

# Directors and Officers Liability Insurance

## Getting the best coverage for your IPO

BY SCOTT M. SADDINGTON, CHIEF UNDERWRITING OFFICER, EXECUTIVE RISK SERVICES, INSURANCE GROUP

Often, “going public” or “income trusting” is the best choice for a business to achieve its corporate and financial objectives. As a potential director or officer or trustee (D&O) of a company considering an IPO or trust conversion, you will have specific exposures not covered by traditional D&O policies. One way to recruit and retain board members, trustees and senior officers is to have the best possible D&O insurance.

**When reviewing your IPO insurance proposals with your licensed broker, here are five key questions to ask:**

**Prior Acts Exclusion:** Is this exclusion in the quotation? A common mistake made in obtaining D&O coverage for a company undertaking an IPO is to have the prior acts exclusion date “effective the date of the offering.” While this exclusion may result in a lower premium, the net effect on the coverage may prove significant to the D&Os personally, by placing the greatest exposure in your company’s history under the wrong policy or by not appropriately insuring it at all.

**Non Rescindable Side A Endorsement:** Is it possible to obtain this coverage? Individual D&Os need to have this coverage in their policies to ensure that their personal

assets are covered until the end of any claim. The endorsement should not contain any “notwithstanding language,” as you do not want an insurer to rescind coverage before or during any claim against the D&Os.

**Non-Cancellable Policy:** Can my policy be cancelled by the insurer for any reason? Some insurance carriers have policies that can be cancelled. You should seek non-cancellable coverage, except for non-payment of premium.

**Final Adjudication:** Does my policy provide for final adjudication of the personal conduct exclusions? D&Os should seek final adjudication language in their contract and not leave it up to the insurer to pick out the good D&Os from the bad D&Os at the start of any claim.

**Statutory Liabilities & Taxes:** Do I have affirmative coverage for statutory liabilities, including taxes? In this instance, “silence is not golden”; you can achieve affirmative coverage within your policy from a number of quality Canadian insurance carriers. A number of foreign carriers exclude the coverage and some are even silent on the issue, which will lead to future claim disagreements.

As a director or trustee, your personal liability is at stake. In this litigious world, you would be well advised to work with your insurance broker to get the very best coverage. ■

