

D&O Insurance Checklist

	Yes	No
Is There a Contract with a Solid Insurance Carrier?		
☞ Has coverage been unconditionally bound by the beginning of the policy period or are there any outstanding items ("subjectivities") that must be reviewed and accepted by the insurers after the binding?	<input type="checkbox"/>	<input type="checkbox"/>
☞ Is your insurance contract being written by a carrier who is experienced at handling D&O claims?	<input type="checkbox"/>	<input type="checkbox"/>
☞ Is your D&O program structured in a manner to minimize your risk from an insurer's insolvency?	<input type="checkbox"/>	<input type="checkbox"/>
Rescission		
☞ Is the policy non-rescindable with respect to Side-A or "non-indemnifiable" claims?	<input type="checkbox"/>	<input type="checkbox"/>
☞ Is there a non-rescindable ABC endorsement that refrains from introducing new exclusions?	<input type="checkbox"/>	<input type="checkbox"/>
☞ If there are bad actors, will the company still be reimbursed for indemnifying good actors?	<input type="checkbox"/>	<input type="checkbox"/>
☞ Can only the knowledge of the CFO and CEO cause the Company to lose its own entity coverage?	<input type="checkbox"/>	<input type="checkbox"/>
Bankruptcy Protection		
☞ Is "non-indemnifiable" defined to include the situation in which the company is prevented by bankruptcy from indemnifying the directors and officers?	<input type="checkbox"/>	<input type="checkbox"/>
☞ Is there an exception to the insured vs. insured exclusion for claims by bankruptcy trustees?	<input type="checkbox"/>	<input type="checkbox"/>
☞ Does the policy contain an "order of payments" provision giving priority to the directors and officers with respect to the policy proceeds?	<input type="checkbox"/>	<input type="checkbox"/>
☞ Will the policy continue to respond throughout the pendency of the bankruptcy proceedings?	<input type="checkbox"/>	<input type="checkbox"/>
Coverage Breadth		
☞ Are criminal and administrative proceedings covered?	<input type="checkbox"/>	<input type="checkbox"/>
☞ Are regulatory and derivative suit-related investigations covered?	<input type="checkbox"/>	<input type="checkbox"/>
☞ Is claim defined as a "written" demand?	<input type="checkbox"/>	<input type="checkbox"/>
☞ Can you notice a "circumstance"?	<input type="checkbox"/>	<input type="checkbox"/>
Personal Conduct Exclusions		
☞ Do they require a "final adjudication" in the underlying case to apply?	<input type="checkbox"/>	<input type="checkbox"/>
☞ Are they "severable" or can one director's or officer's conduct destroy the coverage of the other directors and officers?	<input type="checkbox"/>	<input type="checkbox"/>
☞ Is the "personal profit exclusion" limited to Section 16 claims?	<input type="checkbox"/>	<input type="checkbox"/>
Continuity/Prior Acts		
☞ Are you covered for all prior acts?	<input type="checkbox"/>	<input type="checkbox"/>
☞ Are pending litigation exclusions narrowly drawn?	<input type="checkbox"/>	<input type="checkbox"/>
Section 11		
☞ Will the policy pay defense and settlement for Section 11 claims?	<input type="checkbox"/>	<input type="checkbox"/>
Excess Policies		
☞ Are the excess policies strictly follow-form policies?	<input type="checkbox"/>	<input type="checkbox"/>
☞ Is there specifically negotiated attachment language that minimizes shavings-of-limits issues?	<input type="checkbox"/>	<input type="checkbox"/>
Whistleblowers		
☞ Does the insured vs. insured exclusion contain an exception for whistleblower claims?	<input type="checkbox"/>	<input type="checkbox"/>
Outside Directors		
☞ Has a portion of the D&O program been reserved primarily for the outside directors?	<input type="checkbox"/>	<input type="checkbox"/>
ERISA Claims:		
☞ Can the D&O policy be depleted by payments for ERISA claims under the fiduciary liability insurance policies?	<input type="checkbox"/>	<input type="checkbox"/>
Foreign Law Compliance:		
☞ Has the need for locally-admitted policies where required in foreign jurisdictions been addressed?	<input type="checkbox"/>	<input type="checkbox"/>
☞ Has the Master D&O policy been amended accommodate non-US legal issues?	<input type="checkbox"/>	<input type="checkbox"/>
Other Loss Control Issues:		
☞ Are your indemnification agreements state-of-the art?	<input type="checkbox"/>	<input type="checkbox"/>
☞ Have your corporate governance procedures been recently reviewed for best practices?	<input type="checkbox"/>	<input type="checkbox"/>

For questions, please contact:



Insurance Services
Risk Management
Employee Benefits

OR Licence 812979

Priya Cherian Huskins, Esq.
Woodruff-Sawyer & Co.
220 Bush Avenue, 7th Floor, San Francisco, CA 94104
Direct: 415-402-6527 or phuskins@wsandco.com