

## Summary of Policy Changes: Investment Managers Insurance

Below is a summary of the key changes we have made to our Investment Managers Insurance Policy Wording (01-16) to create our refreshed policy wording version (06-18).

This document is not intended to identify all of the changes that have been made. If you would like to discuss any of the changes in more detail, please contact one of our offices.

### Part A: Professional Liability

#### New Insuring Clause

##### **Insuring Clause 1.2 Self-Report, Internal Inquiry & Professional Inquiry Costs & Expenses**

– this new insuring clause replaces the Professional Inquiries Extension. Cover has been expanded to include Self Reports and Internal Inquiries and the definition of Professional Inquiry has been broadened, as detailed under Definitions below. As a consequence of this new insuring clause, Self-Report, Internal Inquiry and Professional Inquiry have also been incorporated throughout the policy wording, where required.

#### New Extensions

- ▶ Cost of Living Expenses
- ▶ Court Attendance Costs
- ▶ Cyber (optional)
- ▶ Loss Mitigation & Rectification (optional)
- ▶ **Advancement of Costs & Expenses** – this previous insuring clause is now included as an extension.
- ▶ **Contractors & Consultants** – cover has been expanded to include run-off cover for former contractors by replacing “has a written contract” with “has or had a written contract”, with the Insured Organisation.
- ▶ **New Disclosure Documents** – both the New Disclosure Documents Extension and New Disclosure Documents Exclusion have been removed. The policy now provides automatic cover for all new disclosure documents of an Insured Fund.
- ▶ **Emergency Expenses** – the cap of 10% of the Limit of Liability on costs and expenses has been removed and replaced with “reasonable Defence Costs, costs or expenses”, provided that Liberty’s consent is sought within 30 days from the date these costs are incurred.
- ▶ **New Funds** – this extension has been revised to more clearly reflect intent. The exceptions

to automatic cover have been narrowed by removal of the new fund asset size threshold and the replacement of “New Funds domiciled or open to investors in USA or Canada” with “New Funds domiciled or incorporated in USA”. The exceptions to automatic cover have been expanded by adding “New Funds that are regulated by the U.S. Securities and Exchange Commission” and “virtual currency funds”. The window period applicable to the exceptions has increased from 45 to 90 days.

- ▶ **New Subsidiaries** – this extension has been revised to clarify what constitutes a new Subsidiary by including a definition of “Control”. The exceptions to automatic cover have been narrowed by raising the consolidated revenue threshold from 25% to 50% and by removing Canada. The exceptions to automatic cover have been expanded by adding new Subsidiaries which are “regulated by the U.S. Securities and Exchange Commission”. The window period applicable to the exceptions has increased from 45 to 90 days.
- ▶ **Continuous Cover** – a new additional requirement has been added at (a), being that “the Insured has maintained without interruption a professional indemnity insurance policy from when the Insured first became aware of such facts”.
- ▶ **Public Relations Expenses** – this extension has been broadened to include the reasonable costs and expenses incurred by the Insured in seeking advice from a public relations firm or consultant solely: (a) “for the benefit of protecting the Insured Organisation’s reputation as a provider of Professional Services, as a result of the departure (other than a voluntary resignation or planned retirement) of a key Investment manager which occurs during the Policy Period and is reported to Liberty during the Policy Period” and (c) “for the purpose of disseminating the findings of a Final Adjudication in favour of an Insured arising from Professional Services performed by an Insured which have led to a Claim, Self-Report, Internal Inquiry or Professional Inquiry directly pertaining to an Insured”. Excess no longer applies to this extension.
- ▶ **Statutory Liability** – this previous optional extension is now included as a standard extension and cover has been broadened to “worldwide excluding USA, Canada and Australia”.
- ▶ **Period of Grace** – this extension has been incorporated into the Extended Reporting Period General Condition. The automatic extended reporting period has increased from 60 days to 90 days and an optional 12 month extended reporting period is now available.
- ▶ **Intellectual Property Rights** – this extension offers broader jurisdictional cover as the jurisdictional exception has been narrowed by removal of “Canada”.
- ▶ **Loss of Documents** – this extension has been revised to replace “any computer virus” with “Malicious Code” (now a defined term) in exception (b). Excess no longer applies to this extension.
- ▶ **Breach of Confidentiality Extension and Interference with Privacy Extension** – these extensions have been removed as cover is provided under the broad civil liability insuring clause.
- ▶ **Extended Reporting Period** – this extension has been renamed “Change in Control – Run Off Cover”.
- ▶ **Contractual Liability & Commercial Risks** – this exclusion has been revised to add “(f) any amount recoverable by a liquidator or receiver with respect to an unfair preference or uncommercial transaction in relation to a loan or debt facility” and the Performance Guarantee Exclusion has been incorporated into this exclusion at (g).
- ▶ **Defamation** – this new exclusion is required for the correct operation of the Defamation Extension.
- ▶ **Fraud & Dishonesty** – this exclusion has been revised to include “or in any way connected with” in the lead-in language and at (a) to remove “wilful” and “grossly reckless” and replace “conduct” with “act or omission”. Additional exclusion (b) “the gaining of any profit,

