



Errors and Omission Tail Coverage

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Every transaction within the insurance brokerage space involves "conditions to closing" to which a seller must adhere for the transaction to be finalized. One condition to closing that a seller is typically not readily aware of is the requirement to carry an extended coverage of their Errors and Omission policy.

A post-closing extension of the seller's E&O policy provides "tail" protection to both parties. A standard E&O policy requires a carrier to pay claims that were received during the policy period. However, claims are often made long after the event that causes the claim. Tail Coverage gives protection against claims the seller is unaware of at the time the policy ends.

A seller's E&O policy can provide various protections for both the seller and buyer. Nearly every insurance agency purchase agreement includes indemnification language in which the seller indemnifies the buyer for acts occurring prior to the sale. The most common indemnification claim is one arising from an errors and omissions event that occurred prior to the sale. Most often both the buyer and the selling entity are named in these claims. The purchase of an E&O tail policy gives the seller the comfort of knowing that the most likely event to cause an indemnification claim has been insured against. The buyer gains a similar comfort knowing that the seller has adequate coverage and protection.

E&O tail coverage is typically purchased as an extension of the selling agency's existing E&O policy. Limits, exclusions, endorsements and the policy form generally mirror that of the existing E&O policy. An exception can occur when the seller's existing E&O policy has limits below industry standards. In such an instance, the buyer may require the seller to purchase an E&O tail policy with higher limits in keeping with industry standards.

The term of the tail coverage can be a negotiable item between the buyer and seller. The most common term is three (3) years, although some are as short as two (2) years and others as long as seven (7) years. The term of the tail coverage is usually agreed upon between the buyer and seller and stated specifically in the purchase agreement. Often, the term of the E&O tail policy is made to mirror the term of the seller's indemnification commitments to the buyer. For example, a three (3) year indemnification period would prompt a three (3) year E&O tail policy period.

Many E&O policies state the cost of tail coverage for various time periods within the policy itself. Others require an inquiry to the E&O underwriter to ascertain the premium necessary to purchase the tail coverage. Premiums generally run between 1.25 to 3 times the annual E&O premium depending on the term of the coverage. Payment of the E&O tail premium is typically the responsibility of the seller.

Executive Summary

- *E&O tail coverage is essential protection for both the seller and the buyer.*
- *A post-closing E&O claim for a pre-closing event is the most likely trigger of an indemnification claim.*
- *E&O tail coverage limits, exclusions and endorsements usually mirror that of the prior E&O policy.*
- *The term of the E&O tail policy generally matches the term of the indemnification commitment made by the seller.*
- *The E&O tail policy is often purchased as an extension of the seller's existing E&O policy.*

MarshBerry M&A Advisory Services

Deal Strategy

1. Acquisition Planning
2. Deal Return Modeling
3. Strategic Options Analysis
4. Alternative Buyer Comparison

Deal Preparation

1. Sale Preparation Management
2. Offering Memorandum Development
3. Strategic Pitch Book Design
4. Candidate Profile Creation

Deal Representation

1. Buy Side Representation (inc. Search & Screen)
2. Sell Side Representation
3. Letter of Intent Development / Negotiation
4. Creative Deal Structure Alternatives

Deal Analysis

1. Agency Fair Market Valuation
2. Market Comparables / Deal Benchmarking
3. After-Tax Return Optimization
4. IRR, ROI and EPS Analysis

Deal Execution

1. Diagnostic and Confirmatory Due Diligence
2. Intangible Asset Allocation - GAAP Reporting
3. Fairness Opinion
4. Definitive Agreement Best Terms / Conditions

Post-Deal Management

1. Post-Closing Integration
2. Goodwill Impairment Testing
3. Peer-to-Peer CEO Exchange
4. Earn-Out Maximum Consultation

SNL Financial M&A Advisor Rankings

Insurance Broker Merger & Acquisition Deals
1997-2010

Rank	Firm	1997 - 2010 # of Deals	2010 # of Deals
1	Marsh, Berry & Co. Inc.*	308	33
2	Hales & Company, Inc.	145	21
3	Reagan Consulting, Inc.	117	4
4	Mystic Capital Advisors Group, LLC	111	16
5	Macquarie Capital Advisors Grp., LLC	49	4
6	Bank of America Merrill Lynch	22	0
7	B.H. Burke & Company, Inc.	17	1
7	Sica Consultants, Inc.	17	2
9	Harbor Capital Advisors, Inc.	16	0
9	Keefe Bruyette & Woods, Inc.	16	1
11	Sandler O'Neill & Partners, L.P.	14	1
12	North Bridge Advisors, Inc.	13	0
12	Philo Smith & Company	13	3
14	Credit Suisse (USA), Inc.	9	0
15	Business Management Group, Inc.	8	0
15	Curtis Financial Group, LLC	8	0
15	J.P. Morgan Securities, Inc.	8	0
18	Boenning & Scattergood, Inc.	7	0
18	Gill and Roeser Holdings, Inc.	7	0
18	Nexus Group, Inc.	7	0
18	Optis Partners, LLC	7	3
22	2nd Generation Capital Corporation	6	0
22	Goldman, Sachs & Company	6	0
24	Austin Associates, LLC	5	1
24	Garland McPherson & Assoc., Inc.	5	0
24	Lazard Freres & Co., LLC	5	0
24	Piper Jaffray & Co.	5	1
24	Wells Fargo Securities, LLC	5	0

All States // Completed Transactions
Whole deals as reported by SNL Financial, February 2, 2011
* MarshBerry has closed 28% of total deal flow since 1997

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