



Specialty

Directors & Officers Liability for Publicly Traded Companies

There has never been a more challenging time to serve as a director or officer of a publicly traded company. Regulatory changes, derivative shareholder actions and merger and acquisition (M&A) activity have led to an increase in litigation in which directors and officers are named as defendants.

CNA recognizes the complex and litigious world in which your clients operate. To help public companies address the exposures that their directors and officers — as well as their organization — face in today's environment, CNA offers an enhanced Directors & Officers (D&O) Liability policy form that offers a broad range of coverage. This D&O policy form includes broad definitions of claim and loss, a new supplementary payments section, an advancement of loss provision and a limited entity versus insured exclusion. Policy limits of up to \$10 million are available to qualified and eligible insureds.

Coverage Form Highlights

- New supplementary payments section that includes:
 - Investigative cost coverage for shareholder derivative demands.
 - Corporate Manslaughter Act Defense Cost coverage — protection for the insured persons when a claim alleging a violation of the UK Corporate Manslaughter and Corporate Homicide Act of 2007 or any similar statute is made against the insured entity.
 - Inquiry costs coverage — coverage for an insured person to appear at a meeting or interview or a request for discovery if made by a regulatory agency. No wrongful act required to trigger coverage for inquiry costs.
- A broad definition of claim with enhanced triggers for claims against an insured person for regulatory proceedings, investigations, extradition or any alternative dispute resolution process.
- A broad definition of loss that addresses:
 - Sarbanes-Oxley Act §304 / Dodd-Frank Act §954 — fees and expenses incurred in connection with the facilitation of a clawback payment.
 - Foreign Corrupt Practices Act — coverage for civil penalties against insured persons for violations of sections 78dd-2(g)(B) and 78ff(c)(2)(B) of the Act.
 - Sections 11, 12 or 15 of the Securities Act of 1933.
- Provides advancement of loss — for covered claims when the insured refuses or fails to indemnify within 60 days of an insured person making a request for indemnification.
- Conduct exclusions — only triggered by final non-appealable adjudication in any action other than an action initiated by the insurer. Severability with respect to insured persons and only the wrongful acts of a named insured's chief executive officer or chief financial officer will be imputed to the insured entity.

- Limited insured entity versus insured exclusion replaces the traditional insured versus insured exclusion.
- Broad non-entity employment practices liability coverage for insured persons.
- No pollution exclusion — however, loss covered under the policy does not include clean up costs.
- Notice of claim — allows reporting of a claim any time during the policy period as long as the insurer is not prejudiced.
- Settlement authority — ability to settle within the retention without insurer's consent.
- Claims cooperation severability — the failure of any insured person to cooperate with the insurer shall not impair the rights of any other insured persons under the policy.
- Nonrescindable coverage for any reason under Insuring Agreement 1.
- Policy cannot be cancelled by insurer except for nonpayment of premium.
- Automatic coverage for acquisitions of up to 25 percent of the total assets of the insured.
- Outside directorship liability extension for all not-for-profit entities exempt from federal income taxation.
- Removed alternative dispute resolution provision.
- Limited subrogation — the insurer will only subrogate against an insured when the conduct exclusions apply.

The CNA Advantage

CNA is a market leader with more than 100 years of experience and an "A" A.M. Best rating for financial strength. We maintain a strong balance sheet — the financial foundation of any insurance company — through a conservative investment philosophy and an ongoing, disciplined evaluation of assets and liabilities.

Market Commitment — With more than 45 years of experience in underwriting management and professional liability coverages, our commitment to this business segment has remained consistent — even during challenging market cycles.

Underwriting Experience — We offer solutions and technical knowledge that enable CNA to provide coverage tailored to a public company's insurance needs, either on a primary or excess basis.

Dedicated Claims Service — Our claims professionals are experienced in managing complex claims, including multi-venue securities fraud, ERISA class actions, investor "suitability" and shareholder derivative actions. They provide the time and attention necessary to respond to a claim, resulting in a fair outcome with a timely resolution.

For more information, please contact your local CNA underwriter or visit our website at cnacanada.ca.