business, financial condition and results of operations.





## GOVERNMENT REGULATION

We are not currently subject to direct regulation by any governmental agency other than laws and regulations generally applicable to businesses. It is possible that a number of laws and regulations may be adopted in both the United States and Canada with particular applicability to the Internet. Governments have and may continue to enact legislation applicable to us in areas such as content distribution, performance and copying, other copyright issues, network security, encryption, the use of key escrow data, privacy protection, caching of content by server products, electronic authentication or digital signatures, illegal or obscene content, access charges and retransmission activities. The applicability to the Internet of existing laws governing issues such as property ownership, content, taxation, defamation and personal privacy is also uncertain. Export or import restrictions, new legislation or regulation or governmental enforcement of existing regulations may limit the growth of the Internet, increase our costs of doing business or increase its legal exposure.

## RISK FACTORS

We face risks in executing our business plan and achieving revenues. The following risks are material risks that we face. We also face the risks identified elsewhere in this Annual Report, including those risks identified under Item 1 Description of Business, including Competition and Government Regulation, and Item 6 Management Discussion and Analysis or Plan of Operations. If any of these risks occur, our business and our operating results and financial condition could be seriously harmed.

*If revenues decline, then our financial condition and results of operations will be adversely affected.*

Approximately 88% of our revenue is generated from our Play MPE® distribution service. The main competitor for our Play MPE® system remains the physical distribution of music CDs and promotional security free digital distributions of MP3 s. Competitors may arise and/or customers may not renew distribution contracts. This factor could cause our revenue to decrease with the result that our financial condition and operating results would be adversely affected.

*If we are not able to control our operating expenses, then our financial condition may be adversely affected.*

We have been successful in containing our operating expenses. Operating expenses decreased substantially to \$2,515,666 for the year ended August 31, 2009 from \$3,983,821 for the year ended August 31, 2008. Our ability to achieve profitability is conditional upon our ability to maintain our operating expenses. While we have been successful in containing our operating expenses, there is a risk that we will have to increase our operating expenses in the future. Factors that could cause our operating expenses to increase include our determination to spend more on sales and marketing in order to increase product sales or our determination that more research and development expenditures are required in order to keep our current software products competitive or in order to develop new products for the market. To the extent that our operating expenses increase without a corresponding increase in revenue, our financial condition would be adversely impacted.

*If we are not successful in legal proceedings against us, then our business and financial condition could be adversely affected.*

We are currently party to four claims against the Company, as described in Item 3 of Part I under the heading Legal Proceedings . If we are not successful in these legal proceedings and are forced to make payments of damages to the plaintiffs, then our business and our financial condition would be adversely affected.

*Our success is dependent, to a large degree, upon the efforts of Mr. Steve Vestergaard, our current executive officer.*

Mr. Vestergaard was the founder of Destiny Software and has been involved in our business operations since our inception. The loss or unavailability of Mr. Vestergaard could have an adverse effect on our business operations and financial condition. We do not maintain key man life insurance policies for Mr. Vestergaard or for any of our other employees. In addition, our continued success is dependent upon our ability to attract and retain qualified personnel in all areas of our

business, especially management positions. In the event that we are unable to attract and retain qualified personnel, our business would be adversely affected.

*Our financial results may be adversely impacted by currency fluctuations.*

Our revenues are primarily in United States dollars and Euros while our operating expenses are primarily in Canadian dollars. An increase in the value of the Canadian dollar in relation to the United States dollar and/or Euro could have the effect of increasing our loss from operations. Management is in a position to counteract negative impacts through hedging contracts which can mitigate some of this loss.

*If our products are defective or contain errors, we may become subject to product liability claims.*

As a result of their complexity, our software products may contain undetected errors or failures when first introduced or as new versions are released. There can be no assurance that, despite testing we undertake and testing and use by current and potential customers, errors will not be found in new products after commencement of commercial shipments. The occurrence of such errors could result in loss of or delay in market acceptance of our products, which could have a material adverse effect on our business, financial condition and results of operations. Our products also may be vulnerable to break-ins and similar disruptive problems caused by Internet or other users.

Such computer break-ins and other disruptions would jeopardize the security of information stored in and transmitted through the computer systems of our customers, which may result in significant liability to us and deter potential customers. The sale and support of our products may entail the risk of liability claims. A product liability claim brought against us could have a material adverse effect on our business, financial condition and results of operations.

*Our ability to manage growth.*

Should we be successful in the sales and marketing efforts of our software products, we will experience significant growth in operations. If this occurs, management anticipates that additional expansion will be required in order to continue our product development. Any expansion of our business would place further demands on our management, operational capacity and financial resources. We anticipate that we will need to recruit qualified personnel in all areas of its operations, including management, sales, marketing, delivery, and software development. There can be no assurance that we will be effective in attracting and retaining additional qualified personnel, expanding its operational capacity or otherwise managing growth. In addition, there can be no assurance that our current systems, procedures or controls will be adequate to support any expansion of our operations. The failure to manage growth effectively could have a material adverse effect on our business, financial condition and results of operations.

*Risk of system failure and/or security risks.*

Despite the implementation of security measures, our network infrastructure could be vulnerable to unforeseen computer problems. Although we believe we have taken steps to mitigate much of the risk, we may in the future experience interruptions in service as a result of the accidental or intentional actions of Internet users, current and former employees or others. Unknown security risks may result in liability to us and also may deter new customers from purchasing our software and services, and individuals from utilizing it. Although we intend to continue to implement and establish security measures, there can be no assurance that measures implemented by us will not be circumvented in the future, which could have a material adverse effect on our business, financial condition or results of operations.

*Lack of established market for products and services; dependence on internet and intranets as mediums of commerce and communications.*

The market for our streaming media products and services is new and evolving rapidly. It depends on increased use of the Internet and intranets. If the Internet and intranets are not adopted as methods for commerce and communications, or if the adoption rate slows, the market for our products and services may not grow, or may develop more slowly than expected.

The electronic commerce market is relatively new and evolving. Sales of our products depend in large part on the development of the Internet as a viable commercial marketplace. There are now substantially more users and much more traffic over the Internet than ever before, use of the Internet is growing faster than anticipated, and the technological infrastructure of the Internet may be unable to support the demands placed on it by continued growth. Delays in development or adoption of new technological standards and protocols, or increased government regulation, could also affect Internet use. In addition, issues related to use of the Internet and intranets, such as security, reliability, cost, ease of use and quality of service, remain unresolved and may affect the amount of business that is conducted over the Internet and intranets.

*Product delays and errors.*

We have experienced development delays and cost overruns associated with its product development. We may encounter such problems in the future. Delays and cost overruns could affect our ability to respond to technological changes, evolving industry standards, competitive developments or customer requirements. Our products also may contain undetected errors that could cause adverse publicity, reduced market acceptance of the products, or lawsuits by customers.

*Online commerce security risks.*

Online commerce and communications depend on the ability to transmit confidential information securely over public networks. Any compromise of our ability to transmit confidential information securely, and costs associated with the prevention or elimination of such problems, could have a material adverse effect on our business.

*International operations.*

We market and sell our products in the United States, Canada, Europe, Asia, South America, Africa and Australia. As such, we are subject to the normal risks of doing business abroad. Risks include unexpected changes in regulatory requirements, export and import restrictions, tariffs and trade barriers, difficulties in staffing and managing foreign operations, longer payment cycles, problems in collecting accounts receivable, potential adverse tax consequences, exchange rate fluctuations, increased risks of piracy, limits on the our ability to enforce our intellectual property rights, discontinuity of our infrastructures, limitations on fund transfers and other legal and political risks. Such limitations and interruptions could have a material adverse effect on our business. We do not currently hedge our foreign currency exposures.

*Dividend policy.*

We do not presently intend to pay cash dividends in the foreseeable future, as any earnings are expected to be retained for use in developing and expanding its business. Our ability to declare dividends will depend on results of operations, cash requirements and future prospects of us and other factors.

*The global financial crisis may have impacts on our business and financial condition that we currently cannot predict.*

The continued credit crisis and related turmoil in the global financial system, as well as the global economic recession, may have an impact on our business and our financial condition, and we may face challenges if conditions in the financial markets do not improve. The current economic situation could have a material adverse impact on our customers causing them to fail to meet their obligations to us.

*As shares of our common stock are classified as penny stock, investors may have difficulty selling their shares.*

Our common stock is subject to penny stock rules as defined in 1934 Securities and Exchange Act rule 3151-1. The Securities and Exchange Commission has adopted rules that regulate broker-dealer practices in connection with

transactions in penny stocks. Our common shares are subject to these penny stock rules. Transaction costs associated with purchases and sales of penny stocks are likely to be higher than those for other securities. Penny stocks generally are equity securities with a price of less than \$5.00 (other than securities registered on certain national securities exchanges or quoted on the NASDAQ system, provided that current price and volume information with respect to transactions in such securities is provided by the exchange or system).

The penny stock rules require a broker-dealer, prior to a transaction in a penny stock not otherwise exempt from the rules, to deliver a standardized risk disclosure document that provides information about penny stocks and the nature and level of risks in the penny stock market. The broker-dealer also must provide the customer with current bid and offer quotations for the penny stock, the compensation of the broker-dealer and its salesperson in the transaction, and monthly account statements showing the market value of each penny stock held in the customer's account. The bid and offer quotations, and the broker-dealer and salesperson compensation information, must be given to the customer orally or in writing prior to effecting the transaction and must be given to the customer in writing before or with the customer's confirmation.

In addition, the penny stock rules require that prior to a transaction in a penny stock not otherwise exempt from such rules, the broker-dealer must make a special written determination that the penny stock is a suitable investment for the purchaser and receive the purchaser's written agreement to the transaction. These disclosure requirements may have the effect of reducing the level of trading activity in the secondary market for the common shares in the United States and shareholders may find it more difficult to sell their shares.

## **ITEM 2. DESCRIPTION OF PROPERTY.**

Our head office is located in leased premises at Suite 800, 570 Granville Street, Vancouver, British Columbia, Canada V6C 3P1. Our principal business operations are carried out from head office. Our leased premises consist of approximately 10,100 square feet. We pay rent of approximately \$28,000 Canadian (equal to approximately \$25,600 US) per month. The lease expires August 30, 2010. We consider our leased premises adequate for our current business purposes.

The Company owns proprietary algorithms, source code, web domain addresses, patents, trademarks and other intellectual property.

We have one granted patent and one outstanding patent application for the MPE® distribution system covering our innovative security features. The United States Patent & Trademark Office has granted the first patent, entitled 'Digital Media Distribution Method and System' patent application (USPTO Publication No. 20020146122, International WIPO 01/65796). The second patent titled *Methods for Watermarking Media Data* (US 20080098022) was published in April 2008 and is pending review by the USPTO.

We have been granted a trademark for Clipstream® in the US, Canada, Japan, Israel and Europe in connection with our software products. We have been granted trademarks for MPE® in the US, Canada and Europe. We have been granted trademarks for PLAY MPE® in the US and Japan. We have also been granted trademarks for Sonox Digital in Japan.

We have applied for trademark protection for MPE® in China and Japan. We have applied for trademark protection for PLAY MPE® in the Canada, China and Europe and SONOX DIGITAL™ in the US, Canada, China, and Europe. This protection is currently pending.

We generally develop our own technologies and algorithms in house and have a number of technologies that we rely on to maintain our competitive advantage. Additionally we have in excess of 40 registered domain names.

## **ITEM 3. LEGAL PROCEEDINGS.**

The Company is involved in three actions with a competitor in Canada (Yangaroo Inc. Yangaroo, formerly Musicrypt Inc.) regarding various patent claims as described below:

a) On March 7, 2006, the Company filed a statement of claim in the Federal Court of Canada against Yangaroo (the Defendant) to assert that the Company's technology does not infringe on the stated patent owned by the



Defendant and to further declare that Defendant's patent is invalid. On June 7, 2006, the Company's counsel received a statement of defense and counterclaim from the Defendant, requesting specified damages or audited profits from the Play MPE® system sourced to Canada.

b) On May 3, 2007, the Company filed a claim in Ontario Superior Court against the Defendant (Yangaroo Inc.), and executives of the Defendant, Chief Executive Officer of the Defendant and Chief Financial Officer of the Defendant (collectively the Defendants ) in the amount of \$25,000,000 caused by the Defendants making

statements constituting defamation and injurious falsehood, making false or misleading statements tending to discredit the business, making false or misleading representations contrary to the Competition Act of Canada, and unlawful interference with the Company's economic relations. On June 7, 2007, the Defendant filed a statement of defense and counterclaim against the Company for the same amount and for the same causes.

c) On May 12, 2009, the Company was served with a complaint in the United States District Court for the Eastern District of Wisconsin by the Defendant (the Claimant) in the Canadian litigation above, alleging that the Company infringes on its recently issued one method claim in United States Patent No. 7,529,712. The Company initially filed a motion to dismiss the complaint as not being properly pled due to a issue regarding the method claim itself. The Court has ruled that it would be premature to issue a dismissal on such grounds until it had considered the meaning of the patent claim terms. On September 18, 2009 the Company filed an Answer, which included a statement of its defenses. One defense the Company has asserted is the patent claim has limitations regarding operations on a server and because Company's servers are outside the United States, the Claimant's U.S. patent cannot be asserted against the Company. On October 13, 2009 the U.S. District Court issued a scheduling order that limits discovery in the U.S. case to the Company's defense of extraterritoriality and that the Court will entertain a motion for summary judgment by the Company dismissing the case on that basis alone, prior to further discovery, if any. It is management's opinion that the Claimant was sufficiently aware of the location of Company's servers well prior to the date it brought suit and, given Claimant's duty to investigate the law regarding extraterritoriality prior to bringing suit, this case is improper. As a result, the Company will be seeking legal costs from the Claimant, if successful.

The amount of damages awarded to the Company or the Defendants/Claimant, if any, cannot be reasonably estimated and no amount has been recognized in the financial statements. Management believes it is unlikely that the outcome of this matter will have an adverse impact on its result of operations and financial condition.

On August 12, 2009 the Company received a statement of claim in the Supreme Court of British Columbia from a former employee for wrongful dismissal and breach of contract. The claim was for approximately \$180,000 CDN plus an award of stock options and unspecified damages. The Company believes the claim is completely without merit and will vigorously defend its position and reputation and filed a response on September 11, 2009. The former employee's deadline to respond to our response was October 2, 2009. As of November 29, 2009, the Company has not received a response from the former employee. Management believes it is unlikely that the outcome of this matter will have an adverse impact on its result of operations and financial condition.

#### **ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.**

No matters were submitted to our security holders for a vote during the fourth quarter of our fiscal year ending August 31, 2009.

## **PART II**

#### **ITEM 5. MARKET FOR COMMON EQUITY AND RELATED STOCK HOLDER MATTERS AND SMALL BUSINESS ISSUER PURCHASES OF EQUITY SECURITIES.**

##### **Market Information**

Our shares are currently trading on the OTC Bulletin Board under the stock symbol DSNY. The first day on which the Company's shares were traded under the stock symbol DSNY was June 26, 2000. The high and the low trading prices for our shares for each quarter of the last two fiscal years were:

QUARTER	HIGH (\$)	LOW (\$)
1 <sup>st</sup> Quarter 2008	\$0.63	\$0.40
2 <sup>nd</sup> Quarter 2008	\$0.81	\$0.45
3 <sup>rd</sup> Quarter 2008	\$0.70	\$0.47
4 <sup>th</sup> Quarter 2008	\$0.62	\$0.35
1 <sup>st</sup> Quarter 2009	\$0.43	\$0.15
2 <sup>nd</sup> Quarter 2009	\$0.39	\$0.15
3 <sup>rd</sup> Quarter 2009	\$0.30	\$0.17
4 <sup>th</sup> Quarter 2009	\$0.35	\$0.19

The trades reflect inter-dealer prices, without retail mark-up, markdown or commission and may not represent actual transactions.

### Holders of Common Stock

As of November 26, 2009 we had 52,059,647 shares of our common stock outstanding and there were 73 registered shareholders of our common stock.

### Dividends

We have neither declared nor paid any cash dividends on our capital stock and do not anticipate paying cash dividends in the foreseeable future. Our current policy is to retain any earnings in order to finance the expansion of our operations. Our Board of Directors will determine future declaration and payment of dividends, if any, in light of the then-current conditions they deem relevant and in accordance with applicable corporate law.

### Recent Sales of Unregistered Securities

During the year ended August 31, 2009, 500,000 stock options were exercised for cash proceeds of \$100,000. 133,333 previously issued common shares were released from treasury to settle an incomplete private placement between the Company and parties involved in the August 2000 private placement.

### Purchases of Equity Securities by the Issuer and Affiliated Purchasers

We did not purchase any of our shares of common stock or other securities during the year ended August 31, 2009.

## ITEM 6. MANAGEMENT'S DISCUSSION AND ANALYSIS.

The following discussion of our results of operations and financial condition should be read together with the consolidated financial statements and related notes that are included later in this Annual Report on Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors.

### RESULTS OF OPERATIONS FOR THE YEAR ENDED AUGUST 31, 2009

#### Revenue

Revenue continued to grow during our fourth quarter and was the highest in the Company's history. Fourth quarter revenue was 77% higher than the same quarter in the prior year and more than 31% above the previous quarter in fiscal 2009. Total revenue for the quarter is \$872,569 (third quarter fiscal 2009 - \$665,829). Total revenue for the year was \$2,560,447 (2008 - \$1,578,888), an increase of approximately 62% over the fiscal 2008 year.

The growth in revenue is driven by the growth in our Play MPE® system, where access fees for the year have grown by more than 95% over the previous year. Play MPE® continues to see the same substantial revenue growth that it has seen over the previous three years.

	2009	2008	2007
Play MPE® Revenue	\$2,256,871	\$1,154,845	\$446,594
Growth over prior year	95%	159%	138%

The increases in revenue from Play MPE® have continued since we ceased pilot usage of the Play MPE® system at the beginning of the 2007 fiscal year. Play MPE® is the world leader which dominates an evolving business and leads the transformation of the way in which record labels distribute pre-release music. The music industry has begun to use Play MPE® in some markets as the primary distribution method. We have seen the transition from traditional distribution methods to Play MPE® begin gradually and the growth seen in 2008 has continued into 2009. The growth in revenue over the previous year has been realized across formats, through existing clients, and through new clients in new geographic areas and includes; a 48% increase in North American Major Record Label revenue, and a 62% increase in North American independent record label revenue. The addition of European and Australasian based revenue added a further increase of \$540,145 (24% of total 2009 MPE® revenue).

Over the course of fiscal 2009, we added Warner Music Group and Universal Music Group International to our major label agreements that already included EMI and Universal Music Group (North America). Also during the year, we expanded into Australia with commercial agreements with Warner Australia, Universal Music Group (Australia) and EMI (Australia) as well as many additional independent clients in Australia. We have several agreements with subsidiaries of Sony BMG and several additional labels operate on a pay-as-you-go basis. We began to see Play MPE® expand to include numerous European countries. While some use has been seen Asia, South America and Africa this use has had little impact to revenue to date as these revenues are typically recorded through the European parent label which is billed for that usage. We expect Play MPE® service fees to continue to grow throughout all geographic regions in 2010.

While this market development is still at an early stage, the value propositions of the Play MPE® system are both compelling and numerous and we have found we compete well against existing or traditional methods of dissemination as well as alternatives in the market. Our product provides significant advantages such as reducing the costs and lead times, and providing feedback on usage to the record labels. Further, the added benefit of being environmentally friendly appeals to all considered. We compete favorably against the distribution of MP3's by the superior sound quality of files in our system, the security, the reporting (feedback) and the network of recipients using our system. Play MPE® provides many significant advantages over competing solutions such superior sound quality, superior security, constructive business relationships, more advantageous partner relationships, a network of regular users and countless added functions of the player software and total service offering.

Our revenue model is based on a price per send. In October 2009, we reached new milestones having delivered more than 160,000 individual songs in more than 150 million transactions with over 32,000 users. We refer to a transaction as one song which is made available to one recipient. For revenue purposes, fees are based on sends as defined in standard agreements, and could include a single transaction or group of transactions. A send is a song, bundle of songs, album, box set, or video, authorized to be sent to a particular recipient. The revenue associated with each send will be on a sliding scale depending on the size of the particular send (song length for example). The system provides each label under contract to manage their own lists of recipients and directly encode and distribute their songs. This added ability provided to our clients substantially eliminates the strain on our own internal resources that can be seen in competing solutions and allows for high growth potential.

For customers where it is not appropriate to enter into a formal contract we provide access to the Play MPE® system through [www.myplaympe.com](http://www.myplaympe.com).

Real time usage statistics for Play MPE® are available at: <http://www.plaympe.com/v4/company/plaympestats.php>

The MPE® security engine also powers our online music store software suite ([www.podds.ca](http://www.podds.ca)) which provides for the remainder of MPE® revenue.

Approximately 11% of our revenues are derived from sales of our Clipstream® software which declined from the previous year by 5%. This reflects a management strategy of focusing sales, marketing and support resources on MPE® until the new automated system for Clipstream® is available. We hope to increase sales of Clipstream® licenses through our hosted solution, and other license opportunities.

Radio Destiny sales represent 1% of our total revenue.

## Operating Expenses

### Overview

As our technologies and products are developed and maintained in-house, the majority of our expenditures is on salaries and wages and associated expenses; office space, supplies and benefits. Some fluctuation is seen due to the fluctuation in exchange rates during the course of the year. As our operations are primarily conducted in Canada, the majority of our costs are incurred in Canadian dollars while the majority of our revenue is in Euros and US dollars. Thus, the results of operations are impacted to the extent they are not hedged by the rise and fall of the relative values of Canadian dollar to these currencies. During the year, the Company was able to expand into Europe and Australia, and increase revenue in the US, within current spending levels.

For the year of 2009, our total operating expenses have decreased by 37% to \$2,515,666 from \$3,983,821 and have remained steady throughout the year.

Rent expense of \$278,316 is offset by our sub-lease rental income of \$95,788 which is included in Other income in the Statement of Operations.

