

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

TO: All Oregon-based state investment adviser firms

DATE:

RE: Errors and omissions liability coverage for investment adviser firms

Purpose

This bulletin provides guidance on the insurance coverage requirements under Oregon Revised Statute (ORS) 59.175(5). Issues include:

- Obtaining adequate coverage for management services performed.
- Submitting the attestation and proof of policy required by Oregon Administrative Rule (OAR) 441-175-0185.
- Updating the Division of Financial Regulation when there are changes to the policy.

Authority

ORS 59.175

ORS 59.225

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. The legislature adopted the requirement in addition to Oregon's requirement that state investment advisers maintain a \$10,000 bond. 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 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. Every state investment adviser that has its principal place of business in Oregon must demonstrate compliance as a condition of licensure and annual renewal.

OAR 441-175-0185 states that proof of compliance can be demonstrated by filing an attestation form with the director and “submitting a policy declaration page or a certificate of liability coverage specifying errors and omissions coverage.” The “attestation must include: (A) The name of the insurer; (B) The policy number; (C) Name of the insured licensee; and (D) Dates of the policy period.” The rule expressly states that “a policy may not contain exclusions for investment management services performed in Oregon or for persons performing investment management services in Oregon.”

ORS 59.225 states that the director may cancel a state investment adviser’s license or application upon finding that the adviser has “failed to maintain an errors and omissions insurance policy.”

Guidance

ORS 59.175 and OAR 441-175-0185 require proof of errors and omissions insurance as a condition of licensure and renewal. A state investment adviser must submit proof of a current policy and an attestation [form](#) that the policy has been in continuous effect. If there is a change in the policy prior to license renewal, the state investment adviser must update the information with the division. Proof of continuous errors and omissions coverage is a subject of examination, and failure to maintain coverage will subject the adviser to license cancellation.

A state investment adviser subject to the requirements of ORS 59.175 is responsible for ensuring that its errors and omissions policy does not contain exclusions for investment management services performed.¹ Policies that exclude investment advice or management services performed by a state investment adviser with respect to any Oregon clients do not comply with ORS 59.175 and OAR 441-175-0185.

A state investment adviser’s failure to provide proof of coverage that includes appropriate investment management services will result in a notice of cancellation of the investment adviser’s license. Additionally, the cancellation of a state investment adviser’s license also cancels the licenses of the investment advisers representatives of the aforementioned state investment adviser.

Supervisory expectations of professional liability insurance producers are addressed in Bulletin DFR 2022-

This bulletin takes effect immediately.

¹ See OAR 441-175-0185(2)(c).