



InvestaGuard is the most comprehensive E&O available today. The best key features are often defined by what is not in the policy, as well as what you see. Getting into the weeds, we have highlighted policy wording that gives you .....



- More control over your claim process and results
- Broader coverage
- Coverage options if the firm is sold and other business continuity tools

**More Control Over Your Claim Process and Results**

Location	Description	Terms	What It Means To You
Dec Page	<b>Insurer</b>	Partner Reinsurance Company AM Bests A:XV Rating	Strong claims-paying ability.
Dec Page	<b>Monitoring Counsel</b>	Marshall Dennehey Warner Coleman & Goggin or Kutak Rock	Recognized securities law specialists.
Dec Page	<b>Choice of Preferred Defense Counsel</b>	Identified during application process and negotiations, reviewed for qualifications, agreement with insurer regarding rates and litigation management procedures.	Your preferred counsel represents you during the claim process. Compared to assigned panel counsel who provides you with defense, but technically is representing the insurer's interests.
Page 4		Insured's consent necessary for Insurer to make settlements, and the typical "Hammer Clause" omitted.	Other policies have a hammer clause whereby if the insured refuses to consent to a potential settlement, the insurer has no further obligation to defend the matter, nor will they pay more in the ultimate settlement than the previous potential settlement amount. InvestaGuard is much better.
Page 4		If all Insured defendants are able to dispose of the claim within the retention, the Insurer's consent to settle is not required.	Gives you much flexibility to tackle matters with your preferred counsel quickly.
Page 5	<b>Defense Costs</b>	Insured may incur an amount in defense costs up to 50% of the Retention <i>without</i> the insurer's consent.	This goes hand in hand with the ability to settle matters within the Retention.
Page 5	<b>Definition of Claim</b>	A <i>demand</i> for monetary relief;	Beneficial to have simply <i>demand</i> versus <i>written</i> demand. Also, does not contain restrictive language limiting coverage to only claims brought by a client, which means this policy would respond to a claim brought by a client's beneficiary, for example.
Page 5	<b>Definition of Insured</b>	Does not include <i>Former</i> Registered Representatives.	This protects your policy and loss ratio by not including coverage for an advisor you may have terminated for cause or encouraged to resign. If preferred, can include "former" reps.
		Notwithstanding the above, this policy <i>shall apply to claims against the Named Insured</i> involving a <i>former</i> registered representative, IAR and/or agent.	Clear coverage grant for the Named Insured as respects claims arising from a former rep, advisor or agent.
		Includes Independent Contractors	Beneficial language as many home office or production staff are independent contractors and not employees.
		Any entity owned, controlled or <i>employing</i> an Insured registered rep, investment advisor or agent.	Provides good cover, particularly where a strategic relationship exists and the insured advisor is not the owner/controller of their firms.
Pages 9 and 10		Trade Error Correction Extension	The policy will respond to the Named Insured's Loss in situations where the firm makes a correction and the client may be aware and/or a client claim is made, <i>as well as</i> circumstances where the correction is made and the client is unaware. This policy <i>does not</i> condition coverage on the Named Insured obtaining the Insurer's permission before making such correction. Most policies do not operate in this favorable manner.
Page 15	<b>Notice of Potential Claim 8.(b)</b>	Upon awareness of any circumstance which may reasonably be expected to give rise to a claim, the Insureds shall give written notice to the Insurer of the circumstances and the reasons for anticipating such a Claim, <i>with known particulars as to dates, persons and entities involved</i> .	This is much more favorable language for reporting potential claims ( <i>known</i> particulars versus <i>all</i> particulars). With other policies, in order to qualify as a potential covered claim and be accepted as such, most policies require very specific particulars, including name, address, specific potential demand amounts and a specific Wrongful Act. This can be problematic as that information may not be fully known and it requires the Insured to guess/state what the alleged wrongful act may be.
Dec Page and Page 14	<b>Policy Type - Claims Made</b>	Softened reporting period by including 60 day post-policy period window to report claims.	Opportunity to review and investigate 11th-hour incidents with added time to report claims or potential claims.
Page 4	<b>Defense and Investigation</b>	Insurer has right and <i>duty</i> to defend.	Duty to defend is important coverage trigger, particularly when there are uncovered allegations, such as fraud.

