

# Application for CODA Premier®

## Directors and Officers Liability Excess DIC Policy

## Independent Directors Liability Excess DIC Policy

**NOTICE: THE POLICY FOR WHICH YOU ARE APPLYING IS A CLAIMS MADE POLICY. THE POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD, SUBJECT TO THE POLICY PROVISIONS. DEFENSE COSTS REDUCE AND MAY EXHAUST THE APPLICABLE LIMITS OF LIABILITY. THE INSURER IS NOT LIABLE FOR ANY LOSS, WHICH INCLUDES DEFENSE COSTS, IN EXCESS OF THE APPLICABLE LIMITS OF LIABILITY.**

### Instructions for Completing This Application

Please read carefully. Fully answer all questions and submit all requested information. This Application, including all material submitted herewith, shall be held in confidence.

#### 1. APPLICANT

Name of Applicant: \_\_\_\_\_

Principal Address: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

#### 2. SUBSIDIARIES

a) List on Schedule 1-A all corporations in which more than 50% of the outstanding securities representing the present right to vote for election of directors is owned, directly or indirectly, in any combination, by the Applicant (such corporations referred to below as "Subsidiaries").

(Note: Any reference below to Applicant includes all Subsidiaries).

b) List on Schedule 1-B all foundations, charitable trusts and political action committees controlled by the Applicant for which coverage is requested.

c) List on Schedule 1-C all acquisitions and divestitures taking place in the last 12 months.

#### 3. CAPITAL STRUCTURE

Provide on Schedule II full details of all currently outstanding publicly traded securities. Such information should relate to common stock (voting and non-voting), preferred stock, debentures and any other securities.

#### 4. CORPORATE GOVERNANCE

a) Has the President, Chief Executive Officer, Chief Financial Officer or any Executive Vice President of the Applicant left office within the last three years for any reason other than poor health, death or retirement at normal retirement age?

Yes  No  If "Yes", please attach details.

b) Has the Applicant's Board of Directors adopted the following policies or programs:

- code of ethics? Yes  No
- insider trading policy? Yes  No
- conflict of interest policy? Yes  No
- revenue recognition policy? Yes  No
- legal compliance program? Yes  No
- whistleblower procedures? Yes  No

If "Yes", attach details regarding the Applicant's distribution and enforcement of each such policy, program or procedure.

c) Has the Applicant's Board of Directors or the Applicant's Audit Committee discussed the following with its independent auditors within the last 24 months?

- Violation of the Applicant's revenue recognition policy? Yes  No
- Disagreements by the independent auditors regarding the Applicant's accounting issues? Yes  No
- Limitations on the scope of the audit, as imposed by management? Yes  No
- Illegal acts which have come to the attention of the auditors required to be reported to the SEC? Yes  No
- Any material weakness in internal controls of the Applicant? Yes  No
- Any override of the independent auditors by Applicant's management? Yes  No

If "Yes" to any of the above, attach details.

d) Has the Applicant's independent auditors recommended any past audit adjustments? Yes  No

If "Yes", attach details.

## 5. BUSINESS ACTIVITIES

If the answer is "Yes" to any of the following, provide details on Schedule IV.

a) Other than that which is currently confidential to the Applicant's board of directors, have any plans for merger, acquisition, or consolidation been approved by the Applicant's Board?

Yes  No

If "Yes", have plans been submitted to the shareholders for approval?

Yes  No

b) Other than planned offerings that are currently confidential to the Applicant's board, does the Applicant anticipate any new public offering of securities or any registration of securities under any securities act within the next year?

Yes  No

c) Are there any current Form 13d filings that have been made with the SEC either by the Applicant in respect to the securities of another entity or by any other person or entity in respect to the Applicant's securities?

Yes  No

If "Yes", provide copies.

- d) Has the Applicant or any of its directors or officers been involved in any of the following during the past twelve months:

Any anti-trust, copyright or patent litigation?

Yes  No

Any proceeding alleging a violation of any securities law?

Yes  No

Any representative action, class action, or derivative suit?

Yes  No

## 6. PRIOR/CURRENT/REQUESTED COVERAGE

- a) Has the Applicant ever had its directors and officers liability coverage cancelled or non-renewed?

Yes  No

If "Yes", provide details: \_\_\_\_\_

- b) Provide details of current directors and officers liability coverage or, if there is no current coverage, the most recent coverage, if any, on Schedule V. For current coverage, please describe in a footnote to the Schedule any direct or indirect interest of the Applicant in any of the insurers. Please attach copies of the issued policies listed on Schedule V.
- c) If excess DIC coverage is requested, provide details on Schedule V of proposed directors and officers liability coverage which will underlie this excess DIC coverage.

## 7. CLAIMS HISTORY

If the answer is "Yes" to either of the following, provide details on Schedule VI.

- a) Have any payments been made under a previous directors and officers liability policy?

Yes  No

- b) Are there now pending any suits, claims, or proceedings against anyone proposed for coverage?

Yes  No

## 8. KNOWLEDGE

- a) Is anyone proposed for insurance cognizant of any fact or circumstance or any actual or alleged error, misstatement, misleading statement, act, omission, neglect, or breach of duty that he or she has reason to suppose might result in any future claim such as would fall within the scope of the insurance here applied for?

Yes  No

If "Yes", attach details to this application.

- b) Have the board of directors, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, and General Counsel of the Applicant been asked the question in paragraph a) of this item 8?

Yes  No

If "No", the Applicant must provide a letter signed by the Applicant's General Counsel that represents the answer given to the question in paragraph a) of this item 8 is correct.

