



UNAUTHORISED TRADING INSURANCE – 06/08

Nova Underwriting Pty Ltd
ABN 42 127 786 823 / AFSL 324767

1.0 INSURING CLAUSE

We will cover **You** for **Your** direct financial loss discovered during the **Insurance Period** caused solely and directly by **Unauthorised Trading** by any **Trader** while **Trading** for **You** provided that such **Unauthorised Trading** was **Concealed** or **Falsely Recorded**.

2.0 EXCLUSIONS

2.1 We will not cover **You** for loss arising directly or indirectly from:

- 2.1.1 insolvency or other monetary failure of a counterparty; or
- 2.1.2 suspension of **Trading**; or
- 2.1.3 unlawful disclosure or use of confidential information by **You** or any **Trader**; or
- 2.1.4 the underwriting of securities by **You**; or
- 2.1.5 events known to **You**, or notified to **Us** or other insurers, prior to the **Insurance Period**; or
- 2.1.6 **Unauthorised Trading** which occurred or began prior to the **Retroactive Date**; or
- 2.1.7 **Unauthorised Trading** by **Your** directors unless their usual duties are predominantly those of a **Trader**; or
- 2.1.8 loss or deprivation of potential income or profits, including loss or deprivation of interest, dividends, fees, commissions and the like; or
- 2.1.9 the failure of a financial or depository institution or a counterparty [or their receivers or liquidators] to pay, return or deliver funds or property held by them; or
- 2.1.10 damages of any kind [including fines, penalties, punitive or exemplary damages] which **You** are legally liable to pay; or
- 2.1.11 indirect or consequential loss of any kind; or

- 2.1.12** any error, omission, delay or other failure by **You** to accurately record a **Trade**; or
- 2.1.13** costs, fees and other expenses incurred by **You** in defending any claim against **You**;
or
- 2.1.14** costs, fees and other expenses incurred by **You** in establishing, or attempting to establish, the existence or amount of any loss covered by this policy; or
- 2.1.15** in connection with, war, invasion, act of foreign enemy, hostilities or war-like operations [whether war has been declared or not], civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial laws, riot or the act of any lawfully constituted authority [except as may be provided under Condition 3.1]. The burden of proving that this exclusion does not apply is upon **You**; or
- 2.1.16** ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component of a nuclear assembly; or
- 2.1.17** **Unauthorised Trading** by any **Trader**, after it becomes known to any director or officer [not colluding with the **Trader**] of **Yours**, that **Unauthorised Trading** has occurred or that the **Trader** has acted fraudulently or dishonestly.

3.0 CONDITIONS

CHANGE OF CONTROL – LIQUIDATION, RECEIVERSHIP ETC

- 3.1** If **You** have either been placed into liquidation, had receivers or managers appointed, entered into a scheme of arrangement or composition with creditors, or had control assumed by any government [including officials appointed by that government, or its agencies or authorities], then, **We** will only cover **You** for loss arising from **Unauthorised Trading** which occurred prior to these events happening, unless, and at **Our** absolute discretion, **We** agree otherwise.

CHANGE OF CONTROL/OWNERSHIP – MERGERS AND ACQUISITIONS

- 3.2** If **You** have either merged with, acquired, or been acquired by, another entity, then, **We** will only cover **You** for loss arising from **Unauthorised Trading** which occurred prior to these events happening, unless, and at **Our** absolute discretion, **We** agree otherwise.

LIMIT OF INDEMNITY

- 3.3** **Our** total liability for all loss or losses is limited to the **Aggregate Limit of Indemnity** irrespective of the total amount of such loss or losses.

Our total liability for any loss caused by **Unauthorised Trading** by all **Traders** or in which any **Trader** is concerned or implicated, either resulting from a single act or **Trade** or any number of such acts or **Trades**, regardless of when such acts or **Trades** occurred, is limited to the **Aggregate Limit of Indemnity**.

