



## Portfolio Manager Liability Insurance Policy

In today's environment of insolvencies, Ponzi schemes, management conflicts of interest and increased investor activism, the risk of regulatory action, civil litigation, class actions and criminal prosecutions is higher than ever. With this in mind, ERIS designed its *Portfolio Manager Liability Insurance Policy* to offer broad protection for portfolio management professionals and the funds they manage. Our 'made in Canada' policy, tailored for the unique needs and structures of the Canadian investment management market, combines a broad "all-risk" E&O coverage with our already market leading D&O coverage launched in 2009. Without needlessly complex and restrictive definitions, this policy continues ERIS' tradition of easy to read policies that offer easy to understand coverage clients can rely on.

### What does it cover?

- Directors' and officers' management and personal risks
- Corporate risks from securities claims
- Corporate risks from all claims where the Parent Company is a private company
- Professional liability risks arising from business activities provided to clients or funds

### Who does it cover?

- Funds/trusts and their managers
- Professionals, directors, officers and trustees of these entities
- Persons for whose E&O acts the Insured is legally responsible

### Typical Loss Scenarios

- Prospectus liability lawsuits against funds, their managers, directors and officers
- Regulatory proceedings into alleged securities violations and investigations that are expected to result in a proceeding against an executive or director
- Conflict of interest allegations
- Unitholder claims alleging failure to properly obtain approval for fund acquisitions
- Claims by unitholders for breach of investment guidelines
- Costs to defend claims arising out of Ponzi schemes
- Claims by clients alleging operation errors in investment management and investments outside mandate
- Allegations of improper valuation of fund assets

## 5 Insuring Clauses:

- 1A. Directors and Officers Liability – covers Loss for which an Insured Person is not indemnified as a result of a D&O Wrongful Act
- 1B. Corporate Indemnification – covers Loss which the Company pays as indemnification to the Insured Person as a result of a D&O Wrongful Act
- 1C. Corporate Liability – covers Loss the Company is obligated to pay as a result of a Securities Claim
- 1D. Private Company – covers Loss which the Private Company or its Subsidiary is obligated to pay as a result of a Claim
- 1E. Professional Liability – covers Loss which an Insured Person or the Company is obligated to pay as a result of an E&O Wrongful Act

## General Terms and Conditions

- **Severability of Exclusions:** full for all Insured Persons for all exclusions under Insuring Clauses 1A, 1B or 1E.
- **Severability of Application:** full for all Insured Persons. Imputation of top 4 or signor of Application to Company for Insuring Clause C, D and E claims.
- **Defence:** duty of the Insured to defend and right to select counsel. Although Underwriters' consent is to be obtained prior to incurring defence costs, Underwriters' agree to take into consideration actual prejudice with respect to defence costs incurred prior to consent.
- **No "Hammer Clause":** no penalty for Insured wishing to continue to defend when presented with settlement opportunity.
- **Allocation:** where Claim involves a D&O Wrongful Act and either covered and uncovered parties or matters, a minimum of 80% will be allocated to covered defence costs. All other Loss allocated based on relative legal exposure.
- **Notification:** Claims reporting as soon as is reasonably practicable, once named position becomes aware but no more than 60 days after policy expiration. Notice of potential Claim entitlement includes both circumstances as well as request to toll a limitation period.
- **Cancellation:** non-cancellable by Underwriters except for non-payment of premium.
- **Optional Extension Period:** bi-lateral (ie – Insured can choose to exercise if either Underwriter or Insured doesn't renew) at a pre-determined premium.
- **Side-A non-rescindable**
- **Priority of Payments**

## **Definitions**

### **Claim – Definition Includes:**

- monetary and non-monetary demands, injunctive relief
- civil, criminal or penal judicial, administrative or regulatory proceeding or arbitration
- written notice of circumstances of an investigation by a securities regulatory authority that may be expected to give rise to a Claim (as above) against an Insured Person
- proceedings against Insured Person for Company's statutory tax, EIC, CPP and wage liabilities
- extradition requests pursuant to Canadian laws

### **Insured Person:**

- past, present and future director, officer, trustee, governor, chairman, advisory board member, committee member, general partner or partnership manager, and functional or foreign equivalents
- includes employees for E&O and as co-defendant with a Director or Officer for D&O claims
- includes coverage for other persons for whose E&O acts the Insured is legally responsible

### **Funds:**

- includes all funds listed in the Application (do not need to be listed in policy or fit restrictive definition)
- includes any fund with similar investment objective & strategy to those funds listed in Application
- includes all funds created during the Policy Period
- includes coverage for all funds acquired during the policy period automatically for 90 days. Acquired funds with more than 30% of the total assets of the Parent Company of Subsidiary required underwriting for coverage beyond 90 days
- includes past Funds for past acts

**Loss:** provides express coverage for damages, judgments, settlements and defence costs including:

- punitive or exemplary damages except for Employment Practices Violations, with "most favourable law" provision
- pre and post judgment interest
- section 11 or 12 *US Securities Act* (and foreign equivalent) Claims against Insured Persons

**Subsidiary** – includes:

- all entities including those unique to Canada (eg. income trusts, unlimited liability organizations)
- triggers other than ownership of voting securities (eg. right to appoint majority of board, or exercises management control)
- includes past Subsidiaries for past acts

**Wrongful Act:**

- D&O: any act, error, omission, etc by Insured Person acting in Insured Capacity (Side A&B) or by Insured (Side C & D)
- E&O: act, error, omission by Insured in performance of professional services in the ordinary course of Company's business activities for or on behalf of any actual or prospective client or of any Fund

**Exclusions**

**Bodily Injury/Property Damage:**

- "for" language
- carve outs for mental anguish in E&O or Employment Practices Violation

**Prior notice of circumstances under another policy**

- restricted to where other policy accepts notice

**Pollution** – carve out from exclusion for:

- Side A or E&O claims
- Side B security holder claims

**Fiduciary Exclusion** – only applies to Insured's own benefit plan

**Insured vs. Insured** – does not include shareholder who is not otherwise an Insured.

Carve outs for:

- derivative claims
- cross-claim for contribution and indemnity
- employment violations
- bankruptcy trustee
- removed from position for 4 years
- Claim by Fund where failure to bring would result in liability
- defence costs
- Side A claims

**Individual Conduct (Side A, B & E)** – language with final adjudication

**Inadequate or excessive consideration (Side C)** – final adjudication & does not apply to defence costs coverage



### **Company Conduct (Side C & D)**

- deliberate fraud and illegal profit
- final adjudication
- fraud imputation – from top 6 to Company (Side C); from any Insured to Company (Side D)

### **No Securities Exclusion**

**Breach of Contract Exclusion** – solely limited to liability of others assumed by the Company with anyone other than an Insured and does not apply:

- to D&O Claims
- if the Company would have been liable in the absence of the contract
- to loss on account of an alleged failure of the Insured to perform their duties with reasonable care and skill

### **Extensions**

#### **Estates, Legal Representatives and Spouses**

**Outside Directorship Liability** – blanket coverage on not-for-profit and privately held companies

#### **Mergers and Acquisitions**

- automatic coverage for Subsidiaries from acquisition date for subsequent acts where acquisition involves assets equal to or less than 20% of Parent Company assets, unless it is intent of acquisition company to then acquire assets of a Subsidiary greater than 20%
- past Subsidiary coverage for prior acts

**Investigation Costs** – covers Investigation Costs for a Derivative Demand with complainant language

For more information on ERIS' *Portfolio Manager Liability Insurance Policy* or any of our other insurance products, please visit our website at [www.execurisk.com](http://www.execurisk.com) or contact one of our team members directly.

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