<b>General and administrative</b>	<b>31-Aug 2009</b>	<b>31-Aug 2008</b>	<b>\$ Change</b>	<b>% Change</b>
Wages and benefits	366,920	408,902	(41,982)	-10.3%
Rent	71,139	59,893	11,246	18.8%
Telecommunications	23,468	19,674	3,794	19.3%
Bad debt	16,474	54,094	(37,620)	-69.5%
Office and miscellaneous	77,020	193,662	(116,642)	-60.2%
Professional fees	205,024	312,468	(107,444)	-34.4%
	760,045	1,048,693	(288,648)	-27.5%

Our general and administrative expenses consist primarily of salaries and related personnel costs including overhead, professional fees, and other general office expenditures.

The decrease in professional fees is due to a reduction of volume of legal work associated with litigation, and patents and trademark applications. Office and miscellaneous costs have decreased due to the reduction in fees associated with corporate awareness and communications.

<b>Sales and marketing</b>	<b>31-Aug 2009</b>	<b>31-Aug 2008</b>	<b>\$ Change</b>	<b>% Change</b>
Wages and benefits	379,529	639,408	(259,879)	-40.6%
Rent	71,139	89,575	(18,436)	-20.6%
Telecommunications	23,468	29,424	(5,956)	-20.2%
Meals and entertainment	828	19,590	(18,762)	-95.8%
Travel	49,451	84,805	(35,354)	-41.7%
Advertising and marketing	297,510	635,220	(337,710)	-53.2%

821,925	1,498,022	(676,038)	-45.1%
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Sales and marketing expenses consist primarily of salaries and related personnel costs including overhead, sales commissions, advertising and promotional fees, and travel costs. During the prior year ended August 31, 2008, we had significantly expanded our marketing and advertising efforts for Play MPE® in its initial commercial push in the United States and the reduction seen in fiscal 2009 reflected the reduced requirements for market awareness. During the year ended August 31, 2009, Play MPE® has received significant support from the world's largest record labels and achieved symbiotic relationships with partners within the music industry resulting in cost effective and organic marketing efforts and the need for higher cost marketing efforts has decreased. We expect that the business relationships we have developed will provide catalysts to global expansion and barriers to entry with potential competitors should they arise.

<b>Research and development</b>	<b>31-Aug 2009</b>	<b>31-Aug 2008</b>	<b>\$ Change</b>	<b>% Change</b>
Wages and benefits	701,655	1,165,463	(463,808)	-39.8%
Rent	136,038	170,708	(34,670)	-20.3%
Telecommunications	44,878	56,074	(11,196)	-20.0%
Repairs and maintenance	11,144	-	11,144	-
	893,715	1,392,245	(498,530)	-35.8%

Research and development costs consist primarily of salaries and related personnel costs including overhead and consulting fees with respect to product development and deployment. The decrease is mainly due to decreased staffing and consulting requirements due to the technical maturity of the Play MPE® product.

#### **Amortization**

Amortization expense arose from fixed assets and other assets. Amortization decreased to \$39,981 for the fiscal year ended August 31, 2009 from \$44,861 for the fiscal year ended August 31, 2008, a decrease of \$4,880 or 10.88% .

#### **Other earnings and expenses**

Other income decreased to \$102,351 for the year ended August 31, 2009 from \$111,741 for the year ended August 31, 2008, a decrease of \$9,390.

Interest income decreased to \$3,107 for the year ended August 31, 2009 from \$24,959 for the year ended August 31, 2008, a decrease of \$21,852. Interest expense decreased to \$4,692 for the year ended August 31, 2009 from \$24,945 for the year ended August 31, 2008, a decrease of \$20,253. Additionally we realized a gain on settlement of debt of \$15,008 for the year ended August 31, 2009(nil - August 31, 2008).

#### **Income**

We have realized a net income of \$610,831 for the year (2008 loss of \$2,293,178). Included in net income for the year is a future income tax recovery amount of \$450,000 representing tax deductions such as operating losses that are available to offset future taxable income. The amount recognized is the tax effected amount (the gross deductions for tax multiplied by the relevant tax rate) expected to be realized during fiscal 2010.

Income before provision for income taxes is \$160,831 for year. The profit realized during the year is the result steady improvements of the Company's income and earnings before interest taxes depreciation and amortization (EBITDA).

#### **LIQUIDITY AND FINANCIAL CONDITION**

We had cash of \$253,100 as at August 31, 2009 compared to cash of \$91,369 as at August 31, 2008. We had a working capital surplus of \$658,673 as at August 31, 2009 compared to a working capital deficiency of \$192,772 as at

August 31, 2008.

## Cash Flows

Net cash generated in operating activities was \$74,257 for the year ended August 31, 2009, compared to \$1,707,169 used for the year ended August 31, 2008. The increase is mainly due to an increase in total revenue of approximately \$1,000,000 and a reduction of costs associated with our initial marketing push and associated support for the Play MPE® service.

The cash used in investing activities was \$39,997 for the year ended August 31, 2009, compared to \$43,566 for the year ended August 31, 2008.

Net cash provided by financing activities was \$117,894 for the year ended August 31, 2009 compared to \$568,048 for the year ended August 31, 2008.

Our cash from operation was able to provide sufficient funds during the fiscal year end of August 31, 2009. We are encouraged by our revenue growth in fiscal 2009 as our record label clients incorporate Play MPE® into their work flow.

## MATERIAL OFF-BALANCE SHEET ARRANGEMENTS

None.

## CRITICAL ACCOUNTING POLICIES

We prepare our consolidated financial statements in accordance with accounting principles generally accepted in the United States, and make estimates and assumptions that affect our reported amounts of assets, liabilities, revenue and expenses, and the related disclosures of contingent liabilities. We base our estimates on historical experience and other assumptions that we believe are reasonable in the circumstances. Actual results may differ from these estimates.

The following critical accounting policies affect our more significant estimates and assumptions used in preparing our consolidated financial statements.

- The consolidated financial statements have been prepared on the going concern basis, which assumes the realization of assets and liquidation of liabilities in the normal course of operations. If we were not to continue as a going concern, we would likely not be able to realize on our assets at values comparable to the carrying value or the fair value estimates reflected in the balances set out in the preparation of the consolidated financial statements. There can be no assurances that we will be successful in generating additional cash from equity or other sources to be used for operations. The consolidated financial statements do not include any adjustments relating to the recoverability of assets and classification of assets and liabilities that might be necessary should the Company be unable to continue as a going concern.
- We recognize revenue when there is persuasive evidence of an arrangement, delivery has occurred, the fee is fixed or determinable, collection is reasonably assured, and there are no substantive performance obligations remaining. Our revenue recognition policies are in conformity with AICPA's Statement of Position No. 97-2, Software Revenue Recognition, as amended (SOP 97-2). We generate revenue from software arrangements involving multiple element sales arrangements. Revenue is allocated to each element of the arrangement based on the relative fair value of the elements and is recognized as each element is delivered and we have no significant remaining performance obligations. If evidence of fair value for each element does not exist, all revenue from the arrangement is recognized over the term of the arrangement. Changes in our business priorities or model in the future could materially impact our reported revenue and cash flow. Although such changes are not currently contemplated, they could be required in response to industry or customer developments.

**RECENT ACCOUNTING PRONOUNCEMENTS**

In October 2009, the Financial Accounting Standards Board ( FASB ) issued Software (Topic 985): Certain Revenue Arrangements That Include Software Elements a consensus of the FASB Emerging Issues Task Force and Revenue Recognition (Topic 605): Multiple-Deliverable Revenue Arrangements a consensus of the FASB Emerging Issues Task

Force providing guidance on accounting for multiple-deliverable arrangements to enable vendors to account for products and services separately rather than as a combined unit. The guidance addresses how to separate deliverables and how to measure and allocate arrangement consideration to one or more units of accounting. The new guidance is effective for revenue arrangements entered into or materially modified in annual periods beginning on or after June 15, 2010. Early adoption is permitted. The Company is evaluating the potential impact, if any, of the adoption of the new guidance on its consolidated financial statements.

In June 2009, FASB issued SFAS No. 168, The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles a replacement of FASB Statement No. 162 . The FASB Accounting Standards Codification ( Codification ) will become the source of authoritative U.S. generally accepted accounting principles ( GAAP ) recognized by FASB to be applied by nongovernmental entities. Rules and interpretive releases of the Securities and Exchange Commission SEC under authority of federal securities laws are also sources of authoritative GAAP for SEC registrants. On the effective date of this statement, the Codification will supersede all then-existing non-SEC accounting and reporting standards. All other non-grandfathered non-SEC accounting literature not included in the Codification will become non-authoritative. This statement is effective for financial statements issued for interim and annual periods ending after September 30, 2009. The adoption of this statement is not expected to have a material effect on the Company s financial statements.

In May 2009, FASB issued SFAS No. 165, Subsequent Events . SFAS 165 establishes general standards of for the evaluation, recognition and disclosure of events and transactions that occur after the balance sheet date. Although there is new terminology, the standard is based on the same principles as those that currently exist in the auditing standards. The standard, which includes a new required disclosure of the date through which an entity has evaluated subsequent events, is effective for interim or annual periods ending after June 15, 2009. The adoption of SFAS 165 did not have a material effect on the Company s consolidated financial statements.

In May 2008, the FASB issued SFAS No. 162, The Hierarchy of Generally Accepted Accounting Principles . SFAS 162 identifies the sources of accounting principles and the framework for selecting the principles to be used in the preparation of financial statements of nongovernmental entities that are presented in conformity with generally accepted accounting principles in the United States. It is effective 60 days following the SEC s approval of the Public Company Accounting Oversight Board amendments to AU Section 411, The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles . The adoption of this statement is not expected to have a material effect on the Company s consolidated financial statements.

In March 2008, the Financial Accounting Standards Board ( FASB ) issued SFAS No. 161, Disclosures about Derivative Instruments and Hedging Activities an amendment to FASB Statement No. 133 . SFAS No. 161 is intended to improve financial standards for derivative instruments and hedging activities by requiring enhanced disclosures to enable investors to better understand their effects on an entity's financial position, financial performance, and cash flows. Entities are required to provide enhanced disclosures about: (a) how and why an entity uses derivative instruments; (b) how derivative instruments and related hedged items are accounted for under Statement 133 and its related interpretations; and (c) how derivative instruments and related hedged items affect an entity s financial position, financial performance, and cash flows. It is effective for financial statements issued for fiscal years beginning after November 15, 2008, with early adoption encouraged. Our company would adopt it at the fiscal year beginning September, 1 2009. The adoption of this statement is not expected to have a material effect on the Company s consolidated financial statements.

In April 2008, the FASB issued FSP FAS 142-3, Determination of the Useful Life of Intangible Assets ( FSP FAS 142-3 ). FSP FAS 142-3 amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS No. 142, Goodwill and Other Intangible Assets ( SFAS 142 ). The intent of FSP FAS 142-3 is to improve the consistency between the useful life of a recognized intangible asset under SFAS 142 and the period of expected cash flows used to measure the fair value of the asset under SFAS 141(R) and other applicable accounting literature. FSP FAS 142-3 is effective for financial

statements issued for fiscal years beginning after December 15, 2008, which for our company, would be the fiscal year beginning September 1, 2009. Our company is currently assessing the impact of FSP FAS 142-3 on its financial position and results of operations.

In December 2007, the FASB issued SFAS No. 141R, *Business Combinations*. This statement replaces SFAS 141 and defines the acquirer in a business combination as the entity that obtains control of one or more businesses in a business combination and establishes the acquisition date as the date that the acquirer achieves control. SFAS 141R requires an

acquirer to recognize the assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree at the acquisition date, measured at their fair values as of that date. SFAS 141R also requires the acquirer to recognize contingent consideration at the acquisition date, measured at its fair value at that date. This statement is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008, and earlier adoption is prohibited. Our company would adopt it at the fiscal year beginning September 1, 2009. The adoption of this statement is not expected to have a material effect on the Company's consolidated financial statements.

In December 2007, the FASB issued SFAS No. 160, Noncontrolling Interests in Consolidated Financial Statements Liabilities an Amendment of ARB No. 51 . This statement amends ARB 51 to establish accounting and reporting standards for the Noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This statement is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008, and earlier adoption is prohibited. The adoption of this statement does not have a material effect on our consolidated financial statements.

During the first quarter of 2009, the Company adopted Statement of Financial Accounting Standard No. 157, Fair Value Measurements ("SFAS 157"). SFAS 157 defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. SFAS 157 applies under other accounting pronouncements that require or permit fair value measurements, the Financial Accounting Standards Board having previously concluded in those accounting pronouncements that fair value is the relevant measurement attribute. Accordingly, SFAS 157 does not require any new fair value measurements. The adoption of this standard did not have a material impact on the Company's consolidated results of operations, cash flows or financial position.

During the first quarter of 2009, the Company adopted Statement of Financial Accounting Standard No. 159 The Fair Value Option for Financial Assets and Financial Liabilities including an amendment of FASB Statement No. 115 ( SFAS 159 ) which permits entities to choose to measure many financial instruments and certain other items at fair value. The adoption of this standard did not have a material impact on the Company's consolidated results of operations, cash flows or financial position.

## **ITEM 7. FINANCIAL STATEMENTS.**

Index to Audited Consolidated Financial Statements for the Year Ended August 31, 2009:

1. Report of Independent Registered Public Accounting Firm;
2. Consolidated Balance Sheets as at August 31, 2009 and 2008;
3. Consolidated Statement of Operations for the Years Ended August 31, 2009 and 2008;
4. Consolidated Statement of Changes in Stockholders' Equity (Deficiency) for the Years Ended August 31, 2009 and 2008;
5. Consolidated Statement of Cash Flows for the Years Ended August 31, 2009 and 2008;
6. Notes to Consolidated Financial Statements.

Consolidated Financial Statements

**Destiny Media Technologies Inc.**

August 31, 2009 and 2008

(Expressed in United States dollars)

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**Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Stockholders of  
Destiny Media Technologies Inc.

We have audited the accompanying consolidated balance sheet of Destiny Media Technologies Inc. as of August 31, 2009 and the related consolidated statement of operations, cash flows and stockholders' equity for the year ended August 31, 2009. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, the consolidated financial statements referred to above, present fairly, in all material respects, the consolidated financial position of Destiny Media Technologies Inc., as of August 31, 2009 and the results of its operations and its cash flows for the year ended August 31, 2009 in conformity with accounting principles generally accepted in the United States.

CHARTERED ACCOUNTANTS

Vancouver, Canada

November 27, 2009

**Destiny Media Technologies Inc.**

## **CONSOLIDATED BALANCE SHEETS**

As at August 31

(Expressed in United States dollars)

**2009**

2008

\$

### ***III. GENERAL AGREEMENTS***

#### **A. ORGANIC GROWTH**

If an Insured or **Investment Adviser**, while this bond is in force, adds additional **Employees** other than by consolidation or merger with, or purchase or acquisition of the assets, assets under management or liabilities of, another institution, such **Employees** will automatically be covered hereunder from the date of such addition without the requirement of notice to the Company or the payment of additional premium for the remainder of the Policy Period as set forth in ITEM 2 of the Declarations.

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**B. CONSOLIDATION - MERGER - PURCHASE OR  
ACQUISITION OF ASSETS**

If the Insured or an **Investment Adviser**, while this bond is in force, consolidates or merges with, or purchases or acquires assets, assets under management or liabilities of, or purchases or acquires more than 50% voting stock ownership of another institution (hereinafter referred to as a Transaction ), coverage under this bond for loss which:

1. has occurred or will occur in the offices or premises of such institution;
2. has been caused or will be caused by any employee or employees of such institution; or
3. has arisen or will arise out of the assets, assets under management or liabilities acquired by the Insured as a result of such Transaction,  
is provided as follows:

a. Automatic Loss Sustained Coverage

If a Transaction involves assets, assets under management and liabilities in an amount that is more than 25% of the consolidated assets of all Insureds as of the most recent calendar year-end preceding the date of the Transaction, then coverage of this bond as respects the Transaction will be afforded for a Single Loss that is both discovered and for which the acts giving rise to the loss occur in their entirety on or after the effective date of the Transaction. This coverage terminates 60 days after the Transaction date, or the termination date of the bond, whichever comes earlier, unless the Insured provides notice to the Company and obtains the written consent of the Company to extend such coverage beyond said date and, upon obtaining such consent, pays to the Company an additional premium, if required.

b. Automatic Discovery Coverage

If a Transaction involves assets, assets under management and liabilities in an amount that is 25% or less of the consolidated assets of all Insureds as of the most recent calendar year-end preceding the date of the Transaction, then coverage of this bond as respects the Transaction will be afforded for a Single Loss that is discovered on or after the effective date of the Transaction, for the remainder of the Policy Period as set forth

in ITEM 2 of the Declarations, without additional premium being charged and without notice to the Company of the Transaction.

**C. REPRESENTATION OF INSURED**

No statement made by or on behalf of the Insured, whether contained in the application or otherwise, is deemed to be a warranty of anything except that it is true to the best of the knowledge and belief of the person making the statement.

**D. JOINT INSURED**

This bond does not indemnify or hold harmless any Insured for loss sustained by an **Investment Adviser**, or by a proprietorship, partnership or corporation that is owned, controlled or operated by such Insured, and not named as an Insured hereunder, except as may be provided on a limited basis within General Agreement B., but this paragraph does not apply to loss sustained by a nominee organized by an Insured hereunder other than a holding company.

If two or more Insureds are covered under this bond, the first named Insured will act for all Insureds. Payment by the Company to the first named Insured of loss sustained by any Insured fully releases the Company on account of such loss. If the first named Insured ceases to be covered under this bond, the Insured next named will thereafter be considered the first named Insured. In the absence of an Insured

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being specifically next named, the Insured entity having the greatest consolidated assets of all remaining Insureds then becomes the first named Insured. Knowledge possessed or discovery made by any Insured or **Investment Adviser** constitutes knowledge or discovery by all Insureds for all purposes of this bond. The liability of the Company for loss or losses sustained by all Insureds will not exceed the amount for which the Company would have been liable had all such loss or losses been sustained by one Insured.

**E. COURT COSTS AND ATTORNEY S FEES - LEGAL PROCEEDINGS - ELECTION TO DEFEND**

The Company will indemnify the Insured against court costs and reasonable attorney s fees incurred and paid by the Insured in defending any suit or legal proceeding brought against the Insured to enforce the Insured s liability, or alleged liability, on account of any loss, claim or damage that, if established against the Insured, would constitute a collectible loss under this bond in excess of any Single Loss Deductible Amount, provided, however, that with respect to Insuring Agreement A this indemnity will apply only in the event that:

1. an **Employee** admits to being guilty of **Larceny or Embezzlement**;
2. an **Employee** is adjudicated to be guilty of **Larceny or Embezzlement**; or
3. in the absence of 1. or 2. above, an arbitration panel agrees, after a review of an agreed statement of facts, that an **Employee** would be found guilty of **Larceny or Embezzlement** if such **Employee** were prosecuted.

Such indemnity is in addition to the Single Loss Limit of Insurance for the applicable Insuring Agreement or Coverage.

The Insured or an **Investment Adviser** must notify the Company promptly after notice thereof, of any such suit or legal proceeding and at the request of the Company will furnish it with copies of all pleadings and other papers therein. At the Company s election the Insured will permit the Company to conduct the defense of such suit or legal proceeding, in the Insured s name, through attorneys of the Company s selection. In such event, the Insured and **Investment Adviser** will give all reasonable information and assistance, other than pecuniary, that the Company deems necessary to the defense of such suit or legal

proceeding.

If the amount of the Insured's liability or alleged liability is greater than the amount recoverable under this bond, or if a Single Loss Deductible Amount is applicable, or both, then the liability of the Company under this General Agreement E. is limited to the proportion of court costs and attorney's fees incurred and paid by the Insured or by the Company that the amount recoverable under this bond bears to the total amount of the Insured's liability or alleged liability. Any amount not recoverable by reason of the Insured's liability or alleged liability being greater than the amount recoverable under any insuring agreement of this bond, does not serve to reduce the Single Loss Deductible Amount applicable to such Insuring Agreement or Coverage.

If the Company pays court costs and attorney's fees in excess of its proportionate share of such costs and fees, the Insured will promptly reimburse the Company for such excess.

#### ***IV. DEFINITIONS***

As used in this bond:

**A. *Acceptance*** means a **Written** draft that the drawee has, by signature thereon, engaged to honor as presented.

**B. *Bond Period*** has the meaning set forth in section VI. CONDITIONS, C. BOND PERIOD.

**C. *Callback Verification*** means a verbal conversation with the purported **Customer**, using a **Pre-Determined Telephone Number**, to verify the identity of the **Customer** and the authenticity of a funds transfer request.

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**D. *Certificate of Deposit*** means a **Written** acknowledgment by an Insured or a **Financial Institution** of receipt of **Money** with an engagement to repay it.

**E. *Certificate of Origin or Title*** means a **Written** document issued by a manufacturer of personal property or a governmental agency evidencing the ownership of the personal property and by which ownership is transferred.

**F. *Certificated Security*** means a share, participation or other interest in property of, or an enterprise of, the issuer or an obligation of the issuer, that is:

1. represented by a **Written** instrument issued in bearer or registered form;
2. of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
3. either one of a class or series or by its terms divisible into a class or series of shares, participations, interests or obligations.

**G. *Computer Fraud*** means an intentional, unauthorized, and fraudulent entry of data or computer instructions directly into, or change of data or computer instructions within, a **Computer System** by a natural person or entity other than an **Employee**, including any such entry or change made via the internet or a **Network**, provided that such entry or change causes:

1. **Property** to be transferred, paid, or delivered;
2. an account of the Insured, or of its customer, to be added, deleted, debited or credited; or
3. an unauthorized or fictitious account to be debited or credited.

**H. *Computer System*** means:

1. any computer; and
2. any input, output, processing, storage or communication device, or any related network, operating system or application software, that is connected to, or used in connection with, such computer,  
that is rented by, owned by, leased by, licensed to, or under the direct operational control of, the Insured or an **Investment Adviser**.

