Gallagher

2026 EDITION

Guide to D&O Insurance for SPAC IPOs

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As they go through their initial public offering (IPO) and the subsequent merger & acquisition (M&A) process, special purpose acquisition companies (SPACs) face many regulatory, legal and business hurdles. Obtaining the appropriate amount and type of insurance for each stage of their life cycle is one of them. However, with some smart preparation and the expertise of the right advisors, insurance can go from being a necessary burden to a strategic asset.

Gallagher is a market leader for placing Directors & Officers (D&O) insurance for SPACs and SPAC targets that are going public through a de-SPAC. Gallagher is also a nationally recognized leader when it comes to Representations and Warranties Insurance (RWI), which can be an asset in the SPAC M&A process.

SPAC life cycle

When thinking about insurance for an SPAC, it's helpful to think in terms of the SPAC's life cycle. From an insurance perspective, the process can be broken into three main phases:

SPAC IPO → **SPAC Business Combination** → **Operating Company**

Phase 1:
SPAC IPO

- S-1 registration statement filed with SEC
- SEC approval is obtained
- SPAC's D&O policy is bound
- SPAC units begin trading on a public exchange

Phase 2:
SPAC Business Combination

- SPAC management identifies an M&A target
- SPAC's insurance broker conducts target company insurance due diligence and advises on Reps and Warranties insurance
- SPAC files S-4 registration statement and shareholder approval is obtained
- SPAC's insurance broker consults on post-merger D&O coverage

Phase 3:
New Public Company

- The combined company begins life as an operating company with publicly traded shares
- Operating strategy for the combined business is stablished
- Integration of board and/or management takes place
- Financial and other compliance processes are set

The insurance needs of the SPAC are different at each of these phases. This Guide focuses on the first phase of the cycle, the period from a few months before the SPAC IPO until the IPO closes.

Read our Guide to Insurance for De-SPAC Transactions for additional information on the second and third phases of the cycle.

D&O insurance for a SPAC IPO

As it goes through the IPO process, the SPAC's main assets are its cash in trust, its management team and directors, and the management team's investment strategy.

SPAC management teams and directors are vulnerable to lawsuits from their public company shareholders as well as regulators like the Securities and Exchange Commission (SEC) and the Department of Justice (DOJ). D&O insurance mitigates the risk of litigation costs falling on individual directors and officers and the companies they serve.

Being a public company exposes the SPAC's management team and its board to risks that make D&O insurance necessary. Remember too that national stock exchange rules mandate that most of a SPAC's board must consist of independent board members. Businesspeople who serve as independent board members typically don't accept a board appointment without the promise of good D&O insurance to protect them against lawsuits and regulatory enforcement.

Most common types of SPAC lawsuits

D&O insurance serves a central role in protecting the SPAC and its directors and officers from litigation costs. SPAC litigation has evolved in the last several years. Below are some of the more common types of SPAC lawsuits that D&O insurance typically covers.

1. Merger objection lawsuits

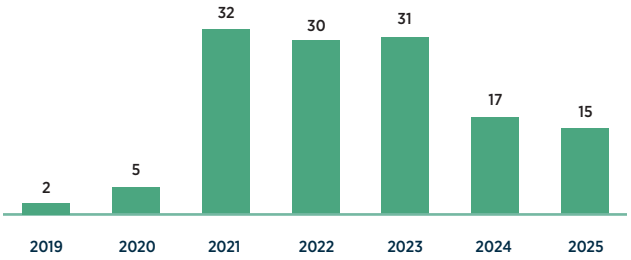
Merger objection lawsuits aren't new. In the SPAC context — much like in non-SPAC deals — as soon as a deal is announced, a plaintiff files a suit claiming that the deal is unsatisfactory in some way and shouldn't proceed. The allegations usually revolve around insufficient disclosure about the upcoming merger. These kinds of lawsuits are typically dropped after additional disclosure is filed, and the plaintiffs and their attorneys walk away with a "mootness fee" of a few thousand dollars. This fee is often referred to as the "M&A tax."