Any costs, fees, and other expenses incurred and paid by **You** in actions taken pursuant to **Your** discretionary authority under Condition 3.5 to mitigate, contain, reduce, or otherwise prevent any actual or potential loss for which cover is or may be available under this policy will be considered part of **Your** loss. Such costs, fees, and other expenses will be part of, and not in addition to, the **Aggregate Limit of Indemnity**.

The **Aggregate Limit of Indemnity** will be reduced by the amount of any payment made by **Us**, and upon exhaustion of the **Aggregate Limit of Indemnity** by such payments, **We** will have no further liability under this policy.

The **Aggregate Limit of Indemnity** will not be reinstated in whole or part by recoveries of payments by **Us** under this policy, unless such recoveries are received by **Us** during the **Insurance Period** or within 12 months afterwards.

Regardless of the number of years this policy has been written by **Us**, **Our** liability will not be cumulative in amount from year to year or from period to period, and will in no case exceed the **Aggregate Limit of Indemnity**.

EXCESS

- 3.4 **We** will only be liable for loss exceeding the Excess stated in Item 7 of the Schedule. The Excess will apply to all loss caused by **Unauthorised Trading** by any **Trader** or in which such **Trader** is concerned or implicated regardless of the number of **Trades** involved.

DISCOVERY OF LOSS

- 3.5 **You** will make every reasonable effort to confidentially inform **Us** of any **Unauthorised Trading** within 48 hours of its discovery. **You** will in any event give **Us** written notice of discovery of any **Unauthorised Trading** within 30 days after discovery by **You** of such **Unauthorised Trading**.

For the purposes of this policy, discovery is deemed to occur when a member of either **Your Market Risk Committee** or Board of Directors first becomes aware of facts which would cause a reasonable person to believe that **Unauthorised Trading** of the kind covered by the policy has occurred regardless of when the act, transaction or event causing or contributing to such an **Unauthorised Trading** occurred, and even though the amount or details of loss may not then be known.

You are permitted to exercise discretionary authority in taking any immediate action **You** deem reasonable and necessary to mitigate, contain, reduce, or otherwise prevent any actual or potential loss for which cover is or may be available under this policy. These actions may include, but may not necessarily be limited to, the liquidation of **Unauthorised Trading** positions, or the purchase of financial instruments necessary to offset the actual or potential loss, if **You** determine that this is a reasonable and prudent action to take.

Despite this discretionary authority, **You** must consult with **Us** as soon as possible to determine and agree the most appropriate measures necessary to mitigate, contain, reduce or otherwise prevent the actual or potential loss. **You** must also tell **Us** at this time what action **you** have taken under **Your** discretionary authority and the impact of that action.

CO-OPERATION

- 3.6 As a condition precedent to **Your** right to be covered by this policy, **You** will co-operate fully with **Us** and **Our** appointed representatives in all matters pertaining to any loss notified to **Us**. **You** will, upon request and at the times and places designated by **Us**, [1] provide for examination all pertinent records within **Your** control including audit records of **Your** internal and external accountants, examination records or advices from regulatory authorities and reports by any persons retained by **You** to investigate the matter, and [2] provide for interview any **Employee** or other person, to the best of **Your** ability and power. **You** agree to execute all papers and render all assistance to secure all rights, title, interest and causes of action **You** may have against any person or entity in connection with any loss notified to **Us**, and to do nothing to prejudice such rights or causes of action.

PROOF OF LOSS

- 3.7 Within 6 months of discovery of loss, **You** will furnish affirmative proof of loss to **Us** in writing, and duly sworn to by **Your** chief financial officer together with full particulars. The onus of proof is upon **You** in preparing **Your** proof of loss:
- to identify the persons responsible for the loss; to identify the specific unauthorised acts involved in each **Trade** constituting such loss; to identify how the **Trade** was **Concealed** or **Falsely Recorded**; and to establish that the resultant loss was directly caused by such unauthorised acts; and
 - to establish that such loss directly resulted from the **Unauthorised Trading** and not from economic conditions or other contributing causes.