**I. *Computer Violation*** means:

1. the introduction of a **Computer Virus** into a **Computer System**; or
2. damage to, or destruction of, computer programs, software or other electronic data stored within a **Computer System** by a natural person, who has:
  - a. gained unauthorized access to such **Computer System**; or
  - b. authorized access to such **Computer System** but uses such access to cause such damage or destruction.

**J. *Computer Virus*** means any malicious code that could destroy, alter, contaminate, or degrade the integrity, quality, or performance of:

1. electronic data used, or stored, in any **Computer System** or network; or
2. a computer network, any computer application software, or a computer operating system or related network.

**K. *Counterfeit*** means a **Written** imitation of an actual, valid, or verifiable **Original** that is intended to deceive and to be taken as the **Original**.



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**L. *Custodian*** means an institution designated by an Insured or an **Investment Adviser** to maintain possession and control of the Insured's assets.

**M. *Customer*** means, only with respect to Insuring Agreement I.2., an entity or natural person that has a **Funds Transfer Agreement** with the Insured or with an **Investment Adviser**.

**N. *Depository*** means a clearing corporation that is:

1. registered with the Securities Exchange Commission as a clearing agency under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1); or
2. a Federal Reserve Bank or other person or entity authorized to operate the federal book entry system described in the regulations of the Department of Treasury codified at 31 CFR 357, Subpart B, or book-entry systems operated pursuant to comparable regulations of other federal agencies.

**O. *Document of Title*** means a **Written** document that is a bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other **Written** document that in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers and must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession that are either identified or are fungible portions of an identified mass.

**P. *Electronic Data Processor*** means a natural person, partnership or corporation authorized in writing by the Insured or an **Investment Adviser** to perform services as a data processor of checks presented to the Insured by a customer or **Financial Institution**, but excluding any such processor who acts as a transfer agent or in any other agency capacity in issuing checks, drafts or securities for the Insured, A Federal Reserve Bank or clearinghouse will not be construed to be an **Electronic Data Processor**.

**Q. *Electronic Record*** means information that is created, generated, sent, communicated, received, or stored by electronic means, and is

retrievable in perceivable form.

**R. *Employee*** means:

1. an officer, partner or other employee of the Insured, while such person is employed by and performing services for the Insured, and whom the Insured directly compensates by wages, salaries or commissions; or for 60 days after such individual's termination of service, provided such termination is not due to employee fraud or dishonesty;
2. a guest student or intern pursuing studies or duties in any of the Insured's or an **Investment Adviser's** offices or premises covered hereunder, while such person is performing services for the Insured;
3. any attorney retained by the Insured or an **Investment Adviser**, and any employee of such attorney, but only while performing legal services for the Insured;
4. any natural person assigned to perform the usual duties of an employee within the premises of the Insured or an **Investment Adviser** and under the Insured's supervision, by contract, including such persons provided by any employment agency furnishing temporary personnel to the Insured or an **Investment Adviser** on a contingent or part-time basis, and including a natural person who is leased to the Insured or an **Investment Adviser** under a written agreement between the Insured and a labor leasing firm to perform duties related to the conduct of the Insured's business; (all such natural persons provided by a single employment agency or labor leasing firm will collectively be deemed to be one person for all the purposes of this bond, excepting, however, the last paragraph of Condition R.2.);
5. an employee of an institution merged or consolidated with the Insured prior to the effective date of this bond, or, subject to General Agreement B., after the effective date of this bond, but only with respect to acts while an employee of such institution and which acts caused said institution to sustain a loss that was not known to the Insured or to the institution at the time of the merger or consolidation;

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6. each natural person, partnership, or corporation authorized by the Insured or an **Investment Adviser** to perform services as an **Electronic Data Processor** (each such **Electronic Data Processor**, and the partners, officers and employees of such **Electronic Data Processor** will collectively be deemed to be one **Employee** for all the purposes of this bond, except with respect to Condition R.2.);
  
7. any director or trustee of an Insured, **Investment Adviser**, underwriter (distributor), transfer agent, shareholder accounting record keeper, or administrator authorized by **Written** agreement with the Insured to keep financial or other required records, but only while performing acts coming within the scope of the usual duties of an officer or employee or while acting as a member of any committee duly elected or appointed to examine or audit or have custody of or access to the **Property** of the Insured;
  
8. any natural person who is a volunteer, while such person is subject to the Insured's direction and control and is performing services for the Insured;
  
9. any natural person who is a former employee retained as a consultant, pursuant to a written agreement with the Insured, while that person is subject to the Insured's direction and control and performing services for the Insured; and
  
10. any officer, partner, or employee of:
  - a. an **Investment Adviser**;
  
  - b. an underwriter (distributor);
  
  - c. a transfer agent or shareholder accounting record-keeper; or
  
  - d. an administrator authorized by written agreement to keep financial or other required records,  
for an Insured but only while performing acts coming within the scope of the usual duties of an officer or employee of the Insured, or while acting as a member of any committee duly elected or appointed to examine or

audit or have custody of or access to the **Property** of any such Insured, provided that only employees or partners of a transfer agent, shareholder accounting record-keeper or administrator that is an affiliated person, as defined in the Investment Company Act of 1940, of an Insured or is an affiliated person of the **Investment Adviser**, underwriter or administrator of such Insured, and that is not a bank, will be included within the definition of Employee.

**Employee** also means any natural person described above while such person is on medical, military, or other leave of absence. Coverage applies to any such **Employee** while on leave, regardless of whether such person remains subject to the Insured's direction and control during the time of leave.

**Employee** does not mean any agent, broker, factor, commission merchant, consignee, independent contractor or representative or other person of the same general character not specified above.

**S. Evidence of Debt** means a **Written** instrument, including a **Negotiable Instrument**, executed, or purportedly executed, by a customer of the Insured and held by the Insured or an **Investment Adviser** that in the regular course of business is treated as evidencing the customer's debt to the Insured.

**T. Financial Institution** means:

1. a bank, trust company, savings bank, credit union, savings and loan association, or similar thrift institution; or
2. a stock brokerage firm, mutual fund, liquid assets fund or similar investment institution;

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provided that **Financial Institution** does not include any such entity, institution or organization that is an Insured or an **Investment Adviser**.

**U. Forgery** means signing the name of another person or organization with a handwritten signature directly applied to a **Written** document without authority, and with the intent to deceive.

A signature written on an electronic pad that captures the signature for purposes of creating an electronic digitized image of a handwritten signature, or a reproduction of a handwritten signature, is treated the same as a handwritten signature. Any other form of electronic signature or digital signature is not treated the same as a handwritten signature.

**Forgery** does not mean a signature that consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.

**V. Fraudulent Instruction** means an intentional, fraudulent and unauthorized instruction directed to the Insured or an **Investment Adviser**, that is:

1. transmitted via telefacsimile, and:
  - a. purports and reasonably appears to be from a **Customer**, a **Financial Institution**, or another office of the Insured;
  - b. was in fact transmitted by someone other than a **Customer**, a **Financial Institution**, or another office of the Insured; and
  - c. purports and reasonably appears to contain the handwritten signature of a person authorized to initiate such transfer that proves to have been used by an unauthorized person; or
2. transmitted verbally, via telephone, and purports to be from:
  - a. an officer, director, partner or employee of a **Customer**, who is authorized by the **Customer** to instruct the Insured or an **Investment Adviser** to make such a transfer;

- b. a **Customer** who is a natural person; or
- c. an **Employee** in another office of the Insured who was authorized by the Insured to instruct other **Employees** to transfer funds on deposit in a **Customer**'s account; and was received by an **Employee** specifically designated to receive and act upon such instructions, but was in fact transmitted by someone other than a person described in paragraph V.2.; or

- 3. transmitted via electronic mail and purports and reasonably appears to be from a **Customer** of the Insured, but was in fact transmitted by someone other than such **Customer**.

**Fraudulent Instruction** does not include any instruction that purports to be from a **Customer** unless the instruction is transmitted by a method that is authorized in the **Funds Transfer Agreement** between the Insured and the **Customer**.

**W.Funds Transfer Agreement** means an agreement, signed by the **Customer**, that:

- a. authorizes the Insured or an **Investment Adviser** to rely on instructions transmitted by either voice, telefacsimile or electronic mail to make funds transfers; and
- b. provides the Insured or an **Investment Adviser** with the names of persons authorized to initiate funds transfers.



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**X. *Guarantee*** means a **Written** undertaking obligating the signer to pay the debt of another to the Insured or its assignee or to a **Financial Institution** from which the Insured has purchased participation in the debt, if the debt is not paid in accordance with its terms.

**Y. *Instruction*** means a **Written** order to the issuer of an **Uncertificated Security** requesting that the transfer, pledge, or release from pledge of the **Uncertificated Security** specified be registered.

**Z. *Investment Adviser*** means any entity defined in §202(a)(11) of, and registered under, the Investment Advisers Act of 1940, as amended, but only while acting on behalf of the Insured.

**AA. *Item of Deposit*** means any checks or drafts deposited into the account of a customer, shareholder or subscriber.

**BB. *Larceny or Embezzlement*** means larceny or embezzlement as defined in the Investment Company Act of 1940, §37 as amended.

**CC. *Letter of Credit*** means an engagement in writing by a **Financial Institution** or other person made at the request of a customer that the **Financial Institution** or other person will honor drafts or other demands for payment upon compliance with the conditions specified in the **Letter of Credit**.

**DD. *Loan*** means all extensions of credit by the Insured and all transactions creating a creditor relationship in favor of the Insured and all transactions by which the Insured assumes an existing creditor relationship.

**EE. *Messenger*** means an **Employee** while in possession of the Insured's **Property** away from the Insured's or **Investment Adviser's** premises and any other natural person acting as custodian of the **Property** during an emergency arising from the incapacity of the original **Employee**.

**FF. *Money*** means a medium of exchange in current use authorized or adopted by a domestic or foreign government as a part of its

currency.

**GG.Negotiable Instrument** means a **Written** document, that:

1. is signed by the maker or drawer;
2. contains an unconditional promise or order to pay a sum certain in **Money** and no other promise, order, obligation or power given by the maker or drawer;
3. is payable on demand or at a definite time; and
4. is payable to order or bearer.

**Negotiable Instrument** also means a counterfeit check or **Substitute Check**.

**HH.Network** means any and all services provided by or through the facilities of any electronic or computer communication system, including Fedwire, Clearing House Interbank Payment System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), National Automated Clearing House Association (NACHA) and similar interbank payment or settlement systems, including any shared networks, internet access facilities, or other similar facilities for such systems in which the Insured participates, allowing the input, output, examination, or transfer of data or programs from one computer to a **Computer System**.

**II. Original** means the first rendering or archetype and does not include photocopies or electronic transmissions even if received and printed.

**JJ.Pre-Determined Telephone Number** means a telephone number that:

1. was provided by the **Customer** when the **Customer** opened the account with the Insured or an **Investment Adviser**;

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2. was provided in person by the **Customer** after the **Customer** opened the account with the Insured or an **Investment Adviser**, while physically present on the Insured's or **Investment Adviser's** premises and while presenting a government-issued photo identification;
3. was provided in a **Funds Transfer Agreement**;
4. replaced a telephone number previously provided for the **Customer's** account, provided that confirmation of the legitimacy of the change was achieved through direct contact with the **Customer** at a telephone number described in paragraph JJ.1., JJ.2. or JJ.3. above; or
5. replaced a telephone number previously provided for the **Customer's** account and was received by the Insured or the **Investment Adviser** at least 30 days prior to the receipt of the **Fraudulent Instruction**.

**KK. *Property*** means **Money, Certificated Securities, Uncertificated Securities, Negotiable Instruments, Certificates of Deposit, Documents of Title, Acceptances, Evidences of Debt, Security Agreements, Withdrawal Orders, Certificates of Origin or Title, Letters of Credit**, insurance policies, abstracts of title, deeds and mortgages on real estate, revenue and other stamps, tokens, unsold state lottery tickets, books of account and other records whether **Written** or recorded electronically, gems, jewelry, precious metals of all kinds and in any form, and tangible items of personal property that are not hereinbefore enumerated.

**LL. *Restoration Expenses*** means reasonable costs incurred by the Insured or an **Investment Adviser**, with the Company's prior written consent, to restore, replace or reproduce damaged or destroyed computer programs, software or other electronic data stored within a **Computer System**, or that the Insured owns, holds or is responsible for, to the condition that existed immediately preceding a **Computer Violation**; provided that if it is determined by the Insured or **Investment Adviser** that such computer programs, software or other electronic data cannot reasonably be restored, replaced or reproduced, then **Restoration Expenses** means only the reasonable costs incurred by the Insured or an **Investment Adviser**, with the Company's prior written

consent, to reach such determination.

**Restoration Expenses** do not include:

1. expenses incurred as a result of the reconstruction of computer programs, software, or other electronic data that the Insured did not have a license to use;
2. expenses incurred to restore, replace, or reproduce damaged or destroyed computer programs, software or other electronic data if such damage or destruction was caused by computer programs, software, or other electronic data that the Insured did not have a license to use;
3. expenses incurred to design, update, improve, or perfect the operation or performance of computer programs, software, or other electronic data; or
4. expenses incurred to redo the work product, research, or analysis that was the basis of, or resulted in, any computer programs, software, or other electronic data stored.

**MM. Security Agreement** means a **Written** agreement that creates an interest in personal property or fixtures and that secures payment or performance of an obligation.

**NN. Security Procedure** means the Insured's or **Investment Adviser's** established authentication process, other than voice recognition, that requires the use of algorithms or other codes, identifying words or numbers, encryption, or similar security devices or procedures. The following are not considered a **Security Procedure**:

1. a general statement that the Insured or **Investment Adviser** may establish security procedures;
2. a statement that the Insured or **Investment Adviser** may perform a callback or other security procedure; or
3. a statement that the Insured or **Investment Adviser** will only accept requests from persons named on the account.

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**OO.***Single Loss* has the meaning set forth in section VI. CONDITIONS, D. SINGLE LOSS.

**PP.***Statement of Uncertificated Security* means a **Written** statement of the issuer of an **Uncertificated Security** containing:

1. a description of the issue of which the **Uncertificated Security** is a part;
2. the number of shares or units:
  - a. transferred to the registered owner;
  - b. pledged by the registered owner to the registered pledgee;
  - c. released from pledge by the registered pledgee;
  - d. registered in the name of the registered owner on the date of the statement; or
  - e. subject to pledge on the date of the statement;
3. the name and address of the registered owner and registered pledgee;
4. a notation of any liens and restrictions of the issuer and any adverse claims to which the **Uncertificated Security** is or may be subject to, or a statement that there are none of those liens, restrictions or adverse claims; and
5. the date:
  - a. the transfer of the shares or units to the new registered owner of the shares or units was registered;

- b. the pledge of the registered pledgee was registered; or
- c. of the statement, if it is a periodic or annual statement.

**QQ. *Substitute Check*** means a paper reproduction of an **Original Written** check as defined in the Check Clearing for the 21<sup>st</sup> Century Act of 2003, as amended.

**RR. *Transportation Company*** means any organization that provides its own or leased vehicles for transportation or that provides freight forwarding or air express services.

**SS. *Uncertificated Security*** means a share, participation or other interest in property of, or an enterprise of, the issuer or an obligation of the issuer, that is:

1. not represented by a **Written** instrument issued in bearer or registered form and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;
2. of a type commonly dealt in on securities exchanges or markets, or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
3. either one of a class or series or by its terms divisible into a class or series of shares, participations, interests or obligations.

**TT. *Withdrawal Order*** means a non-negotiable **Written** instrument, other than an **Instruction**, signed by a customer of the Insured authorizing the Insured to debit the customer's account in the amount of funds stated therein.

**UU. *Written*** means expressed through letters or marks placed upon paper and visible to the eye. It does not include information contained in an **Electronic Record**, or only with respect to Insuring Agreement D, information communicated via telefacsimile.





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***V. EXCLUSIONS***

- A.** This bond does not cover loss resulting directly or indirectly from forgery or alteration, except when covered under Insuring Agreement A, D, E, F or G.
- B.** This bond does not cover loss due to war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, nationalization, requisition, or destruction of, or damage to, property by or under the order of any government, public or local authority, unless such loss occurs in transit in the circumstances recited in Insuring Agreement C and unless, when such transit was initiated, there was no knowledge of such act or condition related to any of the foregoing on the part of any person acting for the Insured in initiating such transit.
- C.** This bond does not cover loss resulting directly or indirectly from nuclear reaction, nuclear radiation, radioactive contamination, biological, or chemical contamination or to any related act or incident.
- D.** This bond does not cover loss resulting directly or indirectly from any acts of any director or trustee of the Insured other than one employed as a salaried, pensioned, or elected official or an **Employee** of the Insured, except when performing acts coming within the scope of the usual duties of an **Employee**, or while acting as a member of any committee duly elected or appointed by resolution of the board of directors or trustees of the Insured to perform specific, as distinguished from general, directorial acts on behalf of the Insured.
- E.** This bond does not cover loss resulting directly or indirectly from the complete or partial non-payment of, or default upon, any **Loan** or transaction involving the Insured as a lender or borrower, or extension of credit, including the purchase, discounting or other acquisition of false or genuine accounts, invoices, notes, agreements or **Evidences of Debt**, whether such **Loan**, transaction or extension was procured in good faith or through trick, artifice, fraud, or false pretenses, except when covered under Insuring Agreement A or E.

**F.** This bond does not cover loss caused by an **Employee**, except:

1. when covered under Insuring Agreement A.; or
2. when covered under Insuring Agreement B. or C. and resulting directly from mysterious unexplainable disappearance or misplacement, or unintentional destruction of or damage to **Property**.

**G.** This bond does not cover loss resulting directly or indirectly from the use or purported use of credit, debit, charge, access, convenience, identification cash management or other cards:

1. in obtaining credit or funds;
2. in gaining access to any automated teller machine; or
3. in gaining access to any point of sale terminal, customer-bank communication terminal, or similar electronic terminal of any electronic funds transfer system,  
whether such cards were issued, or purport to have been issued, by the Insured or by anyone other than the Insured, except when covered under Insuring Agreement A.

**H.** This bond does not cover loss through the surrender of **Property** away from an office of the Insured or an **Investment Adviser** as a result of a threat:

1. to do bodily harm to any person, except loss of **Property** in transit in the custody of a **Messenger** provided that when such transit was initiated there was no knowledge by the Insured of any such threat; or
2. to do damage to the premises or property of the Insured, except when covered under Insuring Agreement A.

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- I.** This bond does not cover loss resulting directly or indirectly from payments made or withdrawals from a customer's account involving erroneous credits to such account, unless such payments or withdrawals are physically received by such depositor or representative of such depositor who is within the office of the Insured or an **Investment Adviser** at the time of such payment or withdrawal, or except when covered under Insuring Agreement A.
- J.** This bond does not cover loss resulting directly or indirectly from payments made or withdrawals from a customer's account involving items of deposit that are not finally paid for any reason, including forgery or any other fraud, except when covered under Insuring Agreement A or J, however, this exclusion does not apply to United States Government checks or drafts that are returned to the Insured by the United States Government for any reason after the funds for said checks or drafts have been remitted to the Insured or credited to the Insured's account.
- K.** This bond does not cover loss resulting directly or indirectly from counterfeiting, except when covered under Insuring Agreement A, D, but only as respects **Negotiable Instruments** (except **Evidences of Debt** or **Substitute Checks**), E or F.
- L.** This bond does not cover loss of **Property** while:
1. in the mail;
  2. in the custody of any **Transportation Company**, unless covered under Insuring Agreement C provided however that non-negotiable instruments while in the possession and custody of any **Transportation Company** will be deemed to be covered under Insuring Agreement C; or
  3. located on the premises of any **Transportation Company**, except when covered under Insuring Agreement A.
- M.** This bond does not cover potential income, including interest and dividends not realized by the Insured.

**N.** This bond does not cover damages of any type for which the Insured is legally liable, except direct compensatory damages, but not multiples thereof, arising directly from a loss covered under this bond.

**O.** This bond does not cover any fees, costs, or other expenses incurred by the Insured in establishing the existence of or amount of loss covered under this bond except when covered under Insuring Agreement G.

**P.** This bond does not cover indirect or consequential loss of any nature.

**Q.** This bond does not cover loss resulting from any violation by the Insured or by any **Employee**:

1. of law regulating: (i) the issuance, purchase or sale of securities; (ii) securities transactions upon security exchanges or over the counter market; (iii) investment companies; or (iv) investment advisers; or

2. of any rule or regulation made pursuant to any such law, unless it is established by the Insured that the act or acts that caused said loss involved fraudulent or dishonest conduct that would have caused a covered loss to the Insured in a similar amount in the absence of such laws, rules or regulations.

**R.** This bond does not cover loss resulting directly or indirectly from the failure of a financial or depository institution, or its receiver or liquidator, to pay or deliver, on demand of the Insured or an **Investment Adviser**, funds or **Property** of the Insured held by it in any capacity, except when covered under Insuring Agreement A or B.1.a.

**S.** This bond does not cover loss involving any **Uncertificated Security** except an **Uncertificated Security** of any Federal Reserve Bank of the United States or when covered under Insuring Agreement A, E or I.