Page 7		Disciplinary Proceedings	Reimbursement to Insured for legal fees and expenses.
Page 8		Loss of Earnings and Expense Reimbursement	Reimbursement to the Insured for reasonable and necessary expenses for attendance at any deposition, hearing or trial in connection with a covered claim, including \$100 per day for loss of earnings, up to \$5,000 per policy period. Higher limits available subject to underwriting approval.
Pages 8 and 9		Pre-Claim Assistance	\$5,000 for legal fees and support to respond to a subpoena for records or files. No deductible applies.
Pages 14 and 15	<b>Notice of a Claim</b>	During the Policy Period or within 60 days after the end of the Policy Period.	Free 60 day grace period to report a claim. Also, no requirement to report within a certain number of days after initial knowledge.
Page 17	<b>Notice and Authority</b>	The Named Insured acts on behalf of all Insureds with respect to notice of claim, giving and receiving of information, notice of cancellation, payment of premiums, receiving any return premiums, acceptance of the policy and exercise of rights to a Discovery Period.	It does not state the Named Insured is responsible for the payment of all Retentions. While this is an implied responsibility and is the norm in the industry, InvestaGuard language leaves the door open for a firm to agree with the insurer for the insurer to collect a retention directly from the advisor if there is a net capital impact.
Page 7	<b>Extensions and Supplemental Payments</b>	Estates, Heirs, Legal Representatives and Spouse	If an Insured becomes deceased, incompetent, insolvent or bankrupt, the estate, heirs and legal representatives have protection for claims arising from acts of the Insured. A lawful spouse is protected under this policy when a claim seeks damages recoverable from marital community property.
Page 17	<b>Territory</b>	Extends to Wrongful Acts taking place or Claims made anywhere in the world to the extent permitted by law.	True worldwide coverage. Most policies allow acts worldwide, however require claim to be brought in the United States and its possessions and territories.
None	<b>Alternative Dispute Resolution</b>	It is hereby understood and agreed that all disputes or differences which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of Loss, shall be subject to the alternative dispute resolution process ("ADR") set forth in this clause.	This common language has been omitted from InvestaGuard. It favors an Insured to <u>not be compelled</u> to an Alternative Dispute Resolution process in the event of a dispute with the Insurer.
None	<b>Action Against the Insurer</b>	No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the Insureds' obligation to pay shall have been finally determined either by judgment against the Insureds after actual trial or by written agreement of the Insureds, the claimant and the Insurer.	This common language has been omitted from InvestaGuard. It favors an Insured to <u>not be compelled</u> to wait until the conclusion of the case before taking action against the insurer if so desired.
None	<b>Service of Suit Clause</b>	It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States.	This common language has been omitted from InvestaGuard. All parties still have their rightful lawful options.

**Broadest Coverage**

Location	Description	Terms	What It Means To You
Pages 3 and 4	<b>Insuring Agreements</b>	Include actual or <i>alleged</i> Wrongful Acts of the insured or <i>any person for whose acts the Insured is legally liable</i> .	Not restricted to only <i>actual</i> wrongful acts. Also, <i>any person</i> language is broader than where coverage only applies if an <i>Insured</i> committed the Wrongful Act.
Page 3	<b>Failure to Supervise resulting in Selling Away</b>	Failure to Supervise in connection with any activity or <i>alleged</i> activity in rendering or failure to render Professional Services <i>whether on the behalf of the Named Insured or not</i> .	Many selling away claims have been denied because the " <i>whether on behalf of the Named Insured or not</i> " language was missing. The lack of distinction between supervising legitimate business and illegitimate business in other policies can be very problematic.

Pages 4 and 5	<b>Approved Outside Business Activity</b>	Approved in advance in writing by the Named insured; in connection with <i>product types</i> which have been approved to be transacted.	Adding <i>product types</i> (versus only "products") broadens coverage and relieves the BD and Advisor from the burden of approving each and every specific product to be transacted.
Page 6	<b>Definition of Professional Services</b>	Includes the purchase, sale or servicing of securities, including investment companies as defined by the SEC...	The definition encompasses all securities, unless excluded.
Page 7	<b>Definition of Wrongful Act</b>	<i>Any act, error or omission by the Named Insured, any director, officer, partner or employee thereof, or by any Insured, in their respective capacities as such including, but not limited to, the failure to supervise, manage or train.</i>	This is broad language as it is not limited to only "negligent" acts. The inclusion of the "failure to supervise, manage or train" expands significantly the scope of coverage.
Page 10	<b>Exclusion Preamble</b>	The Insurer shall not be liable for Loss in connection with any Claim made against an Insured:	Includes "arising out of , based upon or attributable to...in fact.." <i>Does not contain "or in any way related to or involving..."</i> The simple preamble and the "in fact" language provides much broader coverage by limiting the applicability of exclusions.
Page 10	<b>Fraud Exclusions a) and b)</b>	the committing <i>in fact</i> of: Any criminal or <i>deliberately</i> fraudulent act, any <i>willful</i> violation of....rules and regulations.	Leaves less room for a denial of coverage due to fraud by an advisor as it has to be proven "in fact" and be a "willful" violation (as opposed to simple negligence).
Page 11	<b>Insolvency Exclusions d) and e)</b>	solely with respect to the insolvency of the Life/A&H insurer, if at the time of placement of the insurer is rated B+ or better by AM Best Company, this exclusion shall not apply.	This carve-back of coverage within the exclusion is better, as most policies only provide coverage if the insurer is A Rated by AM Bests.
		Arising out of any limited partnership, REIT or other form of direct participation investment program <i>which as of the effective date of the Named Insured's first policy with the Insurer, has been the subject of any proceeding seeking to adjudicate it bankrupt or insolvent, or seeking reorganization arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or composition of its or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors or seeking appointment of a receiver, trustee or other similar official for it or for any substantial part of its property;</i>	InvestaGuard provides much better coverage by restricting the exclusion to only products which were <i>known to be troubled</i> as of the effective date of the <i>first policy</i> with the Insurer. Most policies exclude altogether the insolvency of alternatives.
Page 12	<b>Grant of Selling Away regarding excluded products; end of Exclusion (m)</b>	Penny stocks, foreign securities, structured settlements, promissory notes, viaticals and callable CDs, provided, however this <i>Exclusion shall not apply with respect to Insuring Agreement A.3. (Selling Away coverage for the BD)</i> .	Selling Away coverage can be negated by other policies if it involves these typically "sold away" products. InvestaGuard is broader by clearly providing this specific coverage grant.
Page 3	<b>Named Insured Insuring Agreement (as Broker Dealer, Registered Investment Advisor or Insurance Agency)</b>	Specifies including, but not limited to, <i>management, compliance, due diligence, securities trading and administration.</i>	Beneficial to have a clear coverage grant for those responsibilities.
Page 4	<b>Insurance Agent Insuring Agreement</b>	Includes acts as agent, agency or general agent or general agency.	Beneficial to have coverage beyond simply personal production by the Insured. Coverage can be included by endorsement for independent contractor subagents also.
Pages 4 and 6	<b>Personal Injury</b>	Loss arising from from mental injury, mental anguish, mental tension or emotional distress.	Included in InvestaGuard. Many policies no longer include this as covered loss.

