



## SPECIALIZED AND FOCUSED

Representing Investment Advisers and Registered & Unregistered Funds for their E&O/D&O and Bonding Programs



# PROTECTING INVESTMENT ADVISERS AND FUNDS

Presented by:

Asset Management Insurance

A Division of Maury, Donnelly & Parr, Inc.

# ASSET MANAGEMENT INSURANCE

## PROTECTING INVESTMENT ADVISERS AND FUNDS

Asset Management Insurance, a division of Maury Donnelly & Parr, Inc., has been representing 40Act Investment Advisors and Fund Boards for over 25 years. We specialize and focus singularly within the asset management sector in serving as a resource for our clients in the placement of E&O/D&O/EPL and Fiduciary Liability coverages as well as the various fidelity bonding requirements (ERISA, SEC & FINRA).

Our goal is to educate and service the Investment Adviser and Fund community and provide the best options for their insurance needs. We can provide an assessment of your insurance needs with a choice of which package fits you best.

We are dedicated to providing our customers with the best coverage at competitive rates. With our professional staff, we can be your liaison with the insurance carrier in the event of a claim. We work for you, not the insurance company. Where a true advocate earns their stripes in the face of adversity, is in a challenging claim situation. Being your strongest advocate during a claim is always the most important part of our client service, and it is one of our strongest differentiators. Why? Because our claims professionals are our brokerage professionals. We understand the policy language as we are placing the coverage, so we understand the intent of the policy wording specific to the Adviser/Fund policies of each carrier.

In addition, we are ready to get a carrier's underwriting staff involved with the carrier's claims people to make sure the interpretations are explained. AMI is your strongest advocate.

Noby Powell has been specializing in Investment Adviser and Mutual Funds for over thirty years.

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# INVESTMENT ADVISERS/REGISTERED AND UNREGISTERED FUNDS COVERAGES

## Errors & Omissions and Directors & Officers Liability

**Adviser Errors and Omissions (E&O):** This is also called Professional Liability or sometimes Fiduciary Liability. It provides coverage to an Advisory firm and all past, present and future Partners, Directors, Officers and Employees for claims of errors, omissions, negligence, and breach of duty. Law does not require this coverage, but some pension funds or consultants require the coverage, some with required levels of limits. Defense costs are the single greatest source of payout for the carriers.

**Directors and Officers Liability (D&O):** D&O protects a firm's Directors and Officers for decisions they make in the operation of the firm (not in providing the professional service the firm provides). Coverage for some duties of the Chief Compliance Officer may be best covered here rather than by the Adviser E&O.

**Mutual Fund E&O/D&O Liability:** Similar to the coverage above for Advisers, this combines two coverages for Mutual Funds. It covers errors and mistakes in the operations of the funds, and perhaps more importantly, it provides D&O coverage to the Directors of the Fund for the decisions they make as Directors. Many outside Directors will not sit on a Fund Board without this coverage. The limit of the coverage is, in part, determined by the comfort level of those outside Directors. Statistical data is available to assist fund boards in their limit selection.

**Hedge Fund and Private Equity E&O/D&O Liability:** This is similar to the Mutual Fund E&O/D&O but designed for unregistered funds structured as limited partnerships or LLC's. This coverage extends the scope of protection to incorporate the general partnership, the managing members, the entity fund and the advisor for rendering advice to the fund.

### **Retentions:**

The policies have substantial retentions, a minimum level which is determined by the assets under management. Pricing credits are seldom cost effective for retentions higher than the minimum. These retentions are paid before reimbursement.

### **Policy Form**

This is a Claims Made Form and requires notification to the carrier immediately upon receipt or notification of a potential claim.

### **Rating**

The carriers rate the Advisers E&O coverages based on the total assets under management of the Adviser and also looks at the client base of ERISA assets vs. non-ERISA assets, investment strategy of the Adviser, number of accounts, size of largest accounts, internal controls and performance record of Adviser.

The carriers rate Registered and Unregistered Funds based on the total assets of the funds as well as the types of strategies and performance history. Multiple Series Trusts (MST) have become a concern for the underwriters when the MST exceeds 10 funds or more.

### **Policy structures**

These policies may be structured in many ways to fit each individual case and can be endorsed to cover the Adviser, the Adviser's Sponsored Mutual Fund(s), Mutual Fund(s) only, Private Funds, Advisers for Advice to the Fund only, Advice to the Fund(s) and Private Accounts, etc. We offer Premium Allocations to those shared policies in accordance with SEC Rule 17d-1(d)(7).

