

INVESTMENT ADVISOR SERIES

# **Investment Advisors & Financial Professionals: Using your Insurance as a Marketing Tool**

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Presented by

North American Professional Liability Insurance Agency, LLC (NAPLIA)

## Introduction

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In a recent poll, clients cited **trust**, or lack thereof, as the major factor (60%) for leaving their Investment Advisor. In fact, trust ranked higher than the actual performance of their investment assets. In this era of Ponzi schemes, and other high profile investment fraud, clients today will perform more due diligence and Investment Advisors will need to work harder to reassure clients, both new and existing.

**So, how can you as an advisor gain the trust of your clients and prospects, so that you can continue to grow your business?**

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Proactively using your insurance coverage as a marketing and education tool will help you:

### **Demonstrate your Knowledge and Added Value**

Demonstrate to your clients and prospects your clear understanding of First Party and Third Party Fiduciary exposure, and your affirmative coverage. In addition, if applicable, you can show your understanding of ERISA Section 412 and how it relates to your role with their ERISA Plan. Further, you may use this opportunity to educate your client about their personal fiduciary exposure, and how they may utilize First Party Fiduciary Insurance for their own protection.

### **Create "Peace of Mind"**

Much has happened in the financial industry to undermine the trust of quality advisors. You need to do more proactively to gain (and maintain) your client's trust and create Peace of Mind. By proactively presenting confirmation of your insurance you can begin to break down these walls with your client. Transparency is the best approach to creating trust.

## Confirm "Fiduciary" Coverage

We have seen that providing a "Certificate of Insurance" is no longer always sufficient anymore. Plan Sponsors are hiring their own ERISA attorneys and want to see full policy forms to confirm fiduciary coverage. By including a **Confirmation of Insurance** statement (sidebar) in your RFP you proactively demonstrate your awareness of this issue and have confidence that your policy provides affirmative fiduciary coverage.

## Raise the Bar for your Competition

Once you have proactively shown your affirmative fiduciary coverage and Investment Advisor ERISA Bond (if applicable), you have raised the bar for your competition. Every advisor who approaches your client or prospect after you will likely be asked to demonstrate the same.

### Confirmation of Insurance

NAPLIA's Confirmation of Insurance is a marketing tool that is exclusive to Investment Advisors insured through NAPLIA. It assists you in proactively identifying to your clients your levels of insurance coverage and commitment to quality standards.

[www.naplia.com/resources/confirmation.html](http://www.naplia.com/resources/confirmation.html)

## What types of insurance protection should be important to both advisors and plan sponsors?

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### 1. Errors & Omissions (aka. E&O, Professional Liability) Insurance with affirmative fiduciary coverage

An Errors & Omissions policy protects advisors and consultants against losses due to any actual or alleged negligent act, error or omission committed in the scope of their professional duties. Affirmative fiduciary coverage ensures that the policy extends to the professional's duties as a fiduciary under ERISA.

Fiduciary coverage under the investment professionals E&O policy is considered “third party” as the advisor does not have a direct relationship to the plan, but rather is providing services to the plan. However, the advisor may still be considered a fiduciary to the plan.

Just as important as confirming fiduciary coverage is making sure your policy provides coverage for the professional services rendered to your clients. When reviewing your policy consider asking an expert broker to assist in the policy review.

The major parts of E&O policies are:

**Insuring agreement**

**Definitions**

**Exclusions**

**Conditions**

**Endorsements**

Each coverage part must be read carefully and deliberately to ensure proper coverage. An E&O policy can provide coverage in the Insuring Agreement, only to take it away in the Exclusions. In addition, just because an item (i.e. nontraditional investment) is defined within the Definitions, it does not mean that coverage is necessarily afforded.

Whenever possible it is recommended to carry your own limits of liability. This allows you to control the policy coverage and limits. Shared policies with shared limits, such as provided by Broker/Dealers, can be a concern to your clients and their ERISA counsel because there is no way of knowing if claims preceding

There are four ways that an E&O policy may address third party fiduciary coverage:

**Excluded coverage** is clear and the intent of the policy is to exclude any claims as a result of your capacity as a fiduciary.

**Silent coverage** is difficult to determine the intent of the policy, and does not show specific policy coverage.

**Limited or modified coverage** may provide coverage as a limited 3(21) but exclude discretionary authority over client funds. Contractual exclusions may further limit coverage. This is of particular concern to 3(38) advisors.