2. Securities class actions

Securities class action lawsuits are more serious in nature. Plaintiffs can bring these suits in federal court against the SPAC, its directors and officers, and/or the private company the SPAC is acquiring and its directors and officers. In some cases, plaintiffs can bring securities class action suits against SPAC sponsors and other related deal parties.

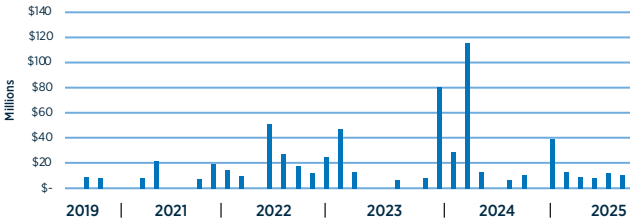
Depending on the fact pattern, suits typically allege violations of federal securities laws due to material misstatements or omissions in disclosures or public statements. These cases are typically brought post-merger, but, like in the Lucid Motors case,[1] might be filed before an M&A transaction.

Securities class actions aganist de-SPACs sued within five years of merger



Total suits: 132

SPAC SCA litigation settlements over the years



3. Breach of fiduciary duty suits

It was common for SPACs to be incorporated in Delaware until plaintiffs started bringing breach of fiduciary duty lawsuits in the Delaware Chancery Court starting in 2021. These lawsuits alleged that the SPAC structure creates an inherent conflict of interest between the SPAC's sponsor and its board and the SPAC's investors. According to plaintiffs, this conflict of interest diminishes the rigor with which the SPAC's board considers a proposed merger, resulting in a breach of the board's fiduciary duty to the SPAC's shareholders.

The MultiPlan litigation filed in 2021 is an early example of this line of attack.[2] A more recent example in 2023 is the Gig3 case.[3] The court in these cases denied the plaintiffs' motion to dismiss, seeming to agree that the conflicts the plaintiffs outlined were potentially serious. As a result, the deal would be reviewed using the entire fairness standard rather than the more deferential business judgment rule.[4]

In May 2024, however, the Delaware court took a different tack. In the Hennessy decision, which involved a similar set of facts to those in MultiPlan, the court granted the defendants' motion to dismiss.[5] The court ruled that the transaction was subject to entire fairness review, and, more specifically, that the plaintiff failed to plead that the defendants had impaired his right to choose whether to redeem his stock.

Indeed, not all SPAC-related cases came out on the side of the plaintiffs. Several notable and interesting SPAC "wins" involved decisions that went in the defendant's favor.

Nevertheless, and even after the SPAC-favorable Hennessy decision, SPACs have fled Delaware partly due to the state's litigation environment. In 2023, about 30% of SPACs were incorporated in Delaware. By 2025, that had dropped to less than 1%, with the Cayman Islands now being the domicile of choice for more than 95% of SPACs.

In 2024 and 2025, we continued to see the shift away from federal securities class action filings and toward breach of fiduciary duty cases in Delaware. The volume of those cases will likely dip in 2026 due to the reduced number of de-SPAC transactions in the last two years. In addition, the SPACs that are currently on the path to finding merger partners are largely no longer Delaware corporations.

4. Shareholder derivative suits

Shareholder derivative suits are a type of breach of fiduciary duty suits.As a technical matter, shareholders file them on behalf of the corporation against the SPAC's directors and officers. Typically, these lawsuits come on the heels of a securities class action already filed against the SPAC and allege that the acts of the SPAC directors and officers harmed the corporation.

Some domiciles of incorporation, such as Delaware, prohibit companies from indemnifying derivative suit settlements. As a result, these suits can pose a serious personal financial risk to the individual directors and officers of the SPAC. In addition, SPACs often have very little left in terms of working capital by the time a derivative suit is filed, another reason indemnification may be unavailable for individual directors and officers. Without D&O insurance, individual directors and officers may need to cover settlement costs out of pocket.

Learn more about The Ins and Outs of D&O Indemnification Agreements.

5. Assorted, creative suits

SPACs have been a laboratory of litigation for the plaintiffs' bar. For example, consider the novel allegations directed against SPACs in August 2021 when plaintiffs sued Bill Ackman's Pershing Square Tontine.[6] Plaintiffs alleged that SPACs are investment companies and should register as such under the Investment Company Act of 1940.