benefit or advantage to which an Insured Person or an Agent is not legally entitled” has been added. Final Adjudication is now a defined term linked to legal, administrative or regulatory proceedings and is no longer established by admission.

- ▶ **Penalties & Punitive Damages** – this exclusion has been narrowed at (b) by removing “aggravated” and “multiple” and restricting application to exemplary or punitive damages pursuant to USA law.
- ▶ **Prior Matters** – this exclusion has been condensed to more clearly reflect intent.
- ▶ **Related Parties** – this exclusion has been revised to now also exclude any Claim made by or on behalf of “(b) any child, sibling, spouse, partner, parent or dependent of an Insured”. Furthermore, “any entity which is owned, controlled or managed by an Insured” has been replaced with “an entity or trustee of a trust which is owned, controlled or managed by any (i) Insured, (ii) child, sibling, spouse, partner, parent or dependant of an Insured, or (iii) parent company or other entity which owns, controls or manages any Insured”. However, this exclusion has been written back so that it will not apply to any claim made by these related parties in their capacity as a Client provided that the related parties have not participated or assisted in performing any Professional Services, and the Insured has not assisted, intervened, solicited or participated in the Claim.
- ▶ **Personal Injury & Property Damage** – this exclusion has been narrowed by amending the lead in language from “for or arising out of” to “for”. These previously separate exclusions have now been combined into one exclusion.
- ▶ **War, Terrorism & Nuclear** – this exclusion has been removed.
- ▶ **Management Liability** – this exclusion has been renamed “Directors & Officers Liability”.
- ▶ **Superannuation Funds** – this exclusion has been renamed “Pension Funds”.

## Part B: Directors & Officers Liability

### New Insuring Clause

#### **Insuring Clause 5.3 Self-Report, Internal Inquiry & Management Inquiry Costs & Expenses**

– this new insuring clause replaces the Management Inquiries Extension. Cover has been expanded to include Self-Reports and Internal Inquiries and the definition of Management Inquiry has been broadened, as detailed under Definitions below. As a consequence of this new insuring clause, Self-Report, internal Inquiry and Management Inquiry have also been incorporated throughout the policy wording, where required.

### New Extensions

- ▶ Asset & Liberty Expenses
- ▶ Cost of Living Expenses
- ▶ Personal Taxation Liability
- ▶ Bail Bond & Civil Bond Expenses
- ▶ Court Attendance Costs
- ▶ **Advancement of Costs & Expenses** – this previous insuring clause is now included as an extension.
- ▶ **New Disclosure Documents** – both the New Disclosure Documents Extension and New Disclosure Documents Exclusion have been removed. The policy now provides automatic cover for all new disclosure documents of an Insured Organisation, other than as excluded under the Future Initial Public Offering of Securities Exclusion.
- ▶ **New Funds** – this extension has been revised to more clearly reflect intent and aligns with the New Funds Extension under Part A.
- ▶ **New Subsidiaries** – this extension has been revised to clarify what constitutes a new Subsidiary by including a definition of “Control”. The exceptions to automatic cover have

been narrowed by raising the consolidated revenue threshold from 25% to 50% and by removing Canada. The exceptions to automatic cover have been expanded by adding new Subsidiaries which are “regulated by the U.S. Securities and Exchange Commission”. The window period applicable to the exceptions has increased from 45 to 90 days.