Page 6	<b>Definition of Loss</b>	Includes <i>punitive and exemplary</i> damages, where insurable by law.	Many policies exclude punitive and exemplary damages.
Page 12	<b>Tangible Property Exclusion (m) (1)</b>	This exclusion does not apply to tangible precious metals.	Most policies do not cover tangible gold or silver.
Page 12	<b>Penny Stock Exclusion (m) (2)</b>	This <i>exclusion does not apply</i> if the equity security trade is <i>specifically approved by the Named Insured</i> .	Most policies do not cover any security priced under \$5.
Page 12	<b>Electronic Failure Exclusion (n)</b>	<i>Solely</i> alleging, arising out of, based upon or attributable to any mechanical or electronic failure, breakdown or malfunction of machines or systems <i>and not part of a Claim alleging a Wrongful Act in the provision of Professional Services</i> .	E&O is not designed to respond to computer/electronic malfunctions, however, our wording is designed to respond if the mechanical/electronic failure results in a claim alleging a problem with the provision of Professional Services.
Page 13	<b>Discretionary Exclusion (r)</b>	However, this exclusion shall not apply to investments in securities and/or rendering investment management services <i>pursuant to a written contract</i> defining the scope of such advice and/or services and the compensation to be paid therefor;	No list of product exclusions while using discretion, unlike other policies.
Page 15	<b>Protection for Innocent Insured</b>	Whenever coverage would be excluded under fraud Exclusions (a) or (b), the coverage otherwise afforded under this policy to a natural person Insured will continue to apply to each such Insured who did not personally commit, participate in, gain a profit or advantage, acquiesce in or remain passive after having personal knowledge or becoming aware of such fraudulent acts.	This important coverage has favorable language. Other policies include conditions (intentionally or unintentionally) that would allow a denial of coverage if the person who committed the wrongful act is no longer an Insured (i.e. a terminated advisor) or if the fraud has been proven in fact (adjudicated or admitted guilt and potentially incarcerated).
Page 17	<b>Other Insurance Clause</b>	Shall apply as excess over any other <i>valid and collectible</i> insurance.	Insurers can invoke the "other insurance clause" when the insured has another policy, in which case the insurer will stand as excess over the other policy (forcing the other policy to be primary). It is important for the other insurance to be "valid and collectible" before the insurer takes this action. " <i>Valid and collectible insurance</i> " is favored over the standard " <i>any other insurance</i> " language for that reason.

### Business Continuity or Change in Control

Location	Description	Terms	What It Means To You
Page 15	<b>Automatic Discovery Period</b>	3 years at 200% annual premium.	In the event of an active claim year, which could result in a non-renewal, the firm has the guaranteed option to purchase a 3-year "tail."
Pages 15, 16 and 17	<b>Transaction Discovery Period in the event of a merger or sale</b>	Up to 6 years can be purchased at rate to be determined.	It is beneficial to have a guaranteed option of a lengthy "tail" in the event of a "transaction" as most acquiring firms mandate one.
Page 6	<b>Definition of Named Insured</b>	Automatically includes Subsidiaries.	The definition simplifies the addition of new entities.
Page 16	<b>Cancellation Clause</b>	May be cancelled by either the Insured or Insurer (except in the event of "Transaction - merger, acquisition, change in control."	No minimum earned premium, and the return of unearned premium is pro rata regardless of who initiated the cancellation.

**Available exclusively through InterWeb - Call us!**

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