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- T.** This bond does not cover under Insuring Agreement I, in addition to all of the other exclusions, loss:
1. resulting directly or indirectly from entries or changes made by an individual authorized to have access to a **Computer System**, who acts in good faith on instructions or advices received by telegraph, teletype, human voice over a telephone, or by any other means, unless such instructions or advices are given to that individual by a software contractor (or by a partner, officer or employee thereof) authorized by the Insured or an **Investment Adviser** to design, develop, prepare, supply, service, write, or implement programs for the **Computer System**, except when covered under Insuring Agreement I.2.;
  2. caused by an employee or director of an automated clearing house (including a Federal Reserve Bank), service bureau, electronic communications systems (including Fedwire, CHIPS and SWIFT) or merchants who have contracted with the Insured to perform electronic funds transfer services; or
  3. resulting directly or indirectly from entries or changes made by an **Employee** acting in good faith on any electronic communication, unless such instructions are purportedly sent by a customer, **Financial Institution**, or automated clearing house, except when covered under Insuring Agreement I.2.
- U.** This bond does not cover loss resulting directly or indirectly from **Computer Fraud** or mechanical breakdown or failure to function properly of any **Computer System**, except when covered under Insuring Agreement A, B, or I.
- V.** This bond does not cover under Insuring Agreement I.2., in addition to all of the other exclusions, loss resulting directly or indirectly from the Insured's or an **Investment Adviser's** assumption of liability by contract unless the liability arises from a loss covered by Insuring Agreement I.2. and would be imposed on the Insured regardless of the existence of the contract.
- W.** This bond does not cover loss resulting directly or indirectly from theft, disappearance, destruction, or disclosure of intangible property or confidential information, including trade secrets, customer lists, customer's intellectual property, confidential



processing methods, formulas, patents, computer programs, negatives, drawings, manuscripts, prints and other records of a similar nature, whether such confidential information is owned by the Insured or an **Investment Adviser** or held by the Insured or **Investment Adviser** in any capacity including concurrently with another person.

- X.** This bond does not cover expenses arising from a data security breach or incident, including forensic audit expenses, fines, penalties, expenses to comply with federal and state laws, payment card industry data security standards (if applicable), or expenses related to notifying affected individuals when the affected individual is personally identifiable customer, financial or medical information was stolen, accessed, downloaded, or misappropriated while in the Insured's care, custody, or control.
- Y.** This bond does not cover under Insuring Agreement A.1., in addition to all of the other exclusions, loss resulting directly or indirectly from the alleged or actual destruction of **Property** by an **Employee**.
- Z.** This bond does not cover loss, costs, or expenses the Insured or an **Investment Adviser** agrees to incur, or incurs on behalf of another person or entity, when the Insured is not legally obligated to incur such loss, costs, or expenses under the Uniform Commercial Code or any other common, case, or tort law, statute, rule, or code anywhere in the world, including any rule or code of any clearing or similar organization; except when covered under Insuring Agreement I.2.
- AA.** This bond does not cover loss resulting directly or indirectly from the dishonest or fraudulent acts of an **Employee** as to whom the bond has terminated pursuant to Condition R. Cancellation, Termination, Change or Modification, provided, however, that this exclusion does not apply to loss of any **Property** already in transit in the custody of such **Employee** at the time the bond terminated or to loss resulting directly from dishonest or fraudulent acts occurring prior to the time the bond terminated.
- BB.** This bond does not cover loss resulting from the unauthorized online **Network, Computer System** or internet access to a customer account maintained by the Insured, through the use of fraudulently obtained customer login, identification, password, or authentication information, except where such information has been obtained directly from unauthorized fraudulent access to a secure file containing such information on a **Computer System**,

except when covered under Insuring Agreement I.2.

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**CC.** This bond does not cover damages resulting from any civil, criminal, or other legal proceeding in which the Insured or **Investment Adviser** is adjudicated to have engaged in racketeering activity, except when the Insured establishes that the act or acts giving rise to such damages were committed by an **Employee** under circumstances that result directly in a loss to the Insured covered by Insuring Agreement A. For purposes of this exclusion, racketeering activity is defined in 18 U.S.C. 1961 et seq., as amended.

**DD.** This bond does not cover any loss resulting directly or indirectly from a **Fraudulent Instruction** except when covered under Insuring Agreement I.2.

**EE.** This bond does not cover loss or expenses due to liability imposed upon the Insured as a result of the unlawful disclosure of non-public information by the Insured, an **Investment Adviser**, or any **Employee**, or as a result of any **Employee** acting upon such information, whether or not authorized.

**FF.** This bond does not cover loss resulting directly or indirectly from the input of an **Electronic Record** into a **Computer System**, either on the premises of a customer of the Insured or under the control of such a customer, by a customer or other person who had authorized access to the customer's authentication mechanism.

***VI. CONDITIONS***

**A. ADDITIONAL COMPANIES INCLUDED AS INSURED**

If more than one corporation, co-partnership, or person, or any combination of them are included as the Insured herein:

1. the total liability of the Company for loss or losses sustained by any one or more or all of them will not exceed the limit for which the Company would be liable hereunder if all such loss were sustained by any one of them;

2.

the Insured first named will be deemed authorized to make, adjust and receive and enforce payment of all claims under the bond and will be deemed to be the agent of the others for such purposes and for the giving or receiving of any notice required or permitted to be given by the terms of this bond, provided however that the Company will furnish each named Insured with a copy of the bond and with any amendment to the bond, together with a copy of each formal filing of claim by any Insured and notification of the terms of any settlement of a claim prior to the execution of such settlement;

3. the Company will not be responsible for the proper application of any payment made hereunder to the first named Insured; and
4. knowledge possessed or discovery made by any partner, officer or supervisory **Employee** of any Insured will for the purposes of Condition B., Condition H. or Condition R. of this bond constitute knowledge or discovery by all the Insureds.

#### **B. DISCOVERY**

This bond applies to loss discovered by the Insured during the **Bond Period**. Discovery occurs when an officer or director of the Insured or of an **Investment Adviser** first becomes aware of facts that would cause a reasonable person to assume that a loss of a type covered by this bond has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.

Discovery also occurs when an officer or director of the Insured or an **Investment Adviser** receives notice of an actual or potential claim in which it is alleged that the Insured is liable to a third party under circumstances that, if true, would constitute a loss under this bond.

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**C. BOND PERIOD**

**Bond Period** means the period of one year following the inception date of this bond or any annual anniversary thereof, or if the time between the inception or annual anniversary date and the expiration date of this bond is less than one year, then such lesser period.

**D. SINGLE LOSS**

**Single Loss** means all covered loss, including court costs and attorney's fees incurred by the Company under General Agreement E., resulting from:

1. any one act or series of related acts of burglary, robbery, or attempt thereat, in which no **Employee** is implicated;
2. any one act or series of related unintentional or negligent acts or omissions on the part of any person (whether an **Employee** or not) resulting in damage to or destruction or misplacement of **Property**;
3. all acts or omissions other than those specified in 1. and 2. above, caused by any person (whether an **Employee** or not) or in which such person is implicated; or
4. any one casualty or event not specified in 1., 2., or 3. above.

**E. SINGLE LOSS LIMIT OF INSURANCE**

The Company's liability for each **Single Loss** will not exceed the applicable Single Loss Limit of Insurance set forth in ITEM 4 of the Declarations. If a **Single Loss** is covered under more than one Insuring Agreement or Coverage, the Single Loss Limit of Insurance for each applicable Insuring Agreement or Coverage will apply separately to that part of the loss covered under such Insuring Agreement or Coverage, provided that the maximum payable for such **Single Loss** will not exceed the largest applicable Single Loss Limit of Insurance.

**F. DEDUCTIBLE**

The Company is liable hereunder only for the amount by which any **Single Loss** exceeds the Single Loss Deductible Amount for the Insuring

Agreement or Coverage applicable to such loss, subject to the applicable Single Loss Limit of Insurance.

If a **Single Loss** is covered under more than one Coverage within an Insuring Agreement, the Single Loss Deductible Amount set forth in ITEM 4 of the Declarations for each applicable Coverage will apply separately to the part of such **Single Loss** covered under such Coverage, however the sum of such Single Loss Deductible Amounts for such **Single Loss** will not exceed the highest applicable Single Loss Deductible Amount for any such Coverage.

The Insured will, in the time and in the manner prescribed in this bond, give the Company notice of any loss of the kind covered by the terms of this bond that exceeds 25% of the Single Loss Deductible Amount applicable to such loss, whether or not the Company is liable therefor, and upon the request of the Company will file with it a brief statement giving the particulars concerning such loss.

#### **G. NON-ACCUMULATION OF LIMITS**

The Single Loss Limit of Insurance of the Company is not cumulative in amount from **Bond Period** to **Bond Period**, regardless of the number of years this bond is in force, the number of times this bond may be renewed or replaced, or the number of premiums that are payable or paid.

#### **H. NOTICE - PROOF OF LOSS - LEGAL PROCEEDINGS**

1. At the earliest practicable moment not to exceed 90 days after discovery of loss, the Insured or **Investment Adviser** must give the Company notice thereof.

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2. Within six months after such discovery, the Insured or **Investment Adviser** must furnish to the Company proof of loss, duly sworn to, with full particulars.
3. Lost **Certificated Securities** listed in a proof of loss will be identified by certificate or bond numbers if such securities were issued therewith.
4. Legal proceedings for the recovery of any loss hereunder will not be brought prior to the expiration of 60 days after the original proof of loss is filed with the Company or after the expiration of 24 months from the discovery of such loss, except that any action or proceeding to recover hereunder on account of any judgment against the Insured in any suit mentioned in General Agreement E., or to recover attorney's fees paid in any such suit, will be brought within 24 months from the date upon which the judgment and such suit will become final.
5. If any limitation embodied in this bond is prohibited by any law controlling the construction hereof, such limitation will be deemed to be amended so as to equal the minimum period of limitation provided by such law.
6. This bond is for the use and benefit only of the Insured, and the Company will not be liable hereunder for loss sustained by anyone other than the Insured. No suit, action or legal proceedings will be brought hereunder by anyone other than the Insured.

**I. VALUATION**

1. Money

Any loss of **Money**, or loss payable in **Money**, will be paid, at the option of the Insured, in the **Money** of the country in which the loss was sustained or in the U.S. dollar equivalent thereof determined at the rate of exchange at the time of payment of such loss.

2. Securities

The Company will settle in kind its liability under this bond on account of a loss of any securities or, at the option of the Insured, will pay to the

Insured the cost of replacing such securities, determined by their highest quoted market value at any time between the business day next preceding the discovery of the loss and the day that the loss is settled. In case of a loss of subscription, conversion or redemption privileges through the misplacement or loss of securities, the amount of such loss will be the value of such privileges immediately preceding the expiration thereof. If such securities cannot be replaced or have no quoted market value, or if such privileges have no quoted market value, their value will be determined by agreement or, at the option of the Insured, arbitration.

If the applicable coverage of this bond is subject to a Single Loss Deductible Amount or is not sufficient in amount to indemnify the Insured in full for the loss of securities for which claim is made hereunder, the liability of the Company under this bond is limited to the payment for, or the duplication of, so much of such securities as has a value equal to the amount of such applicable coverage.

If, at the instance of the Company, the Insured or any customer of the Insured becomes principal upon any bonds, or gives any undertakings, required as a prerequisite to the reissuing or duplicating of any securities for the loss of which the Company is liable under this bond, the Company will become surety upon such bonds or undertakings without premium charge and will indemnify the Insured or such customer against any loss that the Insured or such customer may sustain by reason of having become principal upon any such bonds or having given any such undertakings. The amount of indemnity under this paragraph will not exceed the amount stated in ITEM 4 of the Declarations for the applicable Insuring Agreement.

### 3. Books of Account and Other Records

In case of loss of, or damage to, any books of account or other records used by the Insured in its business, the Company will be liable under this bond only if such books or records are actually reproduced and then for not more than the cost of the blank books, blank pages or other materials plus the cost of labor for the actual transcription or copying of data that have been furnished by the Insured in order to reproduce such books and other records.



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4. Property other than Money, Securities, Books of Account or Other Records

In case of loss of, or damage to, any **Property** other than **Money**, securities, books of account or other records, except damage covered under Insuring Agreement B.2. or B.3., the Company will not be liable for more than the actual cash value of such **Property**. The Company may, at its election, pay the actual cash value of, repair or replace such **Property**.

With respect to damage of **Property** covered under Insuring Agreement B.2., the Company will be liable for the full cost of repair or replacement of such **Property**, without deduction for depreciation.

Disagreement between the Company and the Insured as to the cash value, replacement value or as to the adequacy of repair or replacement will be resolved by agreement or, at the option of the Insured, arbitration.

**J. ASSIGNMENT**

In the event of payment under this bond, the Insured or **Investment Adviser** will deliver, if so requested by the Company, an assignment of such of the Insured's rights, title and interest and causes of action as it has against any person or entity to the extent of the loss payment.

**K. SUBROGATION**

In the event of payment under this bond, the Company will be subrogated to all of the Insured's rights of recovery therefor against any person or entity to the extent of such payment. If the rules of a **Depository** provide that the Insured will be assessed for a portion of any judgment (or agreed settlement) taken by the Company based upon the assignment set forth in Condition J. above and the Insured actually pays such assessment, the Company will reimburse the Insured for the amount of the assessment. However, such reimbursement will not exceed the amount of the loss payment by the Company.

**L. RECOVERIES**

1. All recoveries, whether effected by the Company or by the Insured will be applied, after first deducting the costs and expenses incurred in obtaining such recovery, in the following order of priority:

- a. first, to the Insured to reimburse the Insured for loss sustained that would have been paid under this bond but for the fact that such loss is in excess of the Single Loss Limit of Insurance, provided however, such loss does not include claim expense payments made by the Insured in excess of the Single Loss Limit of Insurance of Insuring Agreement G and such payments will not be deemed excess for purposes of establishing order of priority;
- b. second, to the Company in satisfaction of amounts paid or to be paid to the Insured in settlement of the Insured's claim;
- c. third, to the Insured in satisfaction of any Single Loss Deductible Amount; and
- d. fourth, to the Insured in satisfaction of any loss not covered under this bond.

2. Recovery on account of loss of securities as set forth in Condition I.2., or recovery from reinsurance or indemnity of the Company, will not be deemed a recovery as used herein.

In determining the amount of any loss covered under this bond, all **Money** received by the Insured from any source whatsoever in connection with any matter from which a loss has arisen, including payments and receipts of principal, interest, dividends, commission, and the like, received prior to a loss settlement under this bond, will be deducted from the amount actually paid out, advanced, withdrawn, taken or otherwise lost or stolen. The value of all property received by the Insured from any source whatever and whenever received, in connection with any matter from which a loss has arisen, will be valued as of the date received and will likewise be deducted from the claimed loss.

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**M. COOPERATION**

Upon the Company's request, and at reasonable times and places designated by the Company, the Insured will:

1. submit to examination by the Company and subscribe to the same under oath;
2. produce for the Company's examination all pertinent records; and
3. cooperate with the Company in all matters pertaining to the loss.

The Insured will execute all papers and render assistance to secure to the Company the rights and causes of action provided for herein.

The Insured will do nothing after discovery of loss to prejudice such rights or causes of action and must do everything reasonably necessary to secure those rights and causes of action.

**N. ANTI-BUNDLING**

If any Insuring Agreement requires that an enumerated type of document be altered or **Counterfeit**, or contain a signature that is a **Forgery**, or that it be obtained through trick, artifice, fraud or false pretenses, the alteration, **Counterfeit**, or signature must be on or of the enumerated document itself, not on or of some other document submitted with, accompanying, or incorporated by reference into, the enumerated document.

**O. LIMIT OF INSURANCE UNDER THIS BOND AND PRIOR INSURANCE**

With respect to any **Single Loss** that is recoverable or recovered in whole or in part under any other bonds or policies issued by the Company to the Insured or to any predecessor in interest of the Insured and canceled or terminated or allowed to expire and in which the period for discovery has not expired at the time any such loss thereunder is discovered, the total liability of the Company under this bond and under such other bonds or policies will not exceed, in the aggregate, the amount carried hereunder on such loss or the amount available to the Insured under such other bonds or policies, as limited by the terms and conditions thereof, for any such loss if the latter amount be the larger.

If the coverage of this bond supersedes in whole or in part the coverage of any other bond or policy of insurance issued by an insurer other than the Company and canceled, terminated or allowed to expire, the Company, with respect to any loss sustained prior to such cancellation, termination or expiration and discovered within the period permitted under such other bond or policy for the discovery of loss thereunder, will be liable under this bond only for that part of such loss covered by this bond as is in excess of the amount recoverable or recovered on account of such loss under such other bond or policy, anything to the contrary in such other bond or policy notwithstanding.

**P. OTHER INSURANCE OR INDEMNITY**

Coverage afforded hereunder applies only as excess over any valid and collectible insurance or indemnity obtained by:

1. the Insured;
2. anyone other than the Insured;
3. a **Transportation Company**;
4. another entity on whose premises the loss occurred or that employed the person causing the loss; or
5. the messenger conveying the **Property** involved.

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**Q. COVERED PROPERTY**

This bond applies to loss of **Property**:

1. that is owned by the Insured;
2. that is held by the Insured in any capacity; or
3. for which the Insured is responsible,  
prior to or at the time of the occurrence of the loss. This bond is for the  
sole use and benefit of the Insured.

**R. CANCELATION, TERMINATION, CHANGE, OR  
MODIFICATION**

1. Cancellation
  - a. This bond is canceled in its entirety immediately upon receipt by the Company of a **Written** notice from the Insured or an **Investment Adviser** of its desire to cancel this bond, provided the Insured or **Investment Adviser** has provided at least 60 days advance **Written** notice to the U.S. Securities and Exchange Commission (SEC). The Company will notify all other Insureds of the receipt of such a cancellation request from the Insured or **Investment Adviser**, however the cancellation will not be effective until 60 days after receipt of **Written** notice by all other Insureds.
  - b. This bond is canceled in its entirety 60 days after the receipt by each Insured and the SEC, of a **Written** notice from the Company of its desire to cancel this bond.
  - c. Coverage is canceled as to any **Employee**, or as to any partner, officer, or employee of any **Electronic Data Processor** 60 days after the receipt by the Insured and the SEC, of a written notice from the Company of its desire to cancel coverage under this bond as to such person.
2. Termination

a. This bond terminates in its entirety immediately upon the Expiration Date set forth in ITEM 2 of the Declarations.

b. This bond terminates as to any Insured:

(1) immediately upon the surrender of such Insured's charter to any governmental authority; or

(2) immediately upon the taking over of such Insured by a receiver or other liquidator or by any State or Federal official,

whichever occurs first.

Termination of the bond as to any Insured terminates liability for any loss sustained by such Insured that is discovered after the effective date of such termination.

c. Coverage terminates as to any **Employee**, or as to any partner, officer, or employee of any **Electronic Data Processor**:

(1) as soon as any Director or Officer or Insured not in collusion with such person, learns of any dishonest or fraudulent employment related act, including **Larceny or Embezzlement**; or

(2) 60 days after any director or officer of the Insured not in collusion with such person, learns of any dishonest or fraudulent non-employment related act, including **Larceny or Embezzlement**, that resulted in a loss of **Property** in excess of \$25,000,

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either of which were committed by such person at any time, whether in the employment of the Insured or otherwise, whether or not of the type covered under Insuring Agreement A, against the Insured or any other person or entity, without prejudice to the loss of any **Property** then in transit in the custody of such person.

However, termination of coverage as to any **Employee** as set forth in c.(1) and c.(2) of the preceding paragraph, will not apply to any such person provided the Insured has received and retains an original letter signed by a prior insurer reinstating coverage for such individual for whom the Insured discovered had committed a dishonest or fraudulent act prior to the effective date of this bond.

3. Change or Modification

This bond or any instrument amending or affecting this bond may not be changed or modified orally. No changes in or modification of this bond will be effective unless made by **Written** endorsement issued to form a part of this bond and including the signature of the Company's Authorized

Representative. When a bond covers only one Insured no change or modification that would adversely affect the rights of the Insured will be effective prior to 60 days after **Written** notification has been furnished to the SEC by the Insured, **Investment Adviser** or the Company. If more than one Insured is named under this bond, the Company will give **Written** notice to each Insured and to the SEC not less than 60 days prior to the effective date of any change or modification that would adversely affect the rights of such Insured.

**S. DISCOVERY PERIOD**

At any time prior to the cancelation or termination of this bond in its entirety, whether by the Insured, an **Investment Adviser**, or the Company, the Insured or an **Investment Adviser** may give to the Company written notice that it desires under this bond an additional period of 12 months within which to discover loss sustained by the Insured prior to the effective date of such cancelation or termination and will pay an additional premium therefor.

Upon receipt of such notice from the Insured or an **Investment Adviser**, the Company will give its written consent thereto; provided, that such additional period of time terminates immediately:

1. on the effective date of any other insurance obtained by the Insured, its successor in business or any other party, replacing

in whole or in part the insurance afforded by this bond, whether or not such other insurance provides coverage for loss sustained prior to its effective date; or

2. upon any takeover of the Insured's business by any state or federal official or agency, or by any receiver or liquidator acting or appointed for this purpose, whichever occurs first, and without the necessity of the Company giving notice of such termination. In the event that such additional period of time is terminated, as provided above, the Company will refund on a pro-rata basis, any unearned premium.

The right to purchase such additional period for the discovery of loss may not be exercised by any state or federal official or agency, or by any receiver or liquidator, acting or appointed to take over the Insured's business for the operation or for the liquidation thereof or for any other purpose.

The Company's total liability for any loss discovered during such additional period of time is part of, and not in addition to, the Single Loss Limit of Insurance of the **Bond Period** that terminates immediately preceding the effective date of such additional period.

#### **T. HEADINGS**

The titles of the various paragraphs of this bond and its endorsements are inserted solely for convenience or reference and are not to be deemed in any way to limit, expand or affect the provision to which they relate.



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**THIS ENDORSEMENT CHANGES THE BOND. PLEASE READ IT CAREFULLY.**

**SOCIAL ENGINEERING FRAUD INSURING AGREEMENT  
ENDORSEMENT - ENHANCED**

This endorsement changes the following:

**Investment Company Bond**

**It is agreed that:**

1. The following is added to ITEM 4. of the DECLARATIONS:

<b>Insuring Agreement</b>	<b>Single Loss Limit of Insurance</b>	<b>Single Loss Deductible Amount</b>
<b>Social Engineering Fraud</b>	\$ 250,000	\$ 10,000

2. The following is added to the DECLARATIONS:

<b>Aggregate Limit of Insurance Social Engineering Fraud Insuring Agreement</b>	<b>\$ 250,000</b>
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3. The following **INSURING AGREEMENT** is added to section **II. INSURING AGREEMENTS:**  
**SOCIAL ENGINEERING FRAUD**

Loss resulting directly from the Insured having, in good faith, caused a transfer of funds from its own account as a result of **Social Engineering Fraud.**

4. Solely with respect to the Social Engineering Fraud Insuring Agreement, part 3 of section **IV. DEFINITIONS, Employee** is deleted.