Another example is the technical challenge to the manner in which SPAC shareholders were being asked to vote for deals such as in the Mudrick Capital Acquisition Corporation II case[7] and the Boxed case.[8]

Or consider the FAST Acquisition Corp. case involving a dispute over who gets to keep the proceeds of a breakup fee — management or SPAC shareholders.

While we haven't seen Investment Company Act-related lawsuits in a long time, issues and questions around breakup fees keep coming back.

While it's difficult to predict what the next creative case will be, it's clear there will be more creative litigation in SPAC world — underscoring the need for SPACs to have robust and correctly structured D&O insurance.

Regulatory enforcement against SPACs

Private litigation actions aren't the only things a SPAC's directors and officers need to worry about when considering the correct structure and limits of their D&O insurance coverage. Regulatory investigations and enforcement actions can also prove very costly.

> **Learn more about Litigation Scenarios Private Companies Face Today and How D&O Insurance Can Be a Critical Safeguard.**

The SEC, the DOJ and the Financial Industry Regulatory Authority (FINRA) are continuing to focus on the SPAC market. Since 2021, the agencies have brought several enforcement and investigative actions against SPACs, their directors and officers, their sponsors, the targets, the targets' directors and officers and, in later years, SPAC professional advisers. As an example, enforcement actions like those the SEC brought against Momentus/Stable Road and Nikola, as well as their directors and officers, resulted in fines of $8 million and $125 million, respectively.

In 2022, the SEC brought its first enforcement action against an investment adviser, Perceptive Advisors. The SEC charged the adviser with violating the Investment Advisers Act in connection with its involvement with SPACs and subsequently settled for $1.5 million.

Considering the substantial uptick in SPAC IPO activity in 2025 and early 2026, and that it takes several months after a de-SPAC for lawsuits and enforcement actions to be brought, we'll likely see new lawsuits and enforcement actions pick up in early 2027.

D&O costs for SPAC IPOs are more manageable

Given the litigation and enforcement environment for SPACs, it would be difficult to attract high-quality independent board members to a SPAC board without D&O insurance. As a result, it's not a question of whether SPACs and their targets need D&O insurance, but rather of what kind of D&O coverage and how much of that coverage (the size of the limit) is prudent. For better or worse, however, that question cannot be answered without taking the cost of this insurance into consideration.

The cost of D&O insurance for SPAC IPOs began decreasing in 2022 after a period of extremely high prices during the SPAC boom of 2020-2021. Extreme demand largely drove pricing to previously unimaginable levels. However, due to the continuing relative dearth of IPOs and increasing competition among carriers in the wider D&O market over the last three years, the cost of D&O insurance for SPAC IPOs had fallen to record lows by 2025.

However, with the recent uptick in SPAC activity, especially in the second half of 2025, and a few traditional IPOs making it to the market in 2026, SPAC D&O insurance pricing will likely start to rise — but likely nowhere near the levels experienced during the SPAC boom.

Given how dynamic the current D&O insurance market is, if you are planning to do a SPAC IPO, you'll want to talk to your insurance broker to get an indication of current pricing sooner rather than later.

A broker who specializes in SPACs can also suggest ways to reduce premium costs not only for the SPAC IPO but also for the upcoming D&O coverage for the post-merger entity.

> **Given the dynamic D&O insurance market, talk to a SPAC-specialty insurance broker to understand current pricing and the most effective policy structuring sooner rather than later.**

Risk factors that insurance underwriters examine

D&O cost, of course, depends on the risk insurers take on. When deciding premium and the self-insured retention (a self-insured retention is similar to a deductible) for a SPAC IPO D&O policy, insurers typically examine the following factors, among others:

1. **Experience of the sponsor team:** Insurers will consider whether the SPAC sponsor team has successfully executed previous SPAC IPOs, comes with relevant public company experience and has expertise in the industry of the target company it plans to acquire. Premiums are higher for more inexperienced sponsor teams that lack a substantial track record, public company knowledge or familiarity with raising money for SPACs, and for teams seeking targets outside of their area of expertise.

