Funds in Focus 2019
Private Funds Annual Review Conference

Insurance for Private Funds:
Protecting Your Funds' Returns

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Market Update

General State of the Market

Underwriting/Claims Environment

- The underwriting environment continues to provide significant opportunities to obtain enhanced coverage.
  - Key areas in which we recently have enhanced clients' coverage:
    - government investigations
    - narrowing of policy exclusions
    - improvements to trade error coverage, and
    - relaxing and limiting of policy conditions
- In contrast, the current claims environment is very rough.

General State of the Market

Evolving Risks

- It is <u>essential</u> for private funds to assess—on an ongoing basis—the protections afforded by existing insurance coverage
  - New activities, strategies, investments, etc. present new risks
  - Existing ones present new risks
- This assessment should form a part of every renewal
  - It should be baked into the regular, annual process
- Insurers are taking similar actions—that is, continually updating and adding exclusions to address and limit coverage for new and expanding risks.

Dispelling Certain Myths and Assumptions

- Reliance on Brokers
- “Standard” Policies
- Claims Are Nothing to Worry About
- The Market Is Not Overly Litigious
- Individuals Have Nothing to Worry About
- Cyber / Privacy Risks Are Not Applicable

Hot Topics

For Private Investment Vehicles, Advisers and Sponsors

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Hot Topic #1

Directors & Officers (D&O) / Errors & Omissions (E&O) Coverage

- Regulatory Investigations
- Cost of Corrections
- Private Equity, Private Credit and Activist Hedge Fund Considerations
  - Capacity, Allocation and Outside Directorship Coverages
  - Distress Situations
- Key Exclusions

Directors & Officers / Errors & Omissions Coverage

Regulatory Investigations

- Coverage for government investigations remains critical.
- Opportunities to negotiate for better coverage
  - The market has improved significantly in the past few years—in terms of the scope of coverage available for government investigations.
- Obtaining market-leading coverage for government investigations
  - Coverage differs significantly from insurer to insurer based on policy language.
  - Base policy language, and even many endorsements, are insufficient.
  - Policy language <u>must</u> be negotiated.

Directors & Officers / Errors & Omissions Coverage

Cost of Corrections (COC)

- COC coverage is important because it allows for the resolution of matters without contentious proceedings that can harm investor relationships.
- Myth that this coverage is only important for hedge funds and not private equity.
- In the current market, COC coverage often can be obtained without any additional charge.
- We also have recently seen certain insurers begin to agree to relax the traditionally stringent requirements for recovering for a COC.
- Not limited to trade errors.

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Directors & Officers / Errors & Omissions Coverage

Private Equity, Private Credit and Activist Hedge Funds

- Capacity, Allocation and Outside Directorship Coverages
  - Ensure portco’s or borrower’s policies adequately protect board members
  - Ensure the Funds’ policies also provide broad outside capacity coverage
  - Coverages and indemnification must be comprehensively addressed to avoid gaps
- Distress Situations
  - Protection against the types of claims asserted against sponsors and lenders
  - Insurance as a source of recovery for claims asserted against borrowers or portcos in distress situations or bankruptcy
  - Representations and warranty insurance

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Directors & Officers / Errors & Omissions Coverage

Key Exclusions

- Standard policy forms contain broad exclusions that <u>substantially limit</u> the scope of coverage—for example:
  - Conduct and Profit Exclusions
  - Contractual Liability Exclusion
  - Employment Practices Exclusion
  - Hidden exclusions in the Policy’s “Loss” definition
    - Disgorgement, Fees, Fines and Penalties
  - Insured vs. Insured Exclusion
- Through negotiation, the application of key exclusions can be significantly diminished.

Hot Topic #2

Cyber / Privacy Coverage

- Misconceptions
- The Market is Evolving
- Three Areas of Focus
    - Operations
    - Crime
    - Regulatory Matters

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Hot Topic #3

Claims Provisions and Practices

- Self-Inflicted Wounds
  - Many coverage fights involve an insured's alleged failure to comply with policy conditions (*e.g.*, notice, cooperation and consent)
- Policy Language
  - The relevant conditions can be negotiated at the outset to reduce risks
- Internal Best Practices
  - Internal procedures can be adopted to minimize these risks

Hot Topic #4

General Attention to Detail

- Basics
- The Obvious Often is Overlooked
  - Better to address risks at the outset
  - Ongoing policy review
  - Well-integrated, fully negotiated, complete insurance program
  - Vigilance with respect to potential and known claims
  - Address vendor risks

Questions

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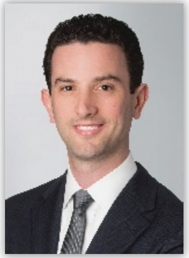

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