5. Solely with respect to the Social Engineering Fraud Insuring Agreement, the following replaces the last paragraph of **IV. DEFINITIONS, R. Employee**:

**DEFINITIONS, R. Employee:**

**Employee** does not mean any agent, broker, factor, commission merchant, consignee, independent contractor, attorney retained by the Insured or any employee of such attorney, or representative or other person of the same general character not specified above.

6. The following are added to section **IV. DEFINITIONS**:

**Client** means an entity or natural person for which the Insured performs services as specified in a written agreement, but only while the written agreement is in effect.

**Social Engineering Fraud** means the intentional misleading of an **Employee** through the use of an electronic, telegraphic, cable, teletype, telephone, or written instruction received by such **Employee** that:

1. purports to be from:

a. a **Vendor**;

b. a **Client**; or

c. an **Employee**,

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but was in fact transmitted by someone other than such **Vendor, Client,**  
or **Employee**, and without the knowledge or consent of such **Vendor,**  
**Client,** or **Employee**;

2. directs the **Employee** to transfer, pay, or deliver funds, or to change the method, destination or account for payments to such **Vendor, Client,** or **Employee**;
3. contains a misrepresentation of a material fact; and
4. is reasonably relied upon by the **Employee**, believing the material fact to be true.

**Vendor** means an entity or natural person that has provided goods or services to the Insured under a genuine, pre-existing written agreement.

7. The following is added to section **VI. CONDITIONS, E.**

**AGGREGATE LIMIT OF INSURANCE:**

Aggregate Limit of Insurance Social Engineering Fraud Insuring Agreement

The Company's total liability under the Social Engineering Fraud Insuring Agreement for all loss discovered during any one **Bond Period**, regardless of when paid, will not exceed the Aggregate Limit of Insurance - Social Engineering Fraud Insuring Agreement as set forth in ITEM 6 of the Declarations. Such Aggregate Limit of Insurance for a **Bond Period** will be reduced, and may be exhausted, by the amount of any payment under the Social Engineering Fraud Insuring Agreement for any loss discovered during that **Bond Period**. The reduced Aggregate Limit of Insurance will then become the Aggregate Limit of Insurance Social Engineering Fraud Insuring Agreement. Upon exhaustion of such Aggregate Limit of Insurance by any such payment:

- a. the Company will have no further liability under the Social Engineering Fraud Insuring Agreement for any loss discovered during that **Bond Period**, whether or not previously reported to the Company; and
- b. upon notice by the Company to the Insured that such Aggregate Limit of Insurance has been exhausted, the Company will have no

further obligation for payment or indemnification of court costs and attorney's fees as set forth in General Agreement G., with respect to any loss, claim or damage under the Social Engineering Fraud Insuring Agreement, whether or not the Company has elected to defend any action thereunder.

Nothing herein contained shall be held to vary, alter, waive, or extend any of the terms, conditions, exclusions, or limitations of the above-mentioned bond, except as expressly stated herein. This endorsement is part of such bond and incorporated therein.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE  
READ IT CAREFULLY.**

**NAMED INSURED ENDORSEMENT**

This endorsement changes the following:

**Investment Company Bond**

**It is agreed that:**

The following are added to ITEM 1 of the Declarations as Insureds:

Gladstone Capital Advisers, Inc.

Gladstone Business Loan, LLC

Gladstone Financial Corporation

Nothing herein contained shall be held to vary, alter, waive, or extend any of the terms, conditions, exclusions, or limitations of the above-mentioned policy, except as expressly stated herein. This endorsement is part of such policy and incorporated therein.

Issuing Company: Travelers Casualty and Surety Company of America

Policy Number: 106628403

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE  
READ IT CAREFULLY.**

**UNAUTHORIZED SIGNATURE ENDORSEMENT**

This endorsement changes the following:

**Investment Company Bond**

**It is agreed that:**

1. The following is added to section II. INSURING AGREEMENTS, D. FORGERY OR ALTERATION:

Loss resulting from the Insured accepting, paying, or cashing any **Negotiable Instrument** or **Withdrawal Order** made or drawn on a customer's account, which bears an unauthorized signature or an unauthorized endorsement, provided that the Insured has on file the signatures of all persons authorized to sign or endorse such **Negotiable Instrument** or **Withdrawal Order**.

2. The following replaces section VI. CONDITIONS, N. ANTI-BUNDLING:

**N. ANTI-BUNDLING**

If any Insuring Agreement requires that an enumerated type of document be altered or **Counterfeit**, or contain a signature or endorsement which is a **Forgery** or which is unauthorized, or that it be obtained through trick, artifice, fraud, or false pretenses, such alteration, **Counterfeit**, signature, or endorsement must be on or of the enumerated document itself, not on or of some other document submitted with, accompanying, or incorporated by reference into, the enumerated document.

Nothing herein contained shall be held to vary, alter, waive, or extend any of the terms, conditions, exclusions, or limitations of the above-mentioned policy, except as expressly stated herein. This

endorsement is part of such policy and incorporated therein.

Issuing Company: Travelers Casualty and Surety Company of America

Policy Number: 106628403

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE  
READ IT CAREFULLY.**

**NON-ACCUMULATION ENDORSEMENT**

This endorsement changes the following:

**Investment Company Bond**

**It is agreed that:**

The following is added to section VI. CONDITIONS, E. SINGLE LOSS  
LIMIT OF INSURANCE:

The liability of the Company under this bond will not be cumulative with  
amounts which may be recoverable under any one or more bonds written  
by Gladstone Management Corporation and Gladstone Investment  
Corporation.

The liability of the Company for any loss payable under this bond and  
concurrently under any other bond will not exceed, in the aggregate, the  
largest applicable Single Loss Limit of Insurance under any such bond.

Nothing herein contained shall be held to vary, alter, waive, or extend  
any of the terms, conditions, exclusions, or limitations of the  
above-mentioned policy, except as expressly stated herein. This  
endorsement is part of such policy and incorporated therein.

Issuing Company: Travelers Casualty and Surety Company of America

Policy Number: 106628403

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE  
READ IT CAREFULLY.**

**VIRGINIA CANCELATION, TERMINATION, CHANGE, OR  
MODIFICATION ENDORSEMENT**

This endorsement changes the following:

**Investment Company Bond**

**It is agreed that:**

1. The following replaces section VI. CONDITIONS, R. CANCELATION, TERMINATION, CHANGE, OR MODIFICATION, 1.b.:

- b. This bond is canceled in its entirety 60 days after the receipt by each Insured and the SEC of a **Written** notice from the Company of its desire to cancel this bond.

Notice provided for above will be sent by certified or registered mail to the parties mailing address last known to the Company. A post office certificate of mailing or certified mail receipt will be sufficient proof of mailing such notice. If this bond or an Insuring Agreement is canceled, the Company will send the Insured any premium refund due, calculated on a pro rata basis. The cancellation will be effective even if the Company has not made or offered a refund, and the Company will have the right to the premium amount for the period of time during which this bond was in effect.

2. The following replaces section VI. CONDITIONS, R. CANCELATION, TERMINATION, CHANGE, OR MODIFICATION, 2.a.:

- a. This bond terminates in its entirety immediately upon the Expiration Date set forth in ITEM 2 of the Declarations, provided **Written** notice has been given to each Insured and the SEC at least 60 days prior to such date. Notice will be sent by certified or registered mail to the parties mailing address last known to the

Company. A post office certificate of mailing or certified mail receipt will be sufficient proof of mailing of notice.

3. The following is added to section VI. CONDITIONS, R. CANCELATION, TERMINATION, CHANGE, OR MODIFICATION:

4. Nonrenewal

The Company will not be required to renew this bond upon its expiration.

If the Company elects not to renew, the Company will provide each Insured and the SEC, **Written** notice to that effect at least 60 days before the Expiration Date set forth in ITEM 2 of the Declarations. Notice of non-renewal will be sent to the each Insured and the SEC by certified or registered mail to the parties mailing address last known to the Company.

A post office certificate of mailing or certified mail receipt will be sufficient proof of mailing of notice.

Nothing herein contained shall be held to vary, alter, waive, or extend any of the terms, conditions, exclusions, or limitations of the above-mentioned policy, except as expressly stated herein. This endorsement is part of such policy and incorporated therein.

Issuing Company: Travelers Casualty and Surety Company of America

Policy Number: 106628403

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**ACTION BY WRITTEN CONSENT**

**OF THE**

**BOARD OF DIRECTORS**

**OF**

**GLADSTONE CAPITAL CORPORATION**

The undersigned, being all of the members of the Board of Directors of Gladstone Capital Corporation, a Maryland Corporation (the *Company*), pursuant to Section 2-408(c) of the Maryland General Corporation Law, hereby adopt the following resolutions by written consent dated effective as of the 25th day of November, 2017:

**WHEREAS**, the Board has reviewed the renewal of the Company's Investment Company Blanket Bond No. 106628403, the terms of which are attached hereto as *Exhibit A*, issued by Travelers Casualty and Surety Company of America (the *Fidelity Bond*);

**NOW, THEREFORE, BE IT RESOLVED**, that the members of the Board, including Paul W. Adelgren, Anthony Parker, Michela A. English, John H. Outland, Walter Wilkinson and Caren Merrick, each of whom is not an interested person under the 1940 Act, hereby acknowledge and agree that the Fidelity Bond is reasonable in form and amount; and it be

**RESOLVED FURTHER**, that the appropriate officers of the Company be, and they hereby are, authorized to enter into the Fidelity Bond for the Company; and it be

**RESOLVED, FURTHER**, that any and all previous actions taken by the Company's officers, principals or agents in connection with the Fidelity Bond be, and hereby are, approved and ratified as duly authorized actions of the Company; and it be

**RESOLVED FURTHER**, that the appropriate officers of the Company be, and each of them hereby is, authorized and directed, for and on behalf of the Company, to file the Fidelity Bond with the Securities and Exchange Commission.

**[SIGNATURE PAGE FOLLOWS]**

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**IN WITNESS WHEREOF**, the undersigned have executed this Action by  
Written Consent of the Board of Directors of Gladstone Capital  
Corporation as of the day and year first written above.

David Gladstone

Terry Lee Brubaker

Anthony Parker

Michela English

John Outland

Paul Adelgren

Walter Wilkinson

Caren Merrick

**Table of Contents**

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Paul Adelgren

Walter Wilkinson

Caren Merrick

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**EXHIBIT A**

**TERMS OF FIDELITY BOND**

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**November 13, 2017**

**GLADSTONE CAPITAL CORPORATION**

**1521 WESTBRANCH DRIVE SUITE 100**

**MC LEAN, VA 22102**

Re: Important Information about **Claims Information Line**

Dear **GLADSTONE CAPITAL CORPORATION**

Travelers Bond & Specialty Insurance is pleased to announce its **1-800-842-8496** Claims Information Line. This line is designed to provide insureds with an additional resource on how to report claims or those circumstances or events which may become claims.

Policyholders will be able to obtain assistance on the following topics from the Claims Information Line:

The information that needs to be included with the claim notice

The address, electronic mail address and/or facsimile number to which the policyholder can send claims related information

Get questions on the claim process answered  
The Declarations Page of your policy sets forth where you should report claims and claims related information. You should also review the policy's reporting requirements to be aware of how much time you have to report a claim to Travelers. The sooner Travelers is notified, the sooner we can become involved in the process and offer assistance to our policyholder. A delay in reporting may result in all or part of a matter to fall outside of the coverage provided.

The Claims Information Line should streamline the claim reporting process and allow policyholders to ask questions on what information is needed as well as other questions which will assist them in working with Travelers. While the Claims Information Line provides policyholders a valuable resource by answering questions and providing information, the line does not replace the reporting requirements contained in the Policy.

We hope this improvement to customer service is something our policyholders will find helps them understand the claim process and

provides them a resource for reporting.

Best regards,

**Richard R Allsop**

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**One Tower Square**

**Hartford, CT 06183**

11/13/2017

GLADSTONE CAPITAL CORPORATION

1521 WESTBRANCH DRIVE SUITE 100

MC LEAN, VA 22102

**RE: Risk Management PLUS+ Online® from Travelers Bond & Specialty Insurance ([www.rmplusonline.com](http://www.rmplusonline.com))**

As a Travelers Bond & Specialty Insured you receive risk management services, at no cost, to help protect you and your business.

Risk Management PLUS+ Online, is a robust website to assist you in the mitigation of risk relative to employment practices, directors and officers, fiduciary liability, cyber, crime, kidnap & ransom, and identity fraud exposures.

Highlights of Risk Management PLUS+ Online include:

Thousands of articles on a variety of risk management topics

Topical webinars and podcasts on current issues

Checklists to assist in managing risk

Web based training

Model Employee Handbook, including policies and forms for downloading or printing that reduce risks in the workplace.

The following Risk Management PLUS+ Online Registration Instructions contain easy, step-by-step instructions to register for this valuable tool. For more information, call 1-888-712-7667 and ask for your Risk Management PLUS+ Online representative. It's that simple.

Thank you for choosing Travelers Bond & Specialty Insurance for your insurance needs. Travelers is a market leader in providing management liability and crime coverages that are specifically customized for your organization.

Instructions for Registration & Orientation to Risk Management PLUS+ Online\*

*Registration for Site Administrators:*

The Site Administrator is the person in your organization who will oversee Risk Management PLUS+ Online for the organization. The Site Administrator is typically a person who leads human resources and/or financial functions or is responsible for legal matters pertaining to personnel. The Site Administrator may add other Site Administrators later to assist with their responsibilities. To register:

1. Go to [www.rmplusonline.com](http://www.rmplusonline.com).
2. In the Sign-In box, click **Register**.
3. Enter the password/passcode: <TRVP300100 for Insurance Companies> <TRVP300400 for Banks and Diversified> <TRV300300 for Asset Management>
4. Fill in the Registration Information and click **Submit**.
5. Your organization is registered, and you are registered as Site Administrator.

*Learning to Navigate the Site:*

1. Go to [www.rmplusonline.com](http://www.rmplusonline.com). On each page, you will see a box outlined in blue that contains the instructions for use of that page.
2. If you have any questions, just click on **Contact Us** on the front page. Enter your question in the form provided, and the System Administrator will get back to you quickly with the answer.
3. You can also schedule a live walk-through of the site by sending a request for a walk-through via the contact link on the front page.

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**IMPORTANT NOTICE REGARDING INDEPENDENT AGENT  
AND**

**BROKER COMPENSATION**

For information on how Travelers compensates independent agents,  
brokers, or other insurance producers, please visit this website:  
[www.travelers.com/w3c/legal/Producer\\_Compensation\\_Disclosure.html](http://www.travelers.com/w3c/legal/Producer_Compensation_Disclosure.html)

If you prefer, you can call the following toll-free number:  
1-866-904-8348. Or you can write to us at Travelers, Agency  
Compensation, One Tower Square, Hartford, CT 06183.

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**VIRGINIA POLICYHOLDERS NOTICE - IMPORTANT  
CONTACT INFORMATION**

Should you need to contact anyone about this insurance for any reason,  
please contact your agent. If you have additional questions you may  
contact Travelers at:

WASHINGTON, D.C. OFFICE

14048 Parkeast Circle

Chantilly, Virginia 20151

(800) 328-2189

Travelers.com

If you have been unable to contact or obtain satisfaction from Travelers  
or your agent, you may contact the Virginia State Corporate  
Commission's Bureau of Insurance at:

Property and Casualty Consumer Outreach

PO Box 1157

Richmond, VA 23218

Toll free: 1-877-310-6560

Richmond, VA area: 804-371-9092

Email: [PCOutreach@scc.virginia.gov](mailto:PCOutreach@scc.virginia.gov)

Written correspondence is preferable so that a record of your inquiry is  
maintained. When contacting your agent, company or the Bureau of  
Insurance, have your policy number available.

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*Investment Company Bond*

*Declarations*

**BOND NO. 106628403**

**Travelers Casualty and Surety Company of America**

**One Tower Square**

**Hartford, Connecticut 06183**

(A Stock Insurance Company, herein called the Company)

**ITEM 1 INSURED:**

GLADSTONE CAPITAL CORPORATION

Principal Address:

1521 WESTBRANCH DRIVE SUITE 100

MC LEAN, VA 22102

(hereinafter, Insured )

**ITEM 2 POLICY PERIOD:**

Inception Date: November 25, 2017  
November 25, 2018

Expiration Date:

12:01 A.M. local time as to both dates at the Principal Address  
stated in ITEM 1.

**ITEM 3 ALL NOTICES OF CLAIM OR LOSS MUST BE SENT TO THE COMPANY BY EMAIL, FACSIMILE, OR MAIL AS SET FORTH BELOW:**

Email: BSIclaims@travelers.com

Fax: (888) 460-6622

Mail: Travelers Bond & Specialty Insurance Claim

385 Washington St. Mail Code 9275-NB03F

St Paul, MN 55102

Travelers Bond & Specialty Insurance Claim telephone number: 800-842-8496

**ITEM 4** If *Not Covered* is inserted opposite any specified Insuring Agreement below, or if no amount is included in the Single Loss Limit of Insurance, such Insuring Agreement and any other reference thereto is deemed to be deleted from this bond.

<b>INSURING AGREEMENT</b>	<b>SINGLE LOSS LIMIT OF DEDUCTIBLE INSURANCEAMOUNT</b>	<b>SINGLE LOSS</b>
<b>A. FIDELITY</b>		
Coverage A.1. Larceny or Embezzlement	\$ 3,000,000	\$ 100,000
Coverage A.2. Restoration Expenses	\$ 3,000,000	\$ 100,000
<b>B. ON PREMISES</b>	\$ 3,000,000	\$ 100,000
<b>C. IN TRANSIT</b>	\$ 3,000,000	\$ 100,000
<b>D. FORGERY OR ALTERATION</b>	\$ 3,000,000	\$ 100,000

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<b>E. SECURITIES</b>	\$ 3,000,000	\$ 100,000
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<b>G. CLAIM EXPENSE</b>	\$ 100,000	\$ 5,000
<b>H. STOP PAYMENT ORDERS OR WRONGFUL DISHONOR OF CHECKS</b>	\$ 100,000	\$ 5,000
<b>I. COMPUTER SYSTEMS</b>		
Coverage I.1. Computer Fraud	\$ 3,000,000	\$ 100,000
Coverage I.2. Fraudulent Instructions	\$ 3,000,000	\$ 100,000
Coverage I.3. Restoration Expense	\$ 3,000,000	\$ 100,000
<b>J. UNCOLLECTIBLE ITEMS OF DEPOSIT</b>	\$ 100,000	\$ 5,000

**ITEM 5 PREVIOUS BONDS OR POLICIES:**

The Insured, by acceptance of this bond, gives notice to the Company canceling or terminating prior bond or policy numbers:

Not Applicable

such cancellation or termination to be effective as of the time this bond becomes effective.

**ITEM 6 DISCOVERY PERIOD:**

Additional Premium Percentage: 100% of the annualized premium

Additional Months: 12 months

(If exercised in accordance with section VI. CONDITIONS, S. DISCOVERY PERIOD)

**ITEM 7 FORMS AND ENDORSEMENTS ATTACHED AT ISSUANCE:**

IVBB-16001-0116; IVBB-19003-0116; IVBB-19004-0116;  
IVBB-19010-0116; IVBB-19014-0116; IVBB-18032-0116

**PRODUCER INFORMATION:**

AON RISK SERVS CENTRAL

200 E RANDOLPH ST 13TH FL

CHICAGO, IL 60601

Countersigned By

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IN WITNESS WHEREOF, the Company has caused this bond to be  
signed by its authorized officers.

President, Bond & Specialty  
Insurance

Corporate Secretary

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*Investment Company Bond*

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***Investment Company Bond***

***with Extended Coverages***

***I. CONSIDERATION CLAUSE***

**IN CONSIDERATION** of the payment of an agreed premium and subject to the Declarations and pursuant to all the terms, conditions, exclusions and limitations of this bond, the Company agrees to indemnify the Insured as set forth in **ITEM 1** of the Declarations (herein called Insured) for:

***II. INSURING AGREEMENTS***

**A. FIDELITY**

Coverage A.1. Larceny or Embezzlement

Loss resulting directly from **Larceny or Embezzlement** committed by an **Employee** acting alone or in collusion with others.

Coverage A.2. Restoration Expenses

**Restoration Expenses** incurred by the Insured and resulting directly from a **Computer Violation** by an **Employee**.

**B. ON PREMISES**

1. Loss of **Property** resulting directly from:

- a. robbery, burglary, mysterious unexplainable disappearance or misplacement and damage or destruction; or

- b. theft, false pretenses, or common law or statutory larceny, committed by a person physically present in an office of, or on the premises of, the Insured at the time the **Property** was surrendered,

while the **Property** is lodged or deposited within offices or premises located anywhere. The premises of a **Depository** will be deemed premises of the Insured, but solely as respects loss of **Certificated Securities**. Coverage for **Certificated Securities** held by such **Depository** is limited to the extent of the Insured's interest therein as effected by the making of appropriate entries on the books and records of such **Depository**. The Company will not be liable under Insuring Agreement B for loss in connection with the central handling of securities within the systems established and maintained by any **Depository** unless the amount of such loss exceeds the amount recoverable or recovered under any bond or policy or participant's fund insuring the **Depository** against such loss.

This bond does not afford any coverage in favor of any **Depository** or exchange or any nominee in whose name is registered any security included within the **Depository**'s systems.

2. Direct loss, through any hazard specified in Insuring Agreement B.1. of any **Property** while such **Property** is within any of the Insured's or an **Investment Adviser**'s offices and in the possession of any customer of the Insured, any representative of such customer or any **Employee** whether or not the Insured is liable for the loss thereof, and provided such loss, at the option of the Insured, is included in the Insured's proof of loss, but excluding, in any event, loss caused by such customer, any representative of such customer, or any **Employee**.