2. **Jurisdiction of the SPAC entity and the potential target:** If the SPAC is based outside of the United States or aims to acquire targets in riskier markets, pricing can be considerably higher. But, for the reasons discussed above, SPACs organized in Delaware won't get the best prices. Underwriters are typically more comfortable with a Cayman-based, rather than Delaware-based, SPAC.

3. **Size of IPO raise:** The larger the SPAC IPO, the riskier it is from an insurer's perspective, thereby resulting in higher D&O premiums.

4. **The SPAC's plans with respect to the redemption of shares:** SPACs are continuing to see high redemptions, often as high as 90% or more. Insurers now routinely ask SPACs to outline their plans for counteracting a potentially deal-breaking number of redemptions.

5. **Length of the SPAC's investment period:** If an SPAC allocates only 15-18 months as its period to find a suitable merger target, the underwriters may question that decision. Considering the difficulty of finding both suitable private company targets and PIPE financing, the increased difficulties in the overall finance market, increases in the length of time the SEC has been taking to approve pre-merger filings, and the number of lawsuits brought against SPACs that are close to their deal deadlines, insurers are becoming increasingly wary of artificially short investment periods.

Learn more about Self-Insured Retentions Versus Deductibles.

The process of securing D&O insurance for your SPAC IPO

The process of securing D&O insurance for your SPAC begins with choosing the right D&O insurance broker. (See Choosing the Right Insurance Broker: Questions to Ask on Page 12.)

Ideally, before the first filing of your confidential Form S-1 registration statement, your broker will launch the process by sending nondisclosure agreements to the relevant insurance carriers. Once you've filed your S-1 with the SEC (confidentially or otherwise), your broker will send the S-1 registration statement to insurance carriers. The S-1 registration statement will serve as the insurance underwriters' primary underwriting document. Your broker will then negotiate with the insurance carriers on your behalf while keeping you informed and updated.

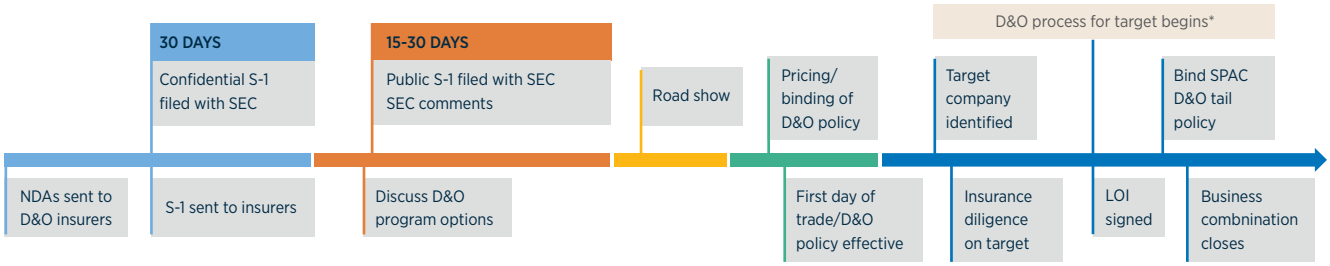
Critical decisions you will make with your broker's guidance include:

- Total D&O insurance limit
- Program structure (the breakdown between traditional "ABC" insurance versus "Side A" insurance)
- Retention amount
- Insurance carrier, based on their overall financial strength, policy wording and claims paying history

The duration of the D&O insurance policy for a SPAC's IPO will normally match the duration of the SPAC's investment period. In addition, at the time you place the D&O insurance for your SPAC IPO, your broker may negotiate the terms of the six-year "tail" (also referred to as a "runoff") policy.

Once your broker has reviewed the options with you and you've made your choices, the broker will wait to hear from you that your deal has priced. If your deal might be delayed, upsized or downsized, tell your broker in case they need to refresh your insurance carriers' quotes. Above all, remember to call your broker on the day of pricing, confirm the price and instruct your borker to bind your D&O program so it's active before trading begins the next day.

SPAC IPO Insurance Timeline



D&O Insurance Process

PREPARE

- Implement carrier NDA
- Discuss preferred D&O insurance program structure and limits
- Broker sends S-1 to D&O insurance market
- Organize insurance underwriting call if