**Affirmative coverage** is the best and most marketable. This is a policy that recognizes your fiduciary duties to your clients and does not limit coverage or policy intent.

your potential claim will erode the aggregate limits leaving the possibility of no funds left to pay a claim.  
See Resources: [Eight Advantages of a Wealth Adviser Policy](#)

**Recap: The best Errors & Omissions (E&O) policy to show to your clients is a policy that is unique to your firm with affirmative fiduciary coverage and has been reviewed to ensure all your services and investments are covered correctly.**

## **2. Investment Advisor ERISA Bond and/or Employee Dishonesty Bond (aka. Theft coverage, fidelity bond)**

Providing your client with evidence of insurance bonding in the RFP process will give you an advantage over other advisors

Bonding for the investment professional comes in two parts. The first part is ERISA bonding under section 412. ERISA requires an advisor that *handles* any plan assets to be bonded<sup>1</sup>. This is required even if the advisor does not custodian any of the funds. ERISA requires the investment advisor to provide a bond equal to 10% of plan assets up to \$500,000 (\$1MM if the plan has company stock). This is the minimum bond required, however plan sponsors may also request more if there are significant assets at stake.

Most Investment Advisor ERISA Bonds are written on a blanket basis. The policy covers all plans serviced by the advisor and each plan is listed on the application at the start of the year. Any new plans added during the course of the policy period are automatically included and should be listed on the renewal application. Make sure your policy allows for new plans to be automatically included in coverage and rated at renewal. Investment Advisor ERISA Bonds meet specific ERISA requirements such as having no deductible.

In addition to ERISA bonds, companies may have other assets invested with an advisor outside of their 401K plan. In this scenario, companies should insist that the investment professional carry an **Employee Dishonesty Bond** that specifically covers funds of clients against theft by the advisor or their employees.

Your clients expect to you to be honest. However, thefts happen every day. Providing confirmation of insurance coverage can give your clients peace of mind, and protects your firm from employees that could cause great harm if they embezzled funds from either your firm or clients.

High net worth individuals that have entrusted their funds with you may want a specific insurance policy naming them, or at least higher limits of \$5mm or more.

**Employee Dishonesty Policies provide coverage in three ways.**

Theft of employer assets by employee (Employee Dishonesty)

Theft of client funds (non-ERISA) for which employer is liable (Third-party Coverage)

Theft of employer assets by non-employee (Crime Coverage)

### **3. First Party Fiduciary Insurance**

“First party” fiduciary insurance is a policy purchased by the plan sponsors to cover mistakes made directly by the plan sponsors. It protects the functional fiduciaries of the plan (either appointed, or by function) for allegations of breach of their fiduciary duties.

Although you may want to have Fiduciary Insurance for your own 401K and health and welfare plans, it is essential to inform your ERISA clients of this coverage and require, or at least request, they carry such. Your clients having Fiduciary Insurance may be an important risk management tool. See Resources: How to inform your clients about Fiduciary Insurance.

## Conclusion

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Marketing is often about the perception of competence. Using your insurance policies as a marketing tool can provide you a significant marketing advantage in the RFP process. By proactively disclosing your insurance coverage, you create the perception that your firm is superior to other firms bidding in this space.

Furthermore, understanding the differences in each type of policy will protect your firm from claims, and demonstrate to your clients that their safety is important to your firm.

Take the time to work with a professional agent who understands your business and the industry.

## Contact

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Gary Sutherland is the Chief Executive Officer of North American Professional Liability Insurance Agency, LLC (NAPLIA). He can be reached at [garys@naplia.com](mailto:garys@naplia.com) or 508-656-1350.

Paul Smith, AIF is the SVP / Advisory Division of North American Professional Liability Insurance Agency, LLC (NAPLIA). He can be reached at [pauls@naplia.com](mailto:pauls@naplia.com) or 508-656-1315.

We welcome your thoughts and comments.



## Other Insurance

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The above does not outline all insurance coverage that your firm should consider. It is intended to address those insurance policies which may be beneficial in the presentation of your firm to prospective clients. Some other insurance you may consider reviewing include:

1. Cyber liability Insurance

Cyber Liability is another growing exposure and causing concern for advisors and clients. Cyber Liability may be included in a Professional liability policy. However, coverage in this format may not be adequate in coverage or scope if you use the internet to transact business. You may consider a standalone Cyber Liability policy. In reviewing this coverage make sure your Broker understands your exposures and adds endorsement to capture all your Cyber Liability exposures.

2. Employment Practices Liability Insurance (EPLI)

EPLI provides employers coverage for claims made against them for employment related issues. This typically includes harassment, discrimination, wrongful termination, or similar claims. EPLI issues have increased recently in light of Social Media exposures. Social Media blurs the line between professional and personal exposure and can result in employee and/or third-party claims.

EPLI policies can address two exposures:

1. Employee versus employer
2. Third party EPLI exposure against your clients or other vendors.

EPLI policies are relatively inexpensive, especially if you consider that statistics show that one EPLI claim could bankrupt 50% of small businesses.