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**C. IN TRANSIT**

Loss of **Property** (occurring with or without negligence or violence) resulting directly from robbery, larceny, theft, holdup, mysterious unexplainable disappearance, misplacement, being lost or otherwise made away with, damage thereto or destruction thereof, and loss of subscription, conversion, redemption or deposit privileges through the misplacement or loss of **Property**, while the **Property** is in transit anywhere in the custody of any person or persons acting as **Messenger**, except while in the mail or with a carrier for hire other than an armored motor vehicle company, for the purpose of transportation, such transit to begin immediately upon receipt of such **Property** by the transporting person or persons, and to end immediately upon delivery thereof at destination, but only while the **Property** is being conveyed.

**D. FORGERY OR ALTERATION**

Loss resulting directly from the Insured having, in good faith, paid or transferred any **Property** in reliance on any **Written, Original**:

1. **Negotiable Instrument** (except an **Evidence of Debt**);
2. **Certificate of Deposit**;
3. **Letter of Credit**;
4. **Withdrawal Order**;
5. **Acceptance**;
6. receipt for the withdrawal of **Property**; or
7. instruction or advice directed to the Insured or an **Investment Adviser** and purportedly signed by a **Customer** of the Insured or by a **Financial Institution**, which (a) bears a handwritten signature which is a **Forgery**; or (b) is altered, but only to the extent the **Forgery** or alteration causes the loss.

Actual physical possession of the items listed in 1. through 7. above by the Insured is a condition precedent to the Insured's having relied on the

items.

**E. SECURITIES**

Loss resulting directly from the Insured having, in good faith, for its own account or for the account of others:

1. acquired, sold, delivered, or given value, extended credit or assumed liability, on the faith of any **Original Written** document that is a (an):
  - a. **Certificated Security;**
  - b. **Document of Title;**
  - c. deed, mortgage, or other instrument conveying title to, or creating or discharging a lien on, real property;
  - d. **Certificate of Origin or Title;**
  - e. **Certificate of Deposit;**
  - f. **Evidence of Debt;**
  - g. corporate, partnership, or personal **Guarantee;**
  - h. **Security Agreement;**

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i. **Instruction;**

j. **Statement of Uncertificated Security,**  
that

(1) bears a handwritten signature material to the validity or enforceability of the **Original Written** document that is a **Forgery**, but only to the extent the **Forgery** causes the loss;

(2) is altered, but only to the extent the alteration causes the loss; or

(3) is lost or stolen;

2. guaranteed in writing or witnessed any handwritten signature upon any transfer, assignment, bill of sale, power of attorney, **Guarantee**, endorsement, or any items listed in items 1.a. through 1.i. above; or

3. acquired, sold or delivered, given value, extended credit or assumed liability, on the faith of any item listed in 1.a. through 1.d. above, that is a **Counterfeit**, but only to the extent the **Counterfeit** causes the loss.

Actual physical possession, and continued actual physical possession if taken as collateral, of the items listed in 1.a. through 1.j. above by the Insured, an **Investment Adviser**, a **Custodian**, or a Federal or State chartered deposit institution of the Insured is a condition precedent to the Insured's having relied on the faith of such items. Release or return of such collateral is an acknowledgment by the Insured that it no longer relies on such collateral.

**F. COUNTERFEIT MONEY AND COUNTERFEIT MONEY ORDERS**

Loss resulting directly from the receipt by the Insured, in good faith, of any **Counterfeit Money** of the United States of America and its territories and possessions, Canada or any other country, or of **Counterfeit** money orders denominated in United States or Canadian currency.

**G. CLAIM EXPENSE**

Reasonable expenses necessarily incurred and paid by the Insured in preparing any covered claim for loss under any Insuring Agreement covered under this bond, which loss exceeds the Single Loss Deductible Amount applicable to such Insuring Agreement. Such expenses include costs incurred (including necessary wages of **Employees**) for that part of audits or examinations performed, whether or not required by State or Federal supervisory authorities and conducted either by such authorities or by independent accountants, by reason of the discovery of loss sustained by the Insured.

**H. STOP PAYMENT ORDERS OR WRONGFUL DISHONOR OF CHECKS**

Damages that the Insured becomes legally liable to pay its customers resulting directly from the Insured or an **Investment Adviser** having:

1. failed to comply with any notice of any customer of the Insured or any authorized representative of such customer to stop payment on any check or draft made or drawn by such customer; or
  
2. wrongfully dishonored or wrongfully failed to certify any check or draft made or drawn by the customer of the Insured or any authorized representative of such customer.

Notwithstanding any other provision of this bond, damages under paragraph 2. above do not include the amount of any check or draft in question, or any amounts paid to the payee, endorser, or accommodation party of such check or draft.

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**I. COMPUTER SYSTEMS**

Coverage I.1. Computer Fraud

Loss resulting directly from **Computer Fraud**.

Coverage I.2. Fraudulent Instructions

Loss resulting directly from the Insured or an **Investment Adviser** having, in good faith, caused a transfer of funds as a result of a **Fraudulent Instruction** when the Insured or an **Investment Adviser**, prior to causing the transfer of the funds, used its best efforts to verify the identity of the person transmitting the instruction; provided that if the instruction is purported to be from a **Customer**, the Insured, or an **Investment Adviser**:

- a. performed a **Callback Verification** with respect to such instruction; or
- b. followed commercially reasonable **Security Procedures** applicable to the transaction and instruction.

Such **Fraudulent Instruction** received and, if applicable, **Callback Verification** performed, must be either recorded, logged, or documented by the Insured or an **Investment Adviser**.

Coverage I.3. Restoration Expenses

**Restoration Expenses** incurred by the Insured or an **Investment Adviser** and resulting from a **Computer Violation** by someone other than an **Employee**.

**J. UNCOLLECTIBLE ITEMS OF DEPOSIT**

Loss, including dividends and interest accrued not to exceed 15% of the value of each **Item of Deposit** that is deposited, resulting directly from the Insured or **Investment Adviser** having credited an account of a customer, shareholder or subscriber on the faith of any **Items of Deposit** that prove to be uncollectible, provided that the crediting of such account causes:

1. redemptions or withdrawals to be permitted;

2. shares to be issued; or

3. dividends to be paid.

It is a condition precedent to coverage under this Insuring Agreement that the Insured or **Investment Adviser** hold funds represented in **Items of Deposit** for the maximum number of days allowable under Regulation CC before permitting any redemptions or withdrawals, or issuing any shares or paying any dividends with respect to such **Items of Deposit**.

**Items of Deposit** will not be deemed to be uncollectible until the Insured s or **Investment Adviser** s standard collection procedures have failed.

This Insuring Agreement applies to Insureds with exchange privileges if all funds in the exchange program are insured by the Company for **Uncollectible Items of Deposit**. Regardless of the number of transactions between funds, the maximum number of days allowable under Regulation CC begins from the date a deposit was first credited to any fund in the exchange program.

### ***III. GENERAL AGREEMENTS***

#### **A. ORGANIC GROWTH**

If an Insured or **Investment Adviser**, while this bond is in force, adds additional **Employees** other than by consolidation or merger with, or purchase or acquisition of the assets, assets under management or liabilities of, another institution, such **Employees** will automatically be covered hereunder from the date of such addition without the requirement of notice to the Company or the payment of additional premium for the remainder of the Policy Period as set forth in ITEM 2 of the Declarations.

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**B. CONSOLIDATION - MERGER - PURCHASE OR  
ACQUISITION OF ASSETS**

If the Insured or an **Investment Adviser**, while this bond is in force, consolidates or merges with, or purchases or acquires assets, assets under management or liabilities of, or purchases or acquires more than 50% voting stock ownership of another institution (hereinafter referred to as a Transaction ), coverage under this bond for loss which:

1. has occurred or will occur in the offices or premises of such institution;
2. has been caused or will be caused by any employee or employees of such institution; or
3. has arisen or will arise out of the assets, assets under management or liabilities acquired by the Insured as a result of such Transaction,  
is provided as follows:

a. Automatic Loss Sustained Coverage

If a Transaction involves assets, assets under management and liabilities in an amount that is more than 25% of the consolidated assets of all Insureds as of the most recent calendar year-end preceding the date of the Transaction, then coverage of this bond as respects the Transaction will be afforded for a Single Loss that is both discovered and for which the acts giving rise to the loss occur in their entirety on or after the effective date of the Transaction. This coverage terminates 60 days after the Transaction date, or the termination date of the bond, whichever comes earlier, unless the Insured provides notice to the Company and obtains the written consent of the Company to extend such coverage beyond said date and, upon obtaining such consent, pays to the Company an additional premium, if required.

b. Automatic Discovery Coverage

If a Transaction involves assets, assets under management and liabilities in an amount that is 25% or less of the consolidated assets of all Insureds as of the most recent calendar year-end preceding the date of the Transaction, then coverage of this bond as respects the Transaction will be afforded for a Single Loss that is discovered on or after the effective date of the Transaction, for the remainder of the Policy Period as set forth

in ITEM 2 of the Declarations, without additional premium being charged and without notice to the Company of the Transaction.

**C. REPRESENTATION OF INSURED**

No statement made by or on behalf of the Insured, whether contained in the application or otherwise, is deemed to be a warranty of anything except that it is true to the best of the knowledge and belief of the person making the statement.

**D. JOINT INSURED**

This bond does not indemnify or hold harmless any Insured for loss sustained by an **Investment Adviser**, or by a proprietorship, partnership or corporation that is owned, controlled or operated by such Insured, and not named as an Insured hereunder, except as may be provided on a limited basis within General Agreement B., but this paragraph does not apply to loss sustained by a nominee organized by an Insured hereunder other than a holding company.

If two or more Insureds are covered under this bond, the first named Insured will act for all Insureds. Payment by the Company to the first named Insured of loss sustained by any Insured fully releases the Company on account of such loss. If the first named Insured ceases to be covered under this bond, the Insured next named will thereafter be considered the first named Insured. In the absence of an Insured



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being specifically next named, the Insured entity having the greatest consolidated assets of all remaining Insureds then becomes the first named Insured. Knowledge possessed or discovery made by any Insured or **Investment Adviser** constitutes knowledge or discovery by all Insureds for all purposes of this bond. The liability of the Company for loss or losses sustained by all Insureds will not exceed the amount for which the Company would have been liable had all such loss or losses been sustained by one Insured.

**E. COURT COSTS AND ATTORNEY S FEES - LEGAL PROCEEDINGS - ELECTION TO DEFEND**

The Company will indemnify the Insured against court costs and reasonable attorney s fees incurred and paid by the Insured in defending any suit or legal proceeding brought against the Insured to enforce the Insured s liability, or alleged liability, on account of any loss, claim or damage that, if established against the Insured, would constitute a collectible loss under this bond in excess of any Single Loss Deductible Amount, provided, however, that with respect to Insuring Agreement A this indemnity will apply only in the event that:

1. an **Employee** admits to being guilty of **Larceny or Embezzlement**;
2. an **Employee** is adjudicated to be guilty of **Larceny or Embezzlement**; or
3. in the absence of 1. or 2. above, an arbitration panel agrees, after a review of an agreed statement of facts, that an **Employee** would be found guilty of **Larceny or Embezzlement** if such **Employee** were prosecuted.

Such indemnity is in addition to the Single Loss Limit of Insurance for the applicable Insuring Agreement or Coverage.

The Insured or an **Investment Adviser** must notify the Company promptly after notice thereof, of any such suit or legal proceeding and at the request of the Company will furnish it with copies of all pleadings and other papers therein. At the Company s election the Insured will permit the Company to conduct the defense of such suit or legal proceeding, in the Insured s name, through attorneys of the Company s selection. In such event, the Insured and **Investment Adviser** will give all reasonable information and assistance, other than pecuniary, that the Company deems necessary to the defense of such suit or legal

proceeding.

If the amount of the Insured's liability or alleged liability is greater than the amount recoverable under this bond, or if a Single Loss Deductible Amount is applicable, or both, then the liability of the Company under this General Agreement E. is limited to the proportion of court costs and attorney's fees incurred and paid by the Insured or by the Company that the amount recoverable under this bond bears to the total amount of the Insured's liability or alleged liability. Any amount not recoverable by reason of the Insured's liability or alleged liability being greater than the amount recoverable under any insuring agreement of this bond, does not serve to reduce the Single Loss Deductible Amount applicable to such Insuring Agreement or Coverage.

If the Company pays court costs and attorney's fees in excess of its proportionate share of such costs and fees, the Insured will promptly reimburse the Company for such excess.

#### ***IV. DEFINITIONS***

As used in this bond:

**A. Acceptance** means a **Written** draft that the drawee has, by signature thereon, engaged to honor as presented.

**B. Bond Period** has the meaning set forth in section VI. CONDITIONS, C. BOND PERIOD.

**C. Callback Verification** means a verbal conversation with the purported **Customer**, using a **Pre-Determined Telephone Number**, to verify the identity of the **Customer** and the authenticity of a funds transfer request.

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**D. Certificate of Deposit** means a **Written** acknowledgment by an Insured or a **Financial Institution** of receipt of **Money** with an engagement to repay it.

**E. Certificate of Origin or Title** means a **Written** document issued by a manufacturer of personal property or a governmental agency evidencing the ownership of the personal property and by which ownership is transferred.

**F. Certificated Security** means a share, participation or other interest in property of, or an enterprise of, the issuer or an obligation of the issuer, that is:

1. represented by a **Written** instrument issued in bearer or registered form;
2. of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
3. either one of a class or series or by its terms divisible into a class or series of shares, participations, interests or obligations.

**G. Computer Fraud** means an intentional, unauthorized, and fraudulent entry of data or computer instructions directly into, or change of data or computer instructions within, a **Computer System** by a natural person or entity other than an **Employee**, including any such entry or change made via the internet or a **Network**, provided that such entry or change causes:

1. **Property** to be transferred, paid, or delivered;
2. an account of the Insured, or of its customer, to be added, deleted, debited or credited; or
3. an unauthorized or fictitious account to be debited or credited.

**H. Computer System** means:

1. any computer; and
2. any input, output, processing, storage or communication device, or any related network, operating system or application software,  
that is connected to, or used in connection with, such computer, that is rented by, owned by, leased by, licensed to, or under the direct operational control of, the Insured or an **Investment Adviser**.

**I. *Computer Violation*** means:

1. the introduction of a **Computer Virus** into a **Computer System**; or
2. damage to, or destruction of, computer programs, software or other electronic data stored within a **Computer System** by a natural person, who has:
  - a. gained unauthorized access to such **Computer System**; or
  - b. authorized access to such **Computer System** but uses such access to cause such damage or destruction.

**J. *Computer Virus*** means any malicious code that could destroy, alter, contaminate, or degrade the integrity, quality, or performance of:

1. electronic data used, or stored, in any **Computer System** or network; or
2. a computer network, any computer application software, or a computer operating system or related network.

**K. *Counterfeit*** means a **Written** imitation of an actual, valid, or verifiable **Original** that is intended to deceive and to be taken as the **Original**.

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**L. *Custodian*** means an institution designated by an Insured or an **Investment Adviser** to maintain possession and control of the Insured's assets.

**M. *Customer*** means, only with respect to Insuring Agreement 1.2., an entity or natural person that has a **Funds Transfer Agreement** with the Insured or with an **Investment Adviser**.

**N. *Depository*** means a clearing corporation that is:

1. registered with the Securities Exchange Commission as a clearing agency under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1); or
2. a Federal Reserve Bank or other person or entity authorized to operate the federal book entry system described in the regulations of the Department of Treasury codified at 31 CFR 357, Subpart B, or book-entry systems operated pursuant to comparable regulations of other federal agencies.

**O. *Document of Title*** means a **Written** document that is a bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other **Written** document that in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers and must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession that are either identified or are fungible portions of an identified mass.

**P. *Electronic Data Processor*** means a natural person, partnership or corporation authorized in writing by the Insured or an **Investment Adviser** to perform services as a data processor of checks presented to the Insured by a customer or **Financial Institution**, but excluding any such processor who acts as a transfer agent or in any other agency capacity in issuing checks, drafts or securities for the Insured, A Federal Reserve Bank or clearinghouse will not be construed to be an **Electronic Data Processor**.

**Q. *Electronic Record*** means information that is created, generated, sent, communicated, received, or stored by electronic means, and is

retrievable in perceivable form.

**R. *Employee*** means:

1. an officer, partner or other employee of the Insured, while such person is employed by and performing services for the Insured, and whom the Insured directly compensates by wages, salaries or commissions; or for 60 days after such individual's termination of service, provided such termination is not due to employee fraud or dishonesty;
2. a guest student or intern pursuing studies or duties in any of the Insured's or an **Investment Adviser's** offices or premises covered hereunder, while such person is performing services for the Insured;
3. any attorney retained by the Insured or an **Investment Adviser**, and any employee of such attorney, but only while performing legal services for the Insured;
4. any natural person assigned to perform the usual duties of an employee within the premises of the Insured or an **Investment Adviser** and under the Insured's supervision, by contract, including such persons provided by any employment agency furnishing temporary personnel to the Insured or an **Investment Adviser** on a contingent or part-time basis, and including a natural person who is leased to the Insured or an **Investment Adviser** under a written agreement between the Insured and a labor leasing firm to perform duties related to the conduct of the Insured's business; (all such natural persons provided by a single employment agency or labor leasing firm will collectively be deemed to be one person for all the purposes of this bond, excepting, however, the last paragraph of Condition R.2.);
5. an employee of an institution merged or consolidated with the Insured prior to the effective date of this bond, or, subject to General Agreement B., after the effective date of this bond, but only with respect to acts while an employee of such institution and which acts caused said institution to sustain a loss that was not known to the Insured or to the institution at the time of the merger or consolidation;

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6. each natural person, partnership, or corporation authorized by the Insured or an **Investment Adviser** to perform services as an **Electronic Data Processor** (each such **Electronic Data Processor**, and the partners, officers and employees of such **Electronic Data Processor** will collectively be deemed to be one **Employee** for all the purposes of this bond, except with respect to Condition R.2.);
  
7. any director or trustee of an Insured, **Investment Adviser**, underwriter (distributor), transfer agent, shareholder accounting record keeper, or administrator authorized by **Written** agreement with the Insured to keep financial or other required records, but only while performing acts coming within the scope of the usual duties of an officer or employee or while acting as a member of any committee duly elected or appointed to examine or audit or have custody of or access to the **Property** of the Insured;
  
8. any natural person who is a volunteer, while such person is subject to the Insured's direction and control and is performing services for the Insured;
  
9. any natural person who is a former employee retained as a consultant, pursuant to a written agreement with the Insured, while that person is subject to the Insured's direction and control and performing services for the Insured; and
  
10. any officer, partner, or employee of:
  - a. an **Investment Adviser**;
  
  - b. an underwriter (distributor);
  
  - c. a transfer agent or shareholder accounting record-keeper; or
  
  - d. an administrator authorized by written agreement to keep financial or other required records,  
for an Insured but only while performing acts coming within the scope of the usual duties of an officer or employee of the Insured, or while acting as a member of any committee duly elected or appointed to examine or

audit or have custody of or access to the **Property** of any such Insured, provided that only employees or partners of a transfer agent, shareholder accounting record-keeper or administrator that is an affiliated person, as defined in the Investment Company Act of 1940, of an Insured or is an affiliated person of the **Investment Adviser**, underwriter or administrator of such Insured, and that is not a bank, will be included within the definition of Employee.

**Employee** also means any natural person described above while such person is on medical, military, or other leave of absence. Coverage applies to any such **Employee** while on leave, regardless of whether such person remains subject to the Insured's direction and control during the time of leave.

**Employee** does not mean any agent, broker, factor, commission merchant, consignee, independent contractor or representative or other person of the same general character not specified above.

**S. Evidence of Debt** means a **Written** instrument, including a **Negotiable Instrument**, executed, or purportedly executed, by a customer of the Insured and held by the Insured or an **Investment Adviser** that in the regular course of business is treated as evidencing the customer's debt to the Insured.

**T. Financial Institution** means:

1. a bank, trust company, savings bank, credit union, savings and loan association, or similar thrift institution; or
2. a stock brokerage firm, mutual fund, liquid assets fund or similar investment institution;

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provided that **Financial Institution** does not include any such entity, institution or organization that is an Insured or an **Investment Adviser**.

**U. Forgery** means signing the name of another person or organization with a handwritten signature directly applied to a **Written** document without authority, and with the intent to deceive.

A signature written on an electronic pad that captures the signature for purposes of creating an electronic digitized image of a handwritten signature, or a reproduction of a handwritten signature, is treated the same as a handwritten signature. Any other form of electronic signature or digital signature is not treated the same as a handwritten signature.

**Forgery** does not mean a signature that consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.

**V. Fraudulent Instruction** means an intentional, fraudulent and unauthorized instruction directed to the Insured or an **Investment Adviser**, that is:

1. transmitted via telefacsimile, and:
  - a. purports and reasonably appears to be from a **Customer**, a **Financial Institution**, or another office of the Insured;
  - b. was in fact transmitted by someone other than a **Customer**, a **Financial Institution**, or another office of the Insured; and
  - c. purports and reasonably appears to contain the handwritten signature of a person authorized to initiate such transfer that proves to have been used by an unauthorized person; or
2. transmitted verbally, via telephone, and purports to be from:
  - a. an officer, director, partner or employee of a **Customer**, who is authorized by the **Customer** to instruct the Insured or an **Investment Adviser** to make such a transfer;

- b. a **Customer** who is a natural person; or
  
- c. an **Employee** in another office of the Insured who was authorized by the Insured to instruct other **Employees** to transfer funds on deposit in a **Customer**'s account; and was received by an **Employee** specifically designated to receive and act upon such instructions, but was in fact transmitted by someone other than a person described in paragraph V.2.; or

- 3. transmitted via electronic mail and purports and reasonably appears to be from a **Customer** of the Insured, but was in fact transmitted by someone other than such **Customer**.

**Fraudulent Instruction** does not include any instruction that purports to be from a **Customer** unless the instruction is transmitted by a method that is authorized in the **Funds Transfer Agreement** between the Insured and the **Customer**.

