



The Schedule III D&O Readiness Checklist

Is your management liability tower built for an MSO or a startup?
Use this checklist to audit your current coverage against the new federal reality.

Phase 1: The Language Audit (Immediate)

Identify “Controlled Substances Act” Exclusions: Scrutinize your policy for any language that excludes coverage for “violations of the CSA.” In a Schedule III environment, this creates a dangerous “Transition Gap” that could leave you uninsured during a regulatory audit.

Scrub “Schedule I” Specifics: Ensure your policy isn’t hard-coded to only provide relief or exceptions for Schedule I entities.

Negotiate “Broad Form” Wording: Move away from restrictive “named peril” language to broad-form corporate governance wording typical of Fortune 1000 companies.

Phase 2: The “Tower” & Personal Asset Protection

Verify Side A DIC (Difference in Conditions): Confirm you have a dedicated Side A limit that is separate from your Side B and C. This ensures that even if a securities suit exhausts the company’s funds (Side C), the Directors’ personal assets remain protected.

Review Indemnification Agreements: Ensure your corporate bylaws and individual director indemnification agreements are synced with your insurance tower. One cannot function effectively without the other.

Assess Limit Adequacy for “Deep Pockets”: With 280E gone and cash flow increasing, your litigation profile has changed. Audit your total limits to ensure they reflect your new valuation and attractiveness to plaintiffs’ attorneys.

Phase 3: M&A and Exit Readiness

Secure 6-Year Tail Provisions: If an exit is on the horizon, confirm that “Tail” (Run-off) coverage is available and priced. Ensure the “Change in Control” provision in your current policy won’t trigger a cancellation you aren’t prepared for.

Institutional Due Diligence: If seeking PE funding or Tier 1 debt, have your broker provide a “Letter of Readiness” or a gap analysis to show potential investors that your D&O meets “Institutional Grade” standards.

R&W Integration: For active acquirers, ensure your D&O team is talking to your Transactional Liability team. Your D&O should pick up where your Reps & Warranties policy leaves off.


Phase 4: The Carrier Pivot

Evaluate “Admitted” Market Options: As Schedule III opens the door for traditional carriers (the “Big A’s”), have your broker benchmark your current surplus lines premium against emerging admitted market rates.

Verify Regulatory Investigation Coverage: Ensure your policy specifically covers the costs of responding to FDA or HHS inquiries, which will replace the “fear of raids” as your primary regulatory risk.

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