

## **ACE elite Public Offering of Securities Insurance Policy**

ACE has designed a new Public Offering of Securities Insurance (POSI) Policy. The Policy will provide directors and officers, their company and some of the major shareholders in the company with protection against the potential exposure to claims in connection with the documentation relating to the public offering of securities.

### **Who Is At Risk?**

Directors may be faced with implementing a strategy to raise additional capital, bring a new entity to the market, or restructure existing shareholdings. The management challenge which such projects involve in today's climate may mean that some of the practical implications and the risks for those involved are overlooked.

The directors of a company contemplating a new issue will have to assume responsibility for the preparation of listing and supplementary listing particulars (which especially include prospectuses), and they will be liable at law for the consequences of any material omissions or mis-statements in such particulars. Responsibility can also attach to such officers of the company as the company secretary or general counsel, if they are not also directors anyway.

Those professionals who underwrite share issues will also be at risk. The same may apply to major holders of shares that are being issued for public sale, if they have roles in the issue which entail their being responsible for its documentation.

### **Who May Seek Redress?**

Risks potentially come from three main quarters: investors; underwriters of issues; and the regulatory authorities. Claims or proceedings by such persons or bodies arise in different ways which will be briefly summarized.

### **The View Of The Investor**

Those who have to assume responsibility for an issue are essentially guaranteeing the proper disclosure of information which supports the public offer of shares, and which will affect the share price. The information that must be provided includes all information that:

- Investors and their professional advisors reasonably require.
- Investors and their professional advisors reasonably expect to find.
- Information that is within the knowledge of the directors and/or officers of the company, or could be obtained by making enquiries.

Investors are entitled to receive:

- documentation which has been prepared with regard to the issuer, the securities being issued and the likely knowledge of purchasers and the advice they are likely to receive.

If investors have been misled by the company's issue documentation, or have suffered loss because of fluctuations in the market caused by deficiencies in such documentation - even if inadvertent - they may have statutory and/or common law claims for compensation. Litigation is notoriously expensive and distracting, even if it does not result in a major award of damages.

### **Claims From Underwriters**

Underwriters may well be an essential ingredient in a successful issue. At the same time they also constitute a potential risk to the issuer. They too are responsible at law for the contents of public offer particulars. It is usual therefore for underwriters to obtain indemnities from the issuer company against the possibility of claims which may be made against them by shareholders or regulators.

### **The Regulatory Perspective**

Regulators may impose penalties on both individuals and companies for:

- failing to file listing particulars or a prospectus when this required by law
- publication particulars or prospectuses which are false or deceptive in any way and/or breach the Listing Manual.

Penalties may be financial but they may also involve public censure, which can be embarrassing and bad for business. In extreme circumstances criminal prosecution may occur. Whilst insurance will not normally be available for civil fines or penalties, and never for criminal fines or penalties, cover is available for the costs of regulatory investigations and of defending enforcement or criminal proceedings. Such costs can be significant and insuring against them is a prudent move.

### **The Age Product**

The responsibilities and obligations of those responsible for new issues are complex and significant. They are currently also the subject of change following the advent of new local regulations.

ACE's new elite Public Offering of Securities Insurance (POSI) Policy seeks to reflect this changing area of the law.

In a straightforward way, the product recognises and provides useful coverage for the risks, and in particular extends cover for the extensive costs of any involvement in litigation, or in regulatory investigations. A further look at the attached specimen policy may answer further queries and provide clarification.

#### **Important Note:**

*The above only highlights a selection of the features available. We aim to work with brokers and clients in providing the cover which is needed for the modern business environment. For full details please ask any ACE Financial Lines representative for the latest wording of the ACE elite POSI policy.*