**W.Funds Transfer Agreement** means an agreement, signed by the **Customer**, that:

- a. authorizes the Insured or an **Investment Adviser** to rely on instructions transmitted by either voice, telefacsimile or electronic mail to make funds transfers; and
  
- b. provides the Insured or an **Investment Adviser** with the names of persons authorized to initiate funds transfers.

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**X. *Guarantee*** means a **Written** undertaking obligating the signer to pay the debt of another to the Insured or its assignee or to a **Financial Institution** from which the Insured has purchased participation in the debt, if the debt is not paid in accordance with its terms.

**Y. *Instruction*** means a **Written** order to the issuer of an **Uncertificated Security** requesting that the transfer, pledge, or release from pledge of the **Uncertificated Security** specified be registered.

**Z. *Investment Adviser*** means any entity defined in §202(a)(11) of, and registered under, the Investment Advisers Act of 1940, as amended, but only while acting on behalf of the Insured.

**AA. *Item of Deposit*** means any checks or drafts deposited into the account of a customer, shareholder or subscriber.

**BB. *Larceny or Embezzlement*** means larceny or embezzlement as defined in the Investment Company Act of 1940, §37 as amended.

**CC. *Letter of Credit*** means an engagement in writing by a **Financial Institution** or other person made at the request of a customer that the **Financial Institution** or other person will honor drafts or other demands for payment upon compliance with the conditions specified in the **Letter of Credit**.

**DD. *Loan*** means all extensions of credit by the Insured and all transactions creating a creditor relationship in favor of the Insured and all transactions by which the Insured assumes an existing creditor relationship.

**EE. *Messenger*** means an Employee while in possession of the Insured's **Property** away from the Insured's or **Investment Adviser's** premises and any other natural person acting as custodian of the **Property** during an emergency arising from the incapacity of the original **Employee**.

**FF. *Money*** means a medium of exchange in current use authorized or adopted by a domestic or foreign government as a part of its

currency.

**GG.Negotiable Instrument** means a **Written** document, that:

1. is signed by the maker or drawer;
2. contains an unconditional promise or order to pay a sum certain in **Money** and no other promise, order, obligation or power given by the maker or drawer;
3. is payable on demand or at a definite time; and
4. is payable to order or bearer.

**Negotiable Instrument** also means a counterfeit check or **Substitute Check**.

**HH.Network** means any and all services provided by or through the facilities of any electronic or computer communication system, including Fedwire, Clearing House Interbank Payment System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), National Automated Clearing House Association (NACHA) and similar interbank payment or settlement systems, including any shared networks, internet access facilities, or other similar facilities for such systems in which the Insured participates, allowing the input, output, examination, or transfer of data or programs from one computer to a **Computer System**.

**II. Original** means the first rendering or archetype and does not include photocopies or electronic transmissions even if received and printed.

**JJ.Pre-Determined Telephone Number** means a telephone number that:

1. was provided by the **Customer** when the **Customer** opened the account with the Insured or an **Investment Adviser**;

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2. was provided in person by the **Customer** after the **Customer** opened the account with the Insured or an **Investment Adviser**, while physically present on the Insured's or **Investment Adviser's** premises and while presenting a government-issued photo identification;
3. was provided in a **Funds Transfer Agreement**;
4. replaced a telephone number previously provided for the **Customer's** account, provided that confirmation of the legitimacy of the change was achieved through direct contact with the **Customer** at a telephone number described in paragraph JJ.1., JJ.2. or JJ.3. above; or
5. replaced a telephone number previously provided for the **Customer's** account and was received by the Insured or the **Investment Adviser** at least 30 days prior to the receipt of the **Fraudulent Instruction**.

**KK. *Property*** means **Money, Certificated Securities, Uncertificated Securities, Negotiable Instruments, Certificates of Deposit, Documents of Title, Acceptances, Evidences of Debt, Security Agreements, Withdrawal Orders, Certificates of Origin or Title, Letters of Credit**, insurance policies, abstracts of title, deeds and mortgages on real estate, revenue and other stamps, tokens, unsold state lottery tickets, books of account and other records whether **Written** or recorded electronically, gems, jewelry, precious metals of all kinds and in any form, and tangible items of personal property that are not hereinbefore enumerated.

**LL. *Restoration Expenses*** means reasonable costs incurred by the Insured or an **Investment Adviser**, with the Company's prior written consent, to restore, replace or reproduce damaged or destroyed computer programs, software or other electronic data stored within a **Computer System**, or that the Insured owns, holds or is responsible for, to the condition that existed immediately preceding a **Computer Violation**; provided that if it is determined by the Insured or **Investment Adviser** that such computer programs, software or other electronic data cannot reasonably be restored, replaced or reproduced, then **Restoration Expenses** means only the reasonable costs incurred by the Insured or an **Investment Adviser**, with the Company's prior written



consent, to reach such determination.

**Restoration Expenses** do not include:

1. expenses incurred as a result of the reconstruction of computer programs, software, or other electronic data that the Insured did not have a license to use;
2. expenses incurred to restore, replace, or reproduce damaged or destroyed computer programs, software or other electronic data if such damage or destruction was caused by computer programs, software, or other electronic data that the Insured did not have a license to use;
3. expenses incurred to design, update, improve, or perfect the operation or performance of computer programs, software, or other electronic data; or
4. expenses incurred to redo the work product, research, or analysis that was the basis of, or resulted in, any computer programs, software, or other electronic data stored.

**MM. Security Agreement** means a **Written** agreement that creates an interest in personal property or fixtures and that secures payment or performance of an obligation.

**NN. Security Procedure** means the Insured's or **Investment Adviser's** established authentication process, other than voice recognition, that requires the use of algorithms or other codes, identifying words or numbers, encryption, or similar security devices or procedures. The following are not considered a **Security Procedure**:

1. a general statement that the Insured or **Investment Adviser** may establish security procedures;
2. a statement that the Insured or **Investment Adviser** may perform a callback or other security procedure; or
3. a statement that the Insured or **Investment Adviser** will only accept requests from persons named on the account.

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**OO.***Single Loss* has the meaning set forth in section VI. CONDITIONS, D. SINGLE LOSS.

**PP.***Statement of Uncertificated Security* means a **Written** statement of the issuer of an **Uncertificated Security** containing:

1. a description of the issue of which the **Uncertificated Security** is a part;
2. the number of shares or units:
  - a. transferred to the registered owner;
  - b. pledged by the registered owner to the registered pledgee;
  - c. released from pledge by the registered pledgee;
  - d. registered in the name of the registered owner on the date of the statement; or
  - e. subject to pledge on the date of the statement;
3. the name and address of the registered owner and registered pledgee;
4. a notation of any liens and restrictions of the issuer and any adverse claims to which the **Uncertificated Security** is or may be subject to, or a statement that there are none of those liens, restrictions or adverse claims; and
5. the date:
  - a. the transfer of the shares or units to the new registered owner of the shares or units was registered;

- b. the pledge of the registered pledgee was registered; or
- c. of the statement, if it is a periodic or annual statement.

**QQ. *Substitute Check*** means a paper reproduction of an **Original Written** check as defined in the Check Clearing for the 21<sup>st</sup> Century Act of 2003, as amended.

**RR. *Transportation Company*** means any organization that provides its own or leased vehicles for transportation or that provides freight forwarding or air express services.

**SS. *Uncertificated Security*** means a share, participation or other interest in property of, or an enterprise of, the issuer or an obligation of the issuer, that is:

1. not represented by a **Written** instrument issued in bearer or registered form and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;
2. of a type commonly dealt in on securities exchanges or markets, or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
3. either one of a class or series or by its terms divisible into a class or series of shares, participations, interests or obligations.

**TT. *Withdrawal Order*** means a non-negotiable **Written** instrument, other than an **Instruction**, signed by a customer of the Insured authorizing the Insured to debit the customer's account in the amount of funds stated therein.

**UU. *Written*** means expressed through letters or marks placed upon paper and visible to the eye. It does not include information contained in an **Electronic Record**, or only with respect to Insuring Agreement D, information communicated via telefacsimile.

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***V. EXCLUSIONS***

- A.** This bond does not cover loss resulting directly or indirectly from forgery or alteration, except when covered under Insuring Agreement A, D, E, F or G.
- B.** This bond does not cover loss due to war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, nationalization, requisition, or destruction of, or damage to, property by or under the order of any government, public or local authority, unless such loss occurs in transit in the circumstances recited in Insuring Agreement C and unless, when such transit was initiated, there was no knowledge of such act or condition related to any of the foregoing on the part of any person acting for the Insured in initiating such transit.
- C.** This bond does not cover loss resulting directly or indirectly from nuclear reaction, nuclear radiation, radioactive contamination, biological, or chemical contamination or to any related act or incident.
- D.** This bond does not cover loss resulting directly or indirectly from any acts of any director or trustee of the Insured other than one employed as a salaried, pensioned, or elected official or an **Employee** of the Insured, except when performing acts coming within the scope of the usual duties of an **Employee**, or while acting as a member of any committee duly elected or appointed by resolution of the board of directors or trustees of the Insured to perform specific, as distinguished from general, directorial acts on behalf of the Insured.
- E.** This bond does not cover loss resulting directly or indirectly from the complete or partial non-payment of, or default upon, any **Loan** or transaction involving the Insured as a lender or borrower, or extension of credit, including the purchase, discounting or other acquisition of false or genuine accounts, invoices, notes, agreements or **Evidences of Debt**, whether such **Loan**, transaction or extension was procured in good faith or through trick, artifice, fraud, or false pretenses, except when covered under Insuring Agreement A or E.

**F.** This bond does not cover loss caused by an **Employee**, except:

1. when covered under Insuring Agreement A.; or
2. when covered under Insuring Agreement B. or C. and resulting directly from mysterious unexplainable disappearance or misplacement, or unintentional destruction of or damage to **Property**.

**G.** This bond does not cover loss resulting directly or indirectly from the use or purported use of credit, debit, charge, access, convenience, identification cash management or other cards:

1. in obtaining credit or funds;
2. in gaining access to any automated teller machine; or
3. in gaining access to any point of sale terminal, customer-bank communication terminal, or similar electronic terminal of any electronic funds transfer system,  
whether such cards were issued, or purport to have been issued, by the Insured or by anyone other than the Insured, except when covered under Insuring Agreement A.

**H.** This bond does not cover loss through the surrender of **Property** away from an office of the Insured or an **Investment Adviser** as a result of a threat:

1. to do bodily harm to any person, except loss of **Property** in transit in the custody of a **Messenger** provided that when such transit was initiated there was no knowledge by the Insured of any such threat; or
2. to do damage to the premises or property of the Insured, except when covered under Insuring Agreement A.

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- I.** This bond does not cover loss resulting directly or indirectly from payments made or withdrawals from a customer's account involving erroneous credits to such account, unless such payments or withdrawals are physically received by such depositor or representative of such depositor who is within the office of the Insured or an **Investment Adviser** at the time of such payment or withdrawal, or except when covered under Insuring Agreement A.
- J.** This bond does not cover loss resulting directly or indirectly from payments made or withdrawals from a customer's account involving items of deposit that are not finally paid for any reason, including forgery or any other fraud, except when covered under Insuring Agreement A or J, however, this exclusion does not apply to United States Government checks or drafts that are returned to the Insured by the United States Government for any reason after the funds for said checks or drafts have been remitted to the Insured or credited to the Insured's account.
- K.** This bond does not cover loss resulting directly or indirectly from counterfeiting, except when covered under Insuring Agreement A, D, but only as respects **Negotiable Instruments** (except **Evidences of Debt** or **Substitute Checks**), E or F.
- L.** This bond does not cover loss of Property while:
1. in the mail;
  2. in the custody of any **Transportation Company**, unless covered under Insuring Agreement C provided however that non-negotiable instruments while in the possession and custody of any **Transportation Company** will be deemed to be covered under Insuring Agreement C; or
  3. located on the premises of any **Transportation Company**, except when covered under Insuring Agreement A.
- M.** This bond does not cover potential income, including interest and dividends not realized by the Insured.

**N.** This bond does not cover damages of any type for which the Insured is legally liable, except direct compensatory damages, but not multiples thereof, arising directly from a loss covered under this bond.

**O.** This bond does not cover any fees, costs, or other expenses incurred by the Insured in establishing the existence of or amount of loss covered under this bond except when covered under Insuring Agreement G.

**P.** This bond does not cover indirect or consequential loss of any nature.

**Q.** This bond does not cover loss resulting from any violation by the Insured or by any **Employee**:

1. of law regulating: (i) the issuance, purchase or sale of securities; (ii) securities transactions upon security exchanges or over the counter market; (iii) investment companies; or (iv) investment advisers; or

2. of any rule or regulation made pursuant to any such law, unless it is established by the Insured that the act or acts that caused said loss involved fraudulent or dishonest conduct that would have caused a covered loss to the Insured in a similar amount in the absence of such laws, rules or regulations.

**R.** This bond does not cover loss resulting directly or indirectly from the failure of a financial or depository institution, or its receiver or liquidator, to pay or deliver, on demand of the Insured or an **Investment Adviser**, funds or **Property** of the Insured held by it in any capacity, except when covered under Insuring Agreement A or B.1 .a.

**S.** This bond does not cover loss involving any **Uncertificated Security** except an **Uncertificated Security** of any Federal Reserve Bank of the United States or when covered under Insuring Agreement A, E or I.

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- T.** This bond does not cover under Insuring Agreement I, in addition to all of the other exclusions, loss:
1. resulting directly or indirectly from entries or changes made by an individual authorized to have access to a **Computer System**, who acts in good faith on instructions or advices received by telegraph, teletype, human voice over a telephone, or by any other means, unless such instructions or advices are given to that individual by a software contractor (or by a partner, officer or employee thereof) authorized by the Insured or an **Investment Adviser** to design, develop, prepare, supply, service, write, or implement programs for the **Computer System**, except when covered under Insuring Agreement I.2.;
  2. caused by an employee or director of an automated clearing house (including a Federal Reserve Bank), service bureau, electronic communications systems (including Fedwire, CHIPS and SWIFT) or merchants who have contracted with the Insured to perform electronic funds transfer services; or
  3. resulting directly or indirectly from entries or changes made by an **Employee** acting in good faith on any electronic communication, unless such instructions are purportedly sent by a customer, **Financial Institution**, or automated clearing house, except when covered under Insuring Agreement I.2.
- U.** This bond does not cover loss resulting directly or indirectly from **Computer Fraud** or mechanical breakdown or failure to function properly of any **Computer System**, except when covered under Insuring Agreement A, B, or I.
- V.** This bond does not cover under Insuring Agreement I.2., in addition to all of the other exclusions, loss resulting directly or indirectly from the Insured's or an **Investment Adviser's** assumption of liability by contract unless the liability arises from a loss covered by Insuring Agreement I.2. and would be imposed on the Insured regardless of the existence of the contract.
- W.** This bond does not cover loss resulting directly or indirectly from theft, disappearance, destruction, or disclosure of intangible property or confidential information, including trade secrets, customer lists, customer's intellectual property, confidential

processing methods, formulas, patents, computer programs, negatives, drawings, manuscripts, prints and other records of a similar nature, whether such confidential information is owned by the Insured or an **Investment Adviser** or held by the Insured or **Investment Adviser** in any capacity including concurrently with another person.

- X.** This bond does not cover expenses arising from a data security breach or incident, including forensic audit expenses, fines, penalties, expenses to comply with federal and state laws, payment card industry data security standards (if applicable), or expenses related to notifying affected individuals when the affected individual's personally identifiable customer, financial or medical information was stolen, accessed, downloaded, or misappropriated while in the Insured's care, custody, or control.
- Y.** This bond does not cover under Insuring Agreement A.1., in addition to all of the other exclusions, loss resulting directly or indirectly from the alleged or actual destruction of **Property** by an **Employee**.
- Z.** This bond does not cover loss, costs, or expenses the Insured or an **Investment Adviser** agrees to incur, or incurs on behalf of another person or entity, when the Insured is not legally obligated to incur such loss, costs, or expenses under the Uniform Commercial Code or any other common, case, or tort law, statute, rule, or code anywhere in the world, including any rule or code of any clearing or similar organization; except when covered under Insuring Agreement I.2.
- AA.** This bond does not cover loss resulting directly or indirectly from the dishonest or fraudulent acts of an **Employee** as to whom the bond has terminated pursuant to Condition R. Cancellation, Termination, Change or Modification, provided, however, that this exclusion does not apply to loss of any **Property** already in transit in the custody of such **Employee** at the time the bond terminated or to loss resulting directly from dishonest or fraudulent acts occurring prior to the time the bond terminated.
- BB.** This bond does not cover loss resulting from the unauthorized online **Network, Computer System** or internet access to a customer account maintained by the Insured, through the use of fraudulently obtained customer login, identification, password, or authentication information, except where such information has been obtained directly from unauthorized fraudulent access to a secure file containing such information on a **Computer System**,

except when covered under Insuring Agreement I.2.

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**CC.** This bond does not cover damages resulting from any civil, criminal, or other legal proceeding in which the Insured or **Investment Adviser** is adjudicated to have engaged in racketeering activity, except when the Insured establishes that the act or acts giving rise to such damages were committed by an **Employee** under circumstances that result directly in a loss to the Insured covered by Insuring Agreement A. For purposes of this exclusion, racketeering activity is defined in 18 U.S.C. 1961 et seq., as amended.

**DD.** This bond does not cover any loss resulting directly or indirectly from a **Fraudulent Instruction** except when covered under Insuring Agreement I.2.

**EE.** This bond does not cover loss or expenses due to liability imposed upon the Insured as a result of the unlawful disclosure of non-public information by the Insured, an **Investment Adviser**, or any **Employee**, or as a result of any Employee acting upon such information, whether or not authorized.

**FF.** This bond does not cover loss resulting directly or indirectly from the input of an **Electronic Record** into a **Computer System**, either on the premises of a customer of the Insured or under the control of such a customer, by a customer or other person who had authorized access to the customer's authentication mechanism.

***VI. CONDITIONS***

**A. ADDITIONAL COMPANIES INCLUDED AS INSURED**

If more than one corporation, co-partnership, or person, or any combination of them are included as the Insured herein:

1. the total liability of the Company for loss or losses sustained by any one or more or all of them will not exceed the limit for which the Company would be liable hereunder if all such loss were sustained by any one of them;

2.

the Insured first named will be deemed authorized to make, adjust and receive and enforce payment of all claims under the bond and will be deemed to be the agent of the others for such purposes and for the giving or receiving of any notice required or permitted to be given by the terms of this bond, provided however that the Company will furnish each named Insured with a copy of the bond and with any amendment to the bond, together with a copy of each formal filing of claim by any Insured and notification of the terms of any settlement of a claim prior to the execution of such settlement;

3. the Company will not be responsible for the proper application of any payment made hereunder to the first named Insured; and
4. knowledge possessed or discovery made by any partner, officer or supervisory **Employee** of any Insured will for the purposes of Condition B., Condition H. or Condition R. of this bond constitute knowledge or discovery by all the Insureds.

#### **B. DISCOVERY**

This bond applies to loss discovered by the Insured during the **Bond Period**. Discovery occurs when an officer or director of the Insured or of an **Investment Adviser** first becomes aware of facts that would cause a reasonable person to assume that a loss of a type covered by this bond has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.

Discovery also occurs when an officer or director of the Insured or an **Investment Adviser** receives notice of an actual or potential claim in which it is alleged that the Insured is liable to a third party under circumstances that, if true, would constitute a loss under this bond.



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**C. BOND PERIOD**

**Bond Period** means the period of one year following the inception date of this bond or any annual anniversary thereof, or if the time between the inception or annual anniversary date and the expiration date of this bond is less than one year, then such lesser period.

**D. SINGLE LOSS**

**Single Loss** means all covered loss, including court costs and attorney's fees incurred by the Company under General Agreement E., resulting from:

1. any one act or series of related acts of burglary, robbery, or attempt thereat, in which no **Employee** is implicated;
2. any one act or series of related unintentional or negligent acts or omissions on the part of any person (whether an **Employee** or not) resulting in damage to or destruction or misplacement of **Property**;
3. all acts or omissions other than those specified in 1. and 2. above, caused by any person (whether an **Employee** or not) or in which such person is implicated; or
4. any one casualty or event not specified in 1., 2., or 3. above.

**E. SINGLE LOSS LIMIT OF INSURANCE**

The Company's liability for each **Single Loss** will not exceed the applicable Single Loss Limit of Insurance set forth in ITEM 4 of the Declarations. If a **Single Loss** is covered under more than one Insuring Agreement or Coverage, the Single Loss Limit of Insurance for each applicable Insuring Agreement or Coverage will apply separately to that part of the loss covered under such Insuring Agreement or Coverage, provided that the maximum payable for such **Single Loss** will not exceed the largest applicable Single Loss Limit of Insurance.

**F. DEDUCTIBLE**

The Company is liable hereunder only for the amount by which any **Single Loss** exceeds the Single Loss Deductible Amount for the Insuring

Agreement or Coverage applicable to such loss, subject to the applicable Single Loss Limit of Insurance.

If a **Single Loss** is covered under more than one Coverage within an Insuring Agreement, the Single Loss Deductible Amount set forth in ITEM 4 of the Declarations for each applicable Coverage will apply separately to the part of such **Single Loss** covered under such Coverage, however the sum of such Single Loss Deductible Amounts for such **Single Loss** will not exceed the highest applicable Single Loss Deductible Amount for any such Coverage.

The Insured will, in the time and in the manner prescribed in this bond, give the Company notice of any loss of the kind covered by the terms of this bond that exceeds 25% of the Single Loss Deductible Amount applicable to such loss, whether or not the Company is liable therefor, and upon the request of the Company will file with it a brief statement giving the particulars concerning such loss.

#### **G. NON-ACCUMULATION OF LIMITS**

The Single Loss Limit of Insurance of the Company is not cumulative in amount from **Bond Period** to **Bond Period**, regardless of the number of years this bond is in force, the number of times this bond may be renewed or replaced, or the number of premiums that are payable or paid.