GOVERNING LAW

- 3.8 This policy will be construed in accordance with the laws of Australia and the state or territory where the policy was issued. All disputes relating to interpretation of this policy will be determined by the courts [or a federal court] based in that state or territory.

EXCLUSIVE POLICY BENEFIT

- 3.9 The cover granted by this policy is for the exclusive benefit only of the first named entity listed in Item 1 of the Schedule, and no other party has any right of action under this policy.

COMPUTATION OF LOSS

- 3.10 Cover for loss under this policy commences following the first **Trade** of any **Unauthorised Trading**. In determining the amount payable under the policy for any direct financial loss:
- all loss occurring within and up to the authorised trading limits of any **Trader** involved with any **Unauthorised Trading** at the time of discovery of the loss will be deducted from **Your** claimed loss. For the purpose of determining the trading limits to be applied, the highest authorised trading limits of any person involved or who had knowledge and failed to disclose the **Unauthorised Trading** will apply;

- where **Trading** by a **Trader** includes both authorised **Trading** and **Unauthorised Trading**, any profits received or payable from any authorised **Trades** will not be deducted from **Your** claimed loss. However, any profits received or payable from any **Unauthorised Trading** will be deducted from **Your** claimed loss;
- all money received from any source whatsoever in connection with any matter from which a claimed loss has arisen, including payments and receipts of principal, interest, dividends, commissions and the like, whenever received, will be deducted from the amount actually paid out, advanced, taken or otherwise lost. The value of all property received from any source whatsoever in connection with any matter from which a claimed loss has arisen, whenever received, will likewise be deducted from **Your** claimed loss;
- the value of any securities, commodities, futures, options, government securities, foreign currencies or other instruments traded through an established securities or commodities exchange involved in any **Unauthorised Trading** will be determined by their closing market value on the last business day prior to the date of discovery of the **Unauthorised Trading**. If there is no market price or value for the same on such day, then the value will be as agreed between **You** and **Us**, or in the absence of agreement, by arbitration with the objective of determining the actual loss sustained by **You**.
- the value of any over-the-counter securities involved in any **Unauthorised Trading** will be determined by reference to publicly available indexes or rates or governmental indexes as of the last business day prior to the date of discovery of the **Unauthorised Trading**. If there is a dispute as to value, then the value will be as agreed between **You** and **Us**, or in the absence of agreement, by arbitration with the objective of determining the actual loss sustained by **You**.
- where **You** are not able to mitigate, contain, reduce or otherwise prevent **Your** loss immediately subsequent to discovery of the **Unauthorised Trading** after making every reasonable effort to do so under **Your** discretionary authority, then any further loss directly resulting from the **Trades** will be considered as part of the loss from **Unauthorised Trading**.

SUBROGATION, SALVAGE AND RECOVERY

3.11 We will upon payment of any loss under this policy, become subrogated to all **Your** rights, title, interest and causes of action with respect to such loss.

In the case of recovery after payment of any loss under this policy, the amount recovered, after deducting the actual cost of obtaining or making such recovery [excluding **Your** own labour or establishment costs] shall be applied in the following order:

- to reimburse **You** in full for the part, if any, of such loss which exceeds the amount of loss paid under this policy [disregarding the amount of any Excess applicable],
- the balance, if any, or the entire net recovery if no part of such loss exceeds the amount of loss paid under this policy, to be retained by **Us**,
- finally, to that part of such loss sustained by **You** by reason of the Excess.

CONSIDERATION

- 3.12** The cover provided by Us under this policy is in consideration of the payment of the agreed premium.

VALIDITY

- 3.13** To be valid, this policy must have a Schedule attached to it which has been signed by an authorised officer of **Ours**.

SERVICE OF SUIT

- 3.14** Any summons or process to be served upon the **Security** may be served upon:

Lloyd's Underwriters' General Representative in Australia
Suite 2 , Level 21 , Angel Place
123 Pitt Street
SYDNEY NSW 2000

who has authority to accept service and to enter an appearance on behalf of the **Security**, and who is directed at **Your** request to give a written undertaking to **You** that they will enter an appearance on behalf of the **Security**.