# Fidelity Bonding

**Investment Company 17g-1 Compliance Bond:** This coverage is required by the SEC of any registered mutual fund, under rule 17g-1, with the required limits spelled out in the same rule. The bond provides coverage to any fund shareholders for dishonest acts by employees of the fund or those acting as employees of the fund. This bond comes with several available Insuring Agreements, but only the Employee Dishonesty Agreement is required by the SEC. These bonds should all have riders providing automatic compliance with the SEC as funds' assets increase or any newly created funds are added during the bond term. There shall be no deductible applicable to any loss under Employee Dishonesty/Fidelity coverage sustained by any Investment Company. There will be a small deductible on the other Insuring Agreements.

**Financial Institution Bond Form 14 (B):** This is a broad form Fidelity Bond providing protection for losses resulting directly from dishonest or fraudulent acts committed by an employee acting alone or in collusion with others, including property in your care, custody, or control. Under the definition of Employee, it includes, directors or officers of the insured, but only while performing acts within the scope of the customary and usual duties of any officer or other 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 Property of the insured. This bond, most notably, can provide protection for financial loss due to a social engineering or fraudulent induced transfer cyber breach.

**Blanket Fidelity Bond:** This provides coverage to the Advisory firm itself for losses it might sustain of its own assets due to dishonesty of its own employees. This bond is not required by any law, but is the type of crime policy any business might have to protect the owners against dishonest acts.

**ERISA Fidelity Bond:** This coverage is required under Section 412 of the ERISA statute. It provides coverage to those client plans that an Adviser lists on their bond for losses those client plans might sustain due to dishonest acts of the Adviser and the Adviser employees. Section 412 calls for bonding in the amount of 10% of the assets the Adviser manages, up to a maximum bond amount of \$500,000. The Pension Protection Act of 2006 modified the aforementioned requirements for employer held securities in a qualified plan raising the maximum bond limit from \$500K to \$1M. The ERISA definition of a fiduciary is very broad. It is any person so named in the plan or any person who exercises any discretionary authority or control with respect to the management or administration of the plan or its assets.

## ADDITIONAL ADVISER COVERAGES

**Employment Practices Liability (EPL):** This coverage had developed out of D&O to be a very specific coverage to handle employment related claims such as wrongful termination, sexual harassment, discrimination, and compliance with ADA. On this policy, entity coverage is available, and should be requested.

**Fiduciary Liability:** Also known as Pension Trust Liability. Provides coverage for losses that the insured becomes legally liable to pay because of a claim made against the insured for any alleged violation of the responsibilities, obligations, or duties imposed on fiduciaries by the Employee Retirement Income Security Act (ERISA), as well as acts, errors, or omissions in the performance of the duties of the plan administrator. It also covers the defense costs in connection with a covered claim.

# CYBER LIABILITY

**Cyber Liability** - This coverage specifically addresses the growing concern over litigation stemming from identity theft, privacy issues and computer system damage. The coverage should provide protection for 1st party losses such as loss due to an internal system virus or system hacking thereby corrupting system and data. There should also be 3rd party coverage to provide defense costs and settlement costs for allegations that your services adversely impacted the system of your customer

## **Carriers concerns**

We have found our cyber carriers utilize increased retention structures due to the escalating costs of both expenses and defense associated with cyber incidents/ransomware across the cyber marketplace. Most, if not all carriers require Insureds to apply Multi-Factor Authentication (MFA) as an added layer of security. MFA requires a secondary password, code, or app to grant access to anything from emails, backups, servers, databases, or Microsoft 365.

## **SEC Requirements relating to Cyber**

Written procedures (Investment Companies and Investment Advisers "...may wish to consider" SEC Division of Investment Management 4/28/15, as noted in the recent ACA Alert.)

- a. Periodic risk assessments focusing on data classification, data storage and transmission...vulnerabilities across the network, controls, procedures, potential system impact and IT governance.
- b. Action plans to prevent, mitigate, detect and respond to cyber incidents, institute technological processes, controls and incident planning.
- c. Adoption of written information security policies and incident response plans, as well as staff training.
- d. Ongoing threat intelligence and awareness
- e. Service provider review, oversight and management

Sample coverage grants for Cyber insurance contracts

- a. 1<sup>st</sup> party exposures (virus, hacking, crisis management, forensic experts, breach notification (legal), credit monitoring, public relations.
- b. 3<sup>rd</sup> party exposures (allegations of breach of fiduciary duty, regulatory investigations, third party suits alleging damages, loss of PII, etc.)
- c. Fidelity Bond (employee dishonesty, computer system (fraudulent transfer of data and/or funds))