



Financial Institutions

Private Equity and Venture Capital Liability Solutions

CNA's Private Equity and Venture Capital Liability solutions provide Directors & Officers and Errors & Omissions coverage to private equity and venture capital funds, management companies, general partners, investment managers, investment holding companies, advisory boards, and their employees and executives.

Frequently Faced Risks

Typical exposures faced by private equity and venture capital firms include:

- Breach of fiduciary duties
- Conflict of interest
- Discrimination
- M&A transactions
- Misrepresentations
- Outside director liability
- Partnership disputes
- Portfolio company bankruptcy
- Regulatory investigations
- Unfair competition claims

CNA in-house Claim professionals are highly experienced in helping insureds resolve claims arising from these risks.

Key Features

- Investigation cost coverage for shareholder derivative demands
- Executive definition includes outside directors of portfolio companies and charitable not-for-profit entities
- Fund definition includes pooled investment vehicles or separately managed accounts
- Loss definition includes:
 - Sarbanes-Oxley Act Section 304, Dodd Frank Act Section 954 or similar statutes – fees and expenses, including loan interest, incurred in connection with the facilitation of a clawback payment
 - Civil fines and penalties against insured persons for violations of Section 78dd-2(g)(2)(B) of the Foreign Corrupt Practices Act

- Judgments and settlements attributable to alleged violations of Sections 11, 12, or 15 of the 33 Act
- Coverage for claimant attorney's fees in covered settlement or judgment
- Defense costs carveback for items specifically excluded from loss
- Coverage offered for an insured acting in the capacity of a control person
- Robust definition of investment activities includes:
 - The formation, capitalization, operation, management, administration, marketing, solicitation, dissolution, or liquidation of a fund or an investment holding company
 - Investment management, portfolio management, or asset allocation services performed for, or on behalf of, a fund
 - Investment advice, advisory, or other services performed to, or for the benefit, of an insured entity or portfolio company
 - The selection and oversight of outside service providers
 - Shareholder representative services
- Coverage offered for wrongful acts of others for which the insured is legally liable
- No retention for Side A or outside entity claims, or for shareholder derivative demands

- Definition of claim includes:
 - Written demands for monetary or non-monetary relief, civil criminal or regulatory proceedings
 - Requests to toll or waive statute of limitations or for alternative dispute proceedings
 - Extradition
 - Formal investigation coverage for insured entities
- Coverage offered for additional insureds serving in capacity for advisory board members, independent contractors or consultants

Exclusions

- Conduct exclusions only triggered by final non-appealable adjudication in the underlying action. Severability with respect to insured persons and only wrongful acts of a responsible person of the named insured will be imputed to the named insured.
- Insured entity versus insured exclusion with expansive/robust carvebacks for any:
 - Defense costs for non-indemnifiable loss
 - Shareholder derivative suit
 - Claim brought at the recommendation of independent counsel, and failure to make such a claim would result in liability of an insured
 - Claim against former insured persons, no longer serving in their capacity
 - Claim brought on behalf of insured entity or outside entity while in financial insolvency
 - Claim outside of United States or common law jurisdictions
 - Claim in the form of a cross-claim, third-party claim, or otherwise for contribution or indemnity not otherwise excluded
 - Claim brought by insured entity in its capacity as a control person
 - Claim brought or maintained by a fund based upon or arising out of investment activities and failure to make sure a claim would result in liability of an insured
- No pollution exclusion, however, loss covered under the policy does not include clean-up costs
- Breach of contract exclusion carvebacks for:
 - Insured's liability in absence of such contract
 - Claim for rendering or failure to render investment activities
 - Organizational documents

Asset Manager Fidelity Bond Enhancement Rider

CNA has added a new Asset Manager Fidelity Bond Enhancement Rider to its Financial Institutions Bond-Form 14 for private equity insureds providing coverage for: Theft of client capital, cyber crime and social engineering.

Additional Terms and Conditions

- Advancement of loss for covered claims within 60 days after an insured person's request for indemnification has been refused or such request has not received a response
- Fully non-rescindable policy
- Limited subrogation/recovery
- Insured has duty to defend and right to select own defense counsel
- Settlement authority – right to incur 50% of retention in defense costs without insurer's consent and the right to settle claims within the retention without insurer's consent
- Policy is primary with respect to any insured person's personal umbrella or personal directorship policies
- Automatic coverage for new funds created by an insured, as long as investment objectives are substantially similar to existing funds

Key Coverage Enhancements Available by Endorsement*

- Employment Practices Liability (EPL) – coverage for EPL claims for insureds
- Fiduciary Liability – coverage for insured's employee benefit plans
- Informal investigation coverage for insured persons
- Employed Lawyers – coverage for wrongful acts by lawyers employed by an insured entity in connection with the performance of professional legal services for an insured entity
- Mock regulatory compliance – reimbursement for costs incurred in connection with SEC mock audits
- Additional Side A limit – additional \$1 million limit of liability for non-indemnifiable loss claims
- Pre-claim expenses

* Additional premium, terms and conditions may apply.

For more information, please contact your local underwriter or visit cna.com/financialinstitutions.