- 3.15** Other than for claims managed outside Australia, this policy complies with the Insurance Council of Australia's General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry and is proudly supported by the **Security**. Any enquiry or complaint relating to this policy should be referred to **Us**, but if **You** are not satisfied with the way **We** dealt with the complaint, **You** should write to:

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21, Angel Place
123 Pitt Street
SYDNEY NSW 2000

who will refer the matter to Policyholder and Market Assistance at Lloyd's. If they are unable to resolve the complaint, it may be referred to the Financial Ombudsman Service [UK], but further details will be provided at the appropriate juncture.

4.0 DEFINITIONS

- 4.1 Aggregate Limit of Indemnity** means the sum stated in Item 6 of the Schedule as being the Aggregate Limit of Indemnity.
- 4.2 Concealed** means the deliberate act of a **Trader** in causing **Unauthorised Trading** not to be recorded in **Your** books and records and in keeping said **Unauthorised Trading** secret from **Your Market Risk Committee** and from any person who is a member of either **Your** Board of Directors or of any other Board or Executive Committee to or through which the **Market Risk Committee** reports.
- 4.3 Designated Counterparty** means a person with whom the **Trader** is authorised by **You** to engage in trading with **You**.
- 4.4 Employee** means one of **Your** officers and other full-time staff compensated by salary, wages or commissions and who **You** have the right to govern and direct in the performance of duties [including a director of **Yours** who is employed as a salaried officer or employee] while acting in the course of their employment by **You** at or from **Your Premises**.
- 4.5 Falsely Recorded** means the deliberate act of a **Trader** in causing **Unauthorised Trading** to be recorded in **Your** books and records so that it does not appear to be **Unauthorised Trading** for the purpose of misleading **You**.
- 4.6 Insurance Period** means the period stated in Item 2 of the Schedule.
- 4.7 Market Risk Committee** means those persons identified in the proposal as comprising **Your** Market Risk Committee.
- 4.8 Premises** means [a] **Your** office at the Principal Address stated in the Schedule, [b] any permanent or temporary office occupied by **You** from which **You** conduct **Your Trading** business as stated in the proposal and including any temporary office used for the purpose of disaster recovery and, [c] with respect to any **Trader** specifically scheduled or identified in the proposal, any location from which said **Trader** has authority to conduct **Trading** for **Your** own account.
- 4.9 Retroactive Date** means the Retroactive Date stated in Item 3 of the Schedule.
- 4.10 Security** means certain Underwriters at Lloyds, each of whom [including their executors and administrators] is only liable for their share of any loss payable by this policy. Details of each syndicate and its share can be obtained from Nova Underwriting Pty Ltd.
- 4.11 Trade[s]** means an actual purchase or sale for **Your** own account of:
- securities, commodities, futures, options or other instruments traded through an established securities or commodities exchange, or
 - over-the-counter securities with a financial institution, or
 - government securities or foreign currencies.

4.12 Trader[s] means an **Employee** who has been specifically designated by **You** to conduct **Trading** for **Your** own account.

4.13 Trading means engaging in one or more **Trades**.

4.14 Unauthorised Trading means **Trading** with an actual counterparty which at the time of the **Trade** is:

- in excess of permitted financial limits, or
- outside of permitted product lines, or
- not with a **Designated Counterparty**

as stated in **Your** written policies and procedures established for **Trading** by the **Trader**, and which **Trading** was intentionally conducted by the **Trader** with the knowledge that such **Trading** was in violation of such written policies and procedures.

4.15 Us, We and Our[s] means: Nova Underwriting Pty Ltd on behalf of the **Security**.

4.16 You means the entity first named in the Schedule and any wholly owned companies that are named in the proposal and Schedule.

4.17 Your[s] means pertaining to **You**.