#### **H. NOTICE - PROOF OF LOSS - LEGAL PROCEEDINGS**

1. At the earliest practicable moment not to exceed 90 days after discovery of loss, the Insured or **Investment Adviser** must give the Company notice thereof.

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2. Within six months after such discovery, the Insured or **Investment Adviser** must furnish to the Company proof of loss, duly sworn to, with full particulars.
3. Lost **Certificated Securities** listed in a proof of loss will be identified by certificate or bond numbers if such securities were issued therewith.
4. Legal proceedings for the recovery of any loss hereunder will not be brought prior to the expiration of 60 days after the original proof of loss is filed with the Company or after the expiration of 24 months from the discovery of such loss, except that any action or proceeding to recover hereunder on account of any judgment against the Insured in any suit mentioned in General Agreement E., or to recover attorney's fees paid in any such suit, will be brought within 24 months from the date upon which the judgment and such suit will become final.
5. If any limitation embodied in this bond is prohibited by any law controlling the construction hereof, such limitation will be deemed to be amended so as to equal the minimum period of limitation provided by such law.
6. This bond is for the use and benefit only of the Insured, and the Company will not be liable hereunder for loss sustained by anyone other than the Insured. No suit, action or legal proceedings will be brought hereunder by anyone other than the Insured.

**I. VALUATION**

1. Money  
Any loss of **Money**, or loss payable in **Money**, will be paid, at the option of the Insured, in the **Money** of the country in which the loss was sustained or in the U.S. dollar equivalent thereof determined at the rate of exchange at the time of payment of such loss.
2. Securities  
The Company will settle in kind its liability under this bond on account of a loss of any securities or, at the option of the Insured, will pay to the

Insured the cost of replacing such securities, determined by their highest quoted market value at any time between the business day next preceding the discovery of the loss and the day that the loss is settled. In case of a loss of subscription, conversion or redemption privileges through the misplacement or loss of securities, the amount of such loss will be the value of such privileges immediately preceding the expiration thereof. If such securities cannot be replaced or have no quoted market value, or if such privileges have no quoted market value, their value will be determined by agreement or, at the option of the Insured, arbitration.

If the applicable coverage of this bond is subject to a Single Loss Deductible Amount or is not sufficient in amount to indemnify the Insured in full for the loss of securities for which claim is made hereunder, the liability of the Company under this bond is limited to the payment for, or the duplication of, so much of such securities as has a value equal to the amount of such applicable coverage.

If, at the instance of the Company, the Insured or any customer of the Insured becomes principal upon any bonds, or gives any undertakings, required as a prerequisite to the reissuing or duplicating of any securities for the loss of which the Company is liable under this bond, the Company will become surety upon such bonds or undertakings without premium charge and will indemnify the Insured or such customer against any loss that the Insured or such customer may sustain by reason of having become principal upon any such bonds or having given any such undertakings. The amount of indemnity under this paragraph will not exceed the amount stated in ITEM 4 of the Declarations for the applicable Insuring Agreement.

### 3. Books of Account and Other Records

In case of loss of, or damage to, any books of account or other records used by the Insured in its business, the Company will be liable under this bond only if such books or records are actually reproduced and then for not more than the cost of the blank books, blank pages or other materials plus the cost of labor for the actual transcription or copying of data that have been furnished by the Insured in order to reproduce such books and other records.

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4. Property other than Money, Securities, Books of Account or Other Records

In case of loss of, or damage to, any **Property** other than **Money**, securities, books of account or other records, except damage covered under Insuring Agreement B.2. or B.3., the Company will not be liable for more than the actual cash value of such **Property**. The Company may, at its election, pay the actual cash value of, repair or replace such **Property**.

With respect to damage of **Property** covered under Insuring Agreement B.2., the Company will be liable for the full cost of repair or replacement of such **Property**, without deduction for depreciation.

Disagreement between the Company and the Insured as to the cash value, replacement value or as to the adequacy of repair or replacement will be resolved by agreement or, at the option of the Insured, arbitration.

**J. ASSIGNMENT**

In the event of payment under this bond, the Insured or **Investment Adviser** will deliver, if so requested by the Company, an assignment of such of the Insured's rights, title and interest and causes of action as it has against any person or entity to the extent of the loss payment.

**K. SUBROGATION**

In the event of payment under this bond, the Company will be subrogated to all of the Insured's rights of recovery therefor against any person or entity to the extent of such payment. If the rules of a **Depository** provide that the Insured will be assessed for a portion of any judgment (or agreed settlement) taken by the Company based upon the assignment set forth in Condition J. above and the Insured actually pays such assessment, the Company will reimburse the Insured for the amount of the assessment. However, such reimbursement will not exceed the amount of the loss payment by the Company.

**L. RECOVERIES**

1. All recoveries, whether effected by the Company or by the Insured will be applied, after first deducting the costs and expenses incurred in obtaining such recovery, in the following order of priority:

- a. first, to the Insured to reimburse the Insured for loss sustained that would have been paid under this bond but for the fact that such loss is in excess of the Single Loss Limit of Insurance, provided however, such loss does not include claim expense payments made by the Insured in excess of the Single Loss Limit of Insurance of Insuring Agreement G and such payments will not be deemed excess for purposes of establishing order of priority;
- b. second, to the Company in satisfaction of amounts paid or to be paid to the Insured in settlement of the Insured's claim;
- c. third, to the Insured in satisfaction of any Single Loss Deductible Amount; and
- d. fourth, to the Insured in satisfaction of any loss not covered under this bond.

2. Recovery on account of loss of securities as set forth in Condition I.2., or recovery from reinsurance or indemnity of the Company, will not be deemed a recovery as used herein.

In determining the amount of any loss covered under this bond, all **Money** received by the Insured from any source whatsoever in connection with any matter from which a loss has arisen, including payments and receipts of principal, interest, dividends, commission, and the like, received prior to a loss settlement under this bond, will be deducted from the amount actually paid out, advanced, withdrawn, taken or otherwise lost or stolen. The value of all property received by the Insured from any source whatever and whenever received, in connection with any matter from which a loss has arisen, will be valued as of the date received and will likewise be deducted from the claimed loss.

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**M. COOPERATION**

Upon the Company's request, and at reasonable times and places designated by the Company, the Insured will:

1. submit to examination by the Company and subscribe to the same under oath;
2. produce for the Company's examination all pertinent records; and
3. cooperate with the Company in all matters pertaining to the loss.

The Insured will execute all papers and render assistance to secure to the Company the rights and causes of action provided for herein.

The Insured will do nothing after discovery of loss to prejudice such rights or causes of action and must do everything reasonably necessary to secure those rights and causes of action.

**N. ANTI-BUNDLING**

If any Insuring Agreement requires that an enumerated type of document be altered or **Counterfeit**, or contain a signature that is a **Forgery**, or that it be obtained through trick, artifice, fraud or false pretenses, the alteration, **Counterfeit**, or signature must be on or of the enumerated document itself, not on or of some other document submitted with, accompanying, or incorporated by reference into, the enumerated document.

**O. LIMIT OF INSURANCE UNDER THIS BOND AND PRIOR INSURANCE**

With respect to any **Single Loss** that is recoverable or recovered in whole or in part under any other bonds or policies issued by the Company to the Insured or to any predecessor in interest of the Insured and canceled or terminated or allowed to expire and in which the period for discovery has not expired at the time any such loss thereunder is discovered, the total liability of the Company under this bond and under such other bonds or policies will not exceed, in the aggregate, the amount carried hereunder on such loss or the amount available to the Insured under such other bonds or policies, as limited by the terms and conditions thereof, for any such loss if the latter amount be the larger.

If the coverage of this bond supersedes in whole or in part the coverage of any other bond or policy of insurance issued by an insurer other than the Company and canceled, terminated or allowed to expire, the Company, with respect to any loss sustained prior to such cancellation, termination or expiration and discovered within the period permitted under such other bond or policy for the discovery of loss thereunder, will be liable under this bond only for that part of such loss covered by this bond as is in excess of the amount recoverable or recovered on account of such loss under such other bond or policy, anything to the contrary in such other bond or policy notwithstanding.

**P. OTHER INSURANCE OR INDEMNITY**

Coverage afforded hereunder applies only as excess over any valid and collectible insurance or indemnity obtained by:

1. the Insured;
2. anyone other than the Insured;
3. a **Transportation Company**;
4. another entity on whose premises the loss occurred or that employed the person causing the loss; or
5. the messenger conveying the **Property** involved.



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**Q. COVERED PROPERTY**

This bond applies to loss of **Property**:

1. that is owned by the Insured;
2. that is held by the Insured in any capacity; or
3. for which the Insured is responsible,  
prior to or at the time of the occurrence of the loss. This bond is for the  
sole use and benefit of the Insured.

**R. CANCELATION, TERMINATION, CHANGE, OR  
MODIFICATION**

1. Cancellation
  - a. This bond is canceled in its entirety immediately upon receipt by the Company of a **Written** notice from the Insured or an **Investment Adviser** of its desire to cancel this bond, provided the Insured or **Investment Adviser** has provided at least 60 days advance **Written** notice to the U.S. Securities and Exchange Commission (SEC). The Company will notify all other Insureds of the receipt of such a cancellation request from the Insured or **Investment Adviser**, however the cancellation will not be effective until 60 days after receipt of **Written** notice by all other Insureds.
  - b. This bond is canceled in its entirety 60 days after the receipt by each Insured and the SEC, of a **Written** notice from the Company of its desire to cancel this bond.
  - c. Coverage is canceled as to any **Employee**, or as to any partner, officer, or employee of any **Electronic Data Processor** 60 days after the receipt by the Insured and the SEC, of a written notice from the Company of its desire to cancel coverage under this bond as to such person.

2. Termination

a. This bond terminates in its entirety immediately upon the Expiration Date set forth in ITEM 2 of the Declarations.

b. This bond terminates as to any Insured:

(1) immediately upon the surrender of such Insured's charter to any governmental authority; or

(2) immediately upon the taking over of such Insured by a receiver or other liquidator or by any State or Federal official,

whichever occurs first.

Termination of the bond as to any Insured terminates liability for any loss sustained by such Insured that is discovered after the effective date of such termination.

c. Coverage terminates as to any **Employee**, or as to any partner, officer, or employee of any **Electronic Data Processor**:

(1) as soon as any Director or Officer or Insured not in collusion with such person, learns of any dishonest or fraudulent employment related act, including **Larceny or Embezzlement**; or

(2) 60 days after any director or officer of the Insured not in collusion with such person, learns of any dishonest or fraudulent non-employment related act, including **Larceny or Embezzlement**, that resulted in a loss of **Property** in excess of \$25,000,

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either of which were committed by such person at any time, whether in the employment of the Insured or otherwise, whether or not of the type covered under Insuring Agreement A, against the Insured or any other person or entity, without prejudice to the loss of any **Property** then in transit in the custody of such person.

However, termination of coverage as to any **Employee** as set forth in c.(1) and c.(2) of the preceding paragraph, will not apply to any such person provided the Insured has received and retains an original letter signed by a prior insurer reinstating coverage for such individual for whom the Insured discovered had committed a dishonest or fraudulent act prior to the effective date of this bond.

3. Change or Modification

This bond or any instrument amending or affecting this bond may not be changed or modified orally. No changes in or modification of this bond will be effective unless made by **Written** endorsement issued to form a part of this bond and including the signature of the Company's Authorized

Representative. When a bond covers only one Insured no change or modification that would adversely affect the rights of the Insured will be effective prior to 60 days after **Written** notification has been furnished to the SEC by the Insured, **Investment Adviser** or the Company. If more than one Insured is named under this bond, the Company will give **Written** notice to each Insured and to the SEC not less than 60 days prior to the effective date of any change or modification that would adversely affect the rights of such Insured.

**S. DISCOVERY PERIOD**

At any time prior to the cancelation or termination of this bond in its entirety, whether by the Insured, an **Investment Adviser**, or the Company, the Insured or an **Investment Adviser** may give to the Company written notice that it desires under this bond an additional period of 12 months within which to discover loss sustained by the Insured prior to the effective date of such cancelation or termination and will pay an additional premium therefor.

Upon receipt of such notice from the Insured or an **Investment Adviser**, the Company will give its written consent thereto; provided, that such additional period of time terminates immediately:

1. on the effective date of any other insurance obtained by the Insured, its successor in business or any other party, replacing

in whole or in part the insurance afforded by this bond, whether or not such other insurance provides coverage for loss sustained prior to its effective date; or

2. upon any takeover of the Insured's business by any state or federal official or agency, or by any receiver or liquidator acting or appointed for this purpose,

whichever occurs first, and without the necessity of the Company giving notice of such termination. In the event that such additional period of time is terminated, as provided above, the Company will refund on a pro-rata basis, any unearned premium.

The right to purchase such additional period for the discovery of loss may not be exercised by any state or federal official or agency, or by any receiver or liquidator, acting or appointed to take over the Insured's business for the operation or for the liquidation thereof or for any other purpose.

The Company's total liability for any loss discovered during such additional period of time is part of, and not in addition to, the Single Loss Limit of Insurance of the **Bond Period** that terminates immediately preceding the effective date of such additional period.

#### **T. HEADINGS**

The titles of the various paragraphs of this bond and its endorsements are inserted solely for convenience or reference and are not to be deemed in any way to limit, expand or affect the provision to which they relate.

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**THIS ENDORSEMENT CHANGES THE BOND. PLEASE READ IT CAREFULLY.**

**SOCIAL ENGINEERING FRAUD INSURING AGREEMENT  
ENDORSEMENT - ENHANCED**

This endorsement changes the following:

**Investment Company Bond**

**It is agreed that:**

1. The following is added to ITEM 4. of the DECLARATIONS:

<b>Insuring Agreement</b>	<b>Single Loss Limit of Insurance</b>	<b>Single Loss Deductible Amount</b>
<b>Social Engineering Fraud</b>	\$ 250,000	\$ 10,000

2. The following is added to the DECLARATIONS:

<b>Aggregate Limit of Insurance</b>	
<b>Social Engineering Fraud Insuring Agreement</b>	\$ 250,000

3. The following **INSURING AGREEMENT** is added to section **II. INSURING AGREEMENTS:**  
**SOCIAL ENGINEERING FRAUD**

Loss resulting directly from the Insured having, in good faith, caused a transfer of funds from its own account as a result of **Social Engineering Fraud.**

4. Solely with respect to the Social Engineering Fraud Insuring Agreement, part 3 of section **IV. DEFINITIONS, Employee** is

deleted.

5. Solely with respect to the Social Engineering Fraud Insuring Agreement, the following replaces the last paragraph of **IV**.

**DEFINITIONS, R. Employee:**

**Employee** does not mean any agent, broker, factor, commission merchant, consignee, independent contractor, attorney retained by the Insured or any employee of such attorney, or representative or other person of the same general character not specified above.

6. The following are added to section **IV. DEFINITIONS:**

**Client** means an entity or natural person for which the Insured performs services as specified in a written agreement, but only while the written agreement is in effect.

**Social Engineering Fraud** means the intentional misleading of an **Employee** through the use of an electronic, telegraphic, cable, teletype, telephone, or written instruction received by such **Employee** that:

1. purports to be from:

a. a **Vendor**;

b. a **Client**; or

c. an **Employee**,

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but was in fact transmitted by someone other than such **Vendor, Client,**  
or **Employee**, and without the knowledge or consent of such **Vendor,**  
**Client, or Employee;**

2. directs the **Employee** to transfer, pay, or deliver funds, or to change the method, destination or account for payments to such **Vendor, Client, or Employee;**
3. contains a misrepresentation of a material fact; and
4. is reasonably relied upon by the **Employee**, believing the material fact to be true.

**Vendor** means an entity or natural person that has provided goods or services to the Insured under a genuine, pre-existing written agreement.

7. The following is added to section **VI. CONDITIONS, E.**

**AGGREGATE LIMIT OF INSURANCE:**

Aggregate Limit of Insurance Social Engineering Fraud Insuring Agreement

The Company's total liability under the Social Engineering Fraud Insuring Agreement for all loss discovered during any one **Bond Period**, regardless of when paid, will not exceed the Aggregate Limit of Insurance - Social Engineering Fraud Insuring Agreement as set forth in ITEM 6 of the Declarations. Such Aggregate Limit of Insurance for a **Bond Period** will be reduced, and may be exhausted, by the amount of any payment under the Social Engineering Fraud Insuring Agreement for any loss discovered during that **Bond Period**. The reduced Aggregate Limit of Insurance will then become the Aggregate Limit of Insurance Social Engineering Fraud Insuring Agreement. Upon exhaustion of such Aggregate Limit of Insurance by any such payment:

- a. the Company will have no further liability under the Social Engineering Fraud Insuring Agreement for any loss discovered during that **Bond Period**, whether or not previously reported to the Company; and
- b. upon notice by the Company to the Insured that such Aggregate Limit of Insurance has been exhausted, the Company will have no

further obligation for payment or indemnification of court costs and attorney's fees as set forth in General Agreement G., with respect to any loss, claim or damage under the Social Engineering Fraud Insuring Agreement, whether or not the Company has elected to defend any action thereunder.

Nothing herein contained shall be held to vary, alter, waive, or extend any of the terms, conditions, exclusions, or limitations of the above-mentioned bond, except as expressly stated herein. This endorsement is part of such bond and incorporated therein.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE  
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**NAMED INSURED ENDORSEMENT**

This endorsement changes the following:

**Investment Company Bond**

**It is agreed that:**

The following are added to ITEM 1 of the Declarations as Insureds:

Gladstone Capital Advisers, Inc.

Gladstone Business Loan, LLC

Gladstone Financial Corporation

Nothing herein contained shall be held to vary, alter, waive, or extend any of the terms, conditions, exclusions, or limitations of the above-mentioned policy, except as expressly stated herein. This endorsement is part of such policy and incorporated therein.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE  
READ IT CAREFULLY.**

**UNAUTHORIZED SIGNATURE ENDORSEMENT**

This endorsement changes the following:

**Investment Company Bond**

**It is agreed that:**

1. The following is added to section II. INSURING AGREEMENTS, D. FORGERY OR ALTERATION:

Loss resulting from the Insured accepting, paying, or cashing any **Negotiable Instrument** or **Withdrawal Order** made or drawn on a customer's account, which bears an unauthorized signature or an unauthorized endorsement, provided that the Insured has on file the signatures of all persons authorized to sign or endorse such **Negotiable Instrument** or **Withdrawal Order**.

2. The following replaces section VI. CONDITIONS, N. ANTI-BUNDLING:

**N. ANTI-BUNDLING**

If any Insuring Agreement requires that an enumerated type of document be altered or **Counterfeit**, or contain a signature or endorsement which is a **Forgery** or which is unauthorized, or that it be obtained through trick, artifice, fraud, or false pretenses, such alteration, **Counterfeit**, signature, or endorsement must be on or of the enumerated document itself, not on or of some other document submitted with, accompanying, or incorporated by reference into, the enumerated document.

Nothing herein contained shall be held to vary, alter, waive, or extend any of the terms, conditions, exclusions, or limitations of the above-mentioned policy, except as expressly stated herein. This

endorsement is part of such policy and incorporated therein.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE  
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**NON-ACCUMULATION ENDORSEMENT**

This endorsement changes the following:

**Investment Company Bond**

**It is agreed that:**

The following is added to section VI. CONDITIONS, E. SINGLE LOSS  
LIMIT OF INSURANCE:

The liability of the Company under this bond will not be cumulative with  
amounts which may be recoverable under any one or more bonds written  
by Gladstone Management Corporation and Gladstone Investment  
Corporation.

The liability of the Company for any loss payable under this bond and  
concurrently under any other bond will not exceed, in the aggregate, the  
largest applicable Single Loss Limit of Insurance under any such bond.

Nothing herein contained shall be held to vary, alter, waive, or extend  
any of the terms, conditions, exclusions, or limitations of the  
above-mentioned policy, except as expressly stated herein. This  
endorsement is part of such policy and incorporated therein.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE  
READ IT CAREFULLY.**

**VIRGINIA CANCELATION, TERMINATION, CHANGE, OR  
MODIFICATION ENDORSEMENT**

This endorsement changes the following:

**Investment Company Bond**

**It is agreed that:**

1. The following replaces section VI. CONDITIONS, R. CANCELATION, TERMINATION, CHANGE, OR MODIFICATION, 1.b.:

- b. This bond is canceled in its entirety 60 days after the receipt by each Insured and the SEC of a **Written** notice from the Company of its desire to cancel this bond.

Notice provided for above will be sent by certified or registered mail to the parties mailing address last known to the Company. A post office certificate of mailing or certified mail receipt will be sufficient proof of mailing such notice. If this bond or an Insuring Agreement is canceled, the Company will send the Insured any premium refund due, calculated on a pro rata basis. The cancellation will be effective even if the Company has not made or offered a refund, and the Company will have the right to the premium amount for the period of time during which this bond was in effect.

2. The following replaces section VI. CONDITIONS, R. CANCELATION, TERMINATION, CHANGE, OR MODIFICATION, 2.a.:

- a. This bond terminates in its entirety immediately upon the Expiration Date set forth in ITEM 2 of the Declarations, provided **Written** notice has been given to each Insured and the SEC at least 60 days prior to such date. Notice will be sent by certified or registered mail to the parties mailing address last known to the

Company. A post office certificate of mailing or certified mail receipt will be sufficient proof of mailing of notice.

3. The following is added to section VI. CONDITIONS, R. CANCELATION, TERMINATION, CHANGE, OR MODIFICATION:

4. Nonrenewal

The Company will not be required to renew this bond upon its expiration.

If the Company elects not to renew, the Company will provide each Insured and the SEC, **Written** notice to that effect at least 60 days before the Expiration Date set forth in ITEM 2 of the Declarations. Notice of non-renewal will be sent to the each Insured and the SEC by certified or registered mail to the parties mailing address last known to the Company.

A post office certificate of mailing or certified mail receipt will be sufficient proof of mailing of notice.

Nothing herein contained shall be held to vary, alter, waive, or extend any of the terms, conditions, exclusions, or limitations of the above-mentioned policy, except as expressly stated herein. This endorsement is part of such policy and incorporated therein.

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