



## Independent Review Committee (IRC) Member Liability and Indemnification Reimbursement Insurance

### *Independent Protection for Investment Fund Management IRC Members*

#### **National Instrument 81-107 (NI 81-107)**

##### **The IRC Committee Members Liability issues**

- ▶ **IRC** members may be liable for breach of securities regulation if they fail through inadvertence or otherwise, to carry out their duties under *NI – 81-107*
- ▶ Failure to abide by the procedural requirements outlined in the *NI 81-107*
- ▶ A breach of fiduciary and *NI 81-107* mandated duties
- ▶ An **IRC** committee members' misrepresentation to fund investors, resulting in negligence in preparing and communicating to fund investors as part of their duties to report directly to fund unit/security holders.

The Canadian Securities Administrators (CSA) have instituted a new governance mandate effective *November 1, 2006*. All investment funds must have an IRC in place by **May 1, 2007**. All investment funds must be in full compliance by *November 1, 2007!*

As a product innovator in the Executive Liability market **Executive Risk Insurance Services (ERIS)**, has introduced an *independent* solution, addressing the liability that IRC members will face in carrying out their mandated duties under NI 81-107. **ERIS'** IRC product is a *primary insurance policy* protecting IRC committee members against any liability that may be incurred in carrying out their duties as described in their particular IRC charter and mandate.

### **Standard Fund Manager/ Investment Manager Insurance Is Not Sufficient!**



- ▶ *Where's the independence?* – IRC members can *not* have a material relationship with the fund manager – being covered under the fund's corporate director & officers policy gives the perception of dependence on the fund managers for cover
- ▶ Limits can be *eroded* by the fund, fund manager and others covered under the policy
- ▶ Most traditional policies will have an *Insured vs. Insured exclusion*
- ▶ IRC members face increased risk should the assets of the fund or the fund manager be frozen by a regulator

### **ERIS' IRC Member Liability and Indemnification Reimbursement Policy**

- ▶ A truly *independent stand-alone primary* insurance solution for IRC members !
- ▶ Investigative Cost coverage
- ▶ *Broad Definition* of "Wrongful Act" – covering the full IRC charter, not just NI 81-107!!
- ▶ *Indemnification Re-imbusement* for Investment Fund Manager or Investment Fund when they indemnify the IRC members
- ▶ Optional Duty to Defend
- ▶ Non-rescindable cover for Independent IRC members
- ▶ Full severability of exclusions
- ▶ No Insured vs. Insured Exclusion
- ▶ Separate/Dedicated Aggregate Limit for IRC members

# Independent Review Committee (IRC) Member Liability and Indemnification Reimbursement Insurance

## Independent Protection for Investment Fund Management IRC Members

### ERIS Policy Features

- ▶ **Capacity** - \$10,000,000 (CAD)
- ▶ **Deductible** – Nil Options Available
- ▶ **Fund or Fund Manager Indemnity Clause** – If Fund or Manager indemnifies IRC member(s) the ERIS policy will reimburse the Fund
- ▶ **Primary or excess** cover available
- ▶ **'A' Rated** paper 100% Lloyd's syndicates



### Required Underwriting Information

- ▶ Completed Application
- ▶ Composition, including Bios of IRC Members (identifying other IRC commitments)
- ▶ Overview/Details of the Funds
  - ▶ Size
  - ▶ Investment strategy
  - ▶ Funds Annual Audited Financial Statements
- ▶ Copy of contractual indemnities for IRC Members
- ▶ Copy of IRC's current Charter and Mandate

In keeping with **ERIS'** ability to quantify risk on an individual basis and provide comprehensive, clear coverage, using our knowledge of corporate governance and consummate underwriting expertise, we offer the **IRC Member Liability and Indemnification Reimbursement Policy** providing the unique and *independent* protection required for an IRC member as they take on this key governance role, instituted by the Canadian Securities Administrators, in the investment fund industry.

For further information and a detailed **ERIS - Independent Review Committee (IRC) Member Liability and Indemnification Reimbursement Insurance** policy discussion, Please contact your insurance broker or an **ERIS** representative:

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**Executive Risk Insurance Services** is dedicated exclusively to mitigating the risks incurred by boards of directors, officers, trustees, independent review committee members and pension plan fiduciaries of public and private corporations, funds, income trusts, governments and not-for-profit organisations.

We are characterised by our differentiated capacity to quantify risk on an individual basis and provide comprehensive clear coverage, using our profound knowledge of corporate governance and our consummate underwriting expertise. Our insurance capacity is 100% provided by certain underwriters at Lloyd's. We distribute our insurance products exclusively through licensed Canadian insurance brokers.

*mitigating risk for directors, officers and trustees and now IRC members*



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