- ▶ **Continuous Cover** – a new additional requirement has been added at (a), being that “the Insured has maintained without interruption a directors and officers liability insurance policy from when the Insured first became aware of such facts”.
- ▶ **Public Relations Expenses** – this extension has been broadened to include the reasonable costs and expenses incurred by an Insured Person in seeking advice from a public relations firm or consultant solely for (a) “the benefit of protecting the Insured Organisation’s reputation as a result of the departure (other than a voluntary resignation or planned retirement) of a key investment manager which occurs during the Policy Period and is reported to Liberty during the Policy Period” or (c) “the purpose of disseminating the findings of a Final Adjudication in favour of an Insured Person arising from a Claim, Internal Inquiry or Management Inquiry directly pertaining to an Insured Person”. Excess no longer applies to this extension.
- ▶ **Emergency Expenses** – the cap of 10% of the Limit of Liability on costs and expenses has been removed and replaced with “reasonable Defence Costs, costs or expenses”, provided that Liberty’s consent is sought within 30 days from the date these costs are incurred.
- ▶ **Employment Practices Liability** – the territorial and jurisdictional cover under this optional extension has been expanded to worldwide, excluding USA.
- ▶ **Fines & Penalties** – this extension replaces the Pecuniary Penalties Extension and has been substantially revised, given that the Penalties & Punitive Damages Exclusion has been replaced with the United States of America: Penalties & Punitive Damages Exclusion.
- ▶ **Lifetime Run-Off Cover for Former Insured Persons** – this extension replaces the Former Directors & Officers Extension. The 180 month run-off cover is now replaced with an indefinite extended reporting period for former Insured Persons in the event of either a Change in Control or failure to renew or replace the policy. The requirement that they had to resign “at least 6 months prior” has also been removed.
- ▶ **Outside Directorships** – this extension has been substantially revised to provide broader cover.
- ▶ **Period of Grace** – this extension has been deleted and incorporated into the Extended Reporting Period General Condition. The automatic extended reporting period has increased from 60 days to 90 days and an optional 12 month extended reporting period is now available.
- ▶ **Extended Reporting Period** – this extension has been renamed “Change in Control – Run Off Cover”.
- ▶ **Additional Side A Limit** – this optional extension replaces the Additional Limit for Non-Executive Directors, with cover expanded to now apply to any Director.
- ▶ **ERISA** – this new exclusion has been added to clarify intent.
- ▶ **Fraud & Dishonesty** – this exclusion has been revised to include “or in any way connected with” in the lead-in language and at (a) to remove “wilful” and “grossly reckless” and replace “conduct” with “act or omission”. Additional exclusion (b) “the gaining of any profit, benefit or advantage to which an Insured Person is not legally entitled” has been added. Final Adjudication is now a defined term linked to legal, administrative or regulatory proceedings and is no longer established by admission or declaratory proceedings.
- ▶ **Future Initial Public Offering of Securities** – this new exclusion has been added as the New Disclosure Documents Exclusion has been removed.

- ▶ **Pollution** – as the Pollution Exclusion has been removed, the Pollution Defence Costs Extension and the Shareholder Pollution Claims Extension are no longer required and have both been removed.
- ▶ **Prior Matters** – this exclusion has been condensed to more clearly reflect intent.
- ▶ **United States of America: Insured Organisation versus Insured** – this exclusion replaces the North America Insured versus Insured Exclusion and now applies only to claims brought by or on behalf of an Insured Organisation within USA or subject to USA law.
- ▶ **War, Terrorism & Nuclear Exclusion and Consensual Claims Exclusion** – these exclusions have been removed.
- ▶ **Personal Injury & Property Damage** – this exclusion has been narrowed by amending the lead-in language from “for or arising out of” to “for”. These previously separate exclusions have now been combined into one exclusion.

## Part C: Crime

- ▶ **New Funds** – this extension has been revised to more clearly reflect intent and aligns with the New Funds Extension under Parts A & B.
- ▶ **New Subsidiaries** – this extension has been revised to clarify what constitutes a new Subsidiary by including a definition of “Control”. The exceptions to automatic cover have been narrowed by raising the consolidated revenue threshold from 25% to 50% and by removing Canada. The exceptions to automatic cover have been expanded by adding new Subsidiaries which are “regulated by the U.S. Securities and Exchange Commission”. The window period applicable to the exceptions has increased from 45 to 90 days.
- ▶ **Public Relations Expenses** – this extension has been broadened to include the reasonable costs and expenses incurred by the Insured Organisation in seeking advice from a public relations firm or consultant solely for (b) “the purpose of disseminating the findings of a Final Adjudication in favour of an Insured arising from a Direct Financial Loss covered under Part C of this Policy”. Excess no longer applies to this extension.
- ▶ **Period of Grace** – this extension has been deleted and incorporated into the Extended Reporting Period General Condition. The automatic extended reporting period has increased from 60 days to 90 days.
- ▶ **War, Terrorism & Nuclear** – this exclusion has been removed.

## New Policy Definitions

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|-----------------------------|--------------------------|----------------------------|
| ▶ Co-insurance Percentage   | ▶ Extortion Demand       | ▶ Malicious Code           |
| ▶ Control                   | ▶ Extortion Monies       | ▶ Self-Report              |
| ▶ Cost of Living Expenses   | ▶ Extradition Proceeding | ▶ Social Engineering Fraud |
| ▶ Denial of Service Attack  | ▶ Final Adjudication     | ▶ Tangible Property        |
| ▶ Extended Reporting Period | ▶ Industrial Instrument  | ▶ Third Party Network      |
|                             | ▶ Insured's Network      |                            |
|                             | ▶ Internal Inquiry       |                            |
- ▶ **Change in Control** – added “(c) any person, entity or group of persons or entities acting in concert acquire control of the appointment of the majority of the directors of the Named Insured”.

- ▶ **Claim** – expanded with more consistent language used in respect of Parts A & B. Aggregation language has been moved into the limit of Liability General Condition.
- ▶ **Direct Financial Loss** – aggregation language has been moved into the Limit of Liability General Condition.
- ▶ **Insured Fund** – expanded to include “(b) any underlying investment vehicle with the dominant purpose of holding one or more of the investments of any of the Insured Funds specifies in the Schedule, prior to or at commencement of the Policy Period”.
- ▶ **Management Inquiry** – expanded to encompass industry-wide inquiries and to include “raid or on-site visit”. It is no longer a requirement that the Insured must be legally required to attend or that the findings could lead to a covered Claim.
- ▶ **Money** – amended to exclude “any virtual currency, coins, tokens and the like”.
- ▶ **Professional Inquiry** – expanded to encompass industry-wide inquiries and to include “raid or on-site visit”. It is no longer a requirement that the Insured must be legally required to attend or that the findings could lead to a covered Claim.
- ▶ **Professional Services** – expanded to include “marketing and fund raising” and “administration, custodial or registry services”.
- ▶ **Pollutant** – this definition has been removed.
- ▶ **Property** – expanded to include “Tangible Property”.
- ▶ **Securities Claim** – expanded to include “criminal proceeding”.
- ▶ **Subsidiary** – revised for clarity to incorporate “Control”.
- ▶ **Theft** – expanded for clarity to include “Social Engineering Fraud”.
- ▶ **Wrongful Act** – expanded language at (a).

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