

MOST COMMON REP. QUESTIONS

A majority of independent contractor broker/dealer firms understand that the most comprehensive approach to professional liability insurance is to implement a firm-wide E&O program, and require the participation of the representatives. The firm personnel responsible for representative communication field many questions regarding the E&O program. Many of these questions have common threads, and we will attempt to answer them here.

Question: I already have my own E&O coverage. Why must I participate in the broker/dealer program?

Any “outside” coverage maintained by the registered representative is for the benefit of the registered representative only, and provides no coverage to the Broker/Dealer. In addition, such “outside” coverage purchased by the representative is Life Agent coverage, and will often include a rider for Series 6 business. Such programs rarely offer coverage for Series 7 or Series 65 activity. Conversely, a Broker/Dealer E&O program is securities and mutual fund oriented, offering additional coverage for fixed insurance sales activity.

Question: Really? Why can't I “opt out” of the firm program?

The Broker/Dealer must ensure that adequate coverage exists for both itself and the registered representative. To confirm that the representatives have coverage, that the coverage terms and liability limits are adequate, that the insurance carrier is acceptable, and that the coverage remains in force, would place an extreme administrative burden on the firm.

I have my own E&O, why do I need yours?

Why is your E&O so expensive? I can get it cheaper on my own.

What about my prior acts?

As an advisor, am I covered in my capacity as a fiduciary?

COMMON QUESTIONS

Question: The cost of E&O at XYZ Broker/Dealer is less. Why?

Many factors impact the overall premium of a broker/dealer program, including retention (deductible) levels, sales activity, size of the firm, limits of liability, and prior claims history. As such, comparing pricing between firms is extremely difficult. Periodicals which publicize the E&O charges at certain firms often deal with outdated information, as the respective firms have not gone through their renewal process.

IS YOUR CURRENT E&O PROGRAM AS COMPREHENSIVE AS IT SHOULD BE?

Allow us to conduct a formal review of your E&O program. We will provide you with a straight-forward analysis of the current policy, including substantive recommendations on ways in which to improve upon the coverage terms. Obviously we want you to work with us, but if you choose not to do so, you will have the benefit of our findings to act upon as you see fit.

What if I leave the firm?

What is considered a claim?

What about my outside life/health or outside RIA?

Effective answers to such questions will assist with representative satisfaction and overall understanding.

COMMON QUESTIONS

Question: What happens if I leave the firm? Can I take the coverage with me?

No. Once registration is terminated, there is no coverage for subsequent activities.

Check your existing policy to determine if coverage is afforded to “Past Reps.”, for activities which occurred prior to termination. If such past rep. coverage exists, past reps. may still be considered insured for claims arising out of activities which occurred prior to the date of termination. If such coverage is not provided, the policy may allow a fixed period of time, following termination, in which these former representatives may report claims.

Question: What is considered a “claim”?

While the exact definition varies by policy, “Claim” is typically defined as a written demand for compensation. This is important, as many representatives mistakenly believe the matter must be an arbitration or civil litigation to qualify as a claim. **Note:** Check your specific policy definition, as some policies do not require that the matter be in writing.

Question: What about my prior acts?

As pertains to the representatives, the “prior acts” or Retroactive Date, is the later of the representative’s date of registration with the broker/dealer, or the Retroactive Date shown on the policy declarations page. No coverage is typically afforded for activities which occurred prior to the representative joining the firm. **Note:** Check your specific policy. Some policy forms offer limited coverage for such activities, although it is not advisable to do so.

Question: I am an advisory rep. What about my activities as a “fiduciary”?

Clarify the question with the representative. The rep. is likely referring to activities as an advisory to a qualified retirement plan, 3(38) or 3(21). If the policy affords coverage for investment advisory activities, and includes discretionary money management in the case of 3(38), the “fiduciary” status of the representative is thereby covered. Most policies contain one or more “fiduciary” exclusions, pertaining only to the fiduciary role regarding the insured broker/dealer’s sponsored retirement plan, or activities as a named trustee to a plan. If you have not already done so, work with your insurance company, modifying the fiduciary exclusion language to make this distinction clear.

Question: What about my outside life/health business? Outside RIA?

First the firm must decide if it wishes to extend such coverage to the reps. for these activities. If the answer is “yes”, check your policy. Many policies automatically extend coverage, while others must be modified. Either way, check to confirm that, as respects coverage for life/health or RIA activities, the professional services are not required to have been rendered to a customer or client of the broker/dealer. In both cases, the outside activity may pertain to customers/clients of the representative, who may not also be customer/clients of the broker/dealer.