

Oregon Department of Consumer and Business Services Division of Financial Regulation, Bulletin No. DFR 2022-6

TO: All Oregon-based professional liability insurance producers

DATE: November 15, 2022

RE: Errors and omissions liability coverage for state licensed investment advisers

Purpose

This bulletin provides guidance to Oregon-based professional liability insurance producers regarding errors and omissions insurance coverage required for state investment advisors under Oregon Revised Statute (ORS) 59.175(5). In order to meet the requirements, policies may not exclude investment advice or other management services performed by the investment advisor.

Authority

ORS 59.175

ORS 746.075

OAR 441-175-0185

Background

In 2017, the Oregon Legislative Assembly adopted a requirement that state investment advisers with their principal place of business in Oregon obtain and maintain a minimum \$1 million errors and omissions insurance policy to act as a backstop in case of investor harm. Oregon-based state investment advisers were required to obtain a compliant errors and omissions policy by July 31, 2018.

In November of 2017, the Division of Financial Regulation sent a notice to state investment adviser licensees about new legislation impacting Oregon state investment advisers and broker dealer firms. Senate Bill 96 (2017 Oregon Laws Chapter 313) required “every applicant for a license or renewal of a license as a broker-dealer or state investment adviser” to file “proof that the applicant maintains an errors and omissions insurance policy in an amount of at least \$1 million from an insurer authorized to transact insurance in this state or from any other insurer approved by the director according to standards established by rule.” The bill exempted investment advisers with

no principal place of business in Oregon, and broker-dealers subject to section 15 of the Securities Exchange Act of 1934.


Guidance

Producers should be aware of the requirement that a state investment adviser obtain errors and omissions coverage which covers the primary functions of being an investment adviser.

In some instances, state investment advisers seeking errors and omissions coverage have incorrectly assumed that the policies they are purchasing meet the requirement of ORS 59.175. If the errors and omissions policy contains exclusions relating to investment advice or management services provided, producers should clearly communicate any such exclusions to the state investment adviser, so that the adviser is specifically informed of and understands the limitations of the coverage.

Supervisory expectations for Oregon-based state investment adviser firms are addressed in Bulletin DFR 2022-7.

This bulletin takes effect immediately.



Andrew R. Stolfi
Insurance Commissioner and Director
Department of Consumer and Business Services

November 15, 2022

Date