## 9. SUPPORTING DOCUMENTATION

Please provide copies of the following documents:

- Most recent Annual Report or SEC Form 10K
- Most recent Quarterly Report or SEC Form 10Q

- Copies of the charter or other document granting corporate existence under local law, and the by-laws, of the Applicant and of any subsidiary with assets in excess of the lesser of either 15% of the Applicant's consolidated assets or \$500,000,000
- Most recent Notice and Proxy Statement
- Any SEC registrations made within the last 12 months
- Written agreements pertaining to indemnification of persons proposed for insurance
- Any Management Letter from the Applicant's auditors in connection with the most recent annual audit of the Applicant and any response letter from management.

## 10. FRAUD WARNING STATEMENTS

**NOTICE TO FLORIDA APPLICANTS:** Any person who knowingly and with intent to injure, defraud or deceive any insurer files a statement of claim or an application (or any supplemental application, questionnaire or similar document) containing any false, incomplete or misleading information is guilty of a felony of the third degree.

**NOTICE TO KENTUCKY APPLICANTS:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.

**NOTICE TO MAINE APPLICANTS:** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or a denial of insurance benefits.

**NOTICE TO OREGON APPLICANTS:** Any person who knowingly and with intent to defraud any insurance company or another person, files an application for insurance or statement of claim containing any materially false information, or conceals information for the purpose of misleading, commits a fraudulent insurance act, which may be a crime and may subject such person to criminal and civil penalties.

**NOTICE TO PENNSYLVANIA APPLICANTS:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

**NOTICE TO VIRGINIA APPLICANTS:** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

**NOTICE TO WEST VIRGINIA APPLICANTS:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

### **NOTICE TO ALL OTHER APPLICANTS:**

**ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR ANOTHER PERSON, FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS INFORMATION FOR THE PURPOSE OF MISLEADING, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND MAY SUBJECT SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES.**

## 11. DECLARATION AND SIGNATURE

It is agreed that the following documents shall be submitted to the Insurer within 30 days after the document is filed or becomes effective, provided the filing or effective date is subsequent to completion of this application:

- Form 13d filing with the SEC either by the Applicant in respect to the securities of another entity or by any other person or entity in respect to the Applicant's securities;
- any proxy statement filing with the SEC in respect of the Applicant; and
- any change in the charter or other similar formative document, by-laws, or written agreement pertaining to indemnification.

It is also agreed that if the Insurer, whether before or after issuance of a policy to the Applicant, requires that a document referred to above be sent with a cover letter signed by the General Counsel, Chief Executive Officer, Chief Financial Officer or Chief Operating Officer of the Applicant, such document shall be so sent.

The undersigned, on behalf of all prospective insureds, after a reasonable inquiry, declares to the best of his knowledge and belief that the statements contained herein are true. It is agreed that although the signing of this application does not commit the Applicant to purchase the insurance being applied for, the statements made in this application shall become the basis of the policy should one be purchased and shall be attached to and made part of the policy.

By execution of this application by the President or Chairman of the Board, of the Applicant, the Applicant and all present and future Subsidiaries agree to indemnify all persons proposed for insurance and advance defense costs and expenses to the fullest extent required or permitted by their charters or other similar formative documents, by-laws, and any indemnification agreements.

The undersigned, on behalf of all prospective insureds, agrees that if any information or answers contained in this application change between the date of this application and the inception date of the coverage, the undersigned will immediately notify the Insurer of such changes, and the Insurer may withdraw or modify any outstanding quotations and/or agreement to bind the coverage.

The information requested in this application is for underwriting purposes only and does not constitute notice to the Insurer under any policy of a claim or potential claim. All such notices must be submitted to the Insurer pursuant to the terms of the policy, if and when issued.

The undersigned acknowledges that he or she is aware that defense costs reduce and may exhaust the applicable limits of liability. The Insurer is not liable for any loss (which includes defense costs) in excess of the applicable limits of liability.

IF THE OUTSIDE POSITIONS ENDORSEMENT IS PURCHASED WITHOUT A SEPARATE LIMIT FOR THE COVERAGE, THE LIMIT AVAILABLE UNDER THE POLICY COULD BE REDUCED BY SUCH COVERAGE.

\_\_\_\_\_  
Signature of either the Chairman of the Board of the  
Applicant, or, if the President is a Board Member, the  
President

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Date

Print name and title of person signing this application:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

A POLICY CANNOT BE ISSUED UNLESS THIS APPLICATION IS PROPERLY SIGNED AND DATED.

Please submit this Application, when completed, signed and dated to:

ACE USA Professional Risk  
D&O Division  
140 Broadway  
41<sup>st</sup> Floor  
New York, NY 10005

**FOR FLORIDA APPLICANTS ONLY:**

Agent Name: \_\_\_\_\_  
Agent License Identification Number: \_\_\_\_\_







**Schedule II**  
**Application Item 3**

\_\_\_\_\_  
**Applicant**

**PUBLICLY TRADED SECURITIES**

\_\_\_\_\_



**Schedule IV**  
**Application Item 5**

\_\_\_\_\_  
**Applicant**

**BUSINESS ACTIVITIES**

\_\_\_\_\_

**Schedule V**  
**Application Item 6**

            
**Applicant**

**CURRENT OR MOST RECENT COVERAGE**  
**FOR DIRECTORS AND OFFICERS LIABILITY**

Insurer	Policy Period	Limits	Deductibles	Premium

**PROPOSED UNDERLYING COVERAGE**  
**FOR DIRECTORS AND OFFICERS LIABILITY**

Insurer	Policy Period	Limits	Deductibles

**Schedule VI**  
**Application Item 7**

          
**Applicant**

**CLAIMS HISTORY**

**PAYMENTS MADE:**

\_\_\_\_\_

**CLAIMS NOW PENDING:**

\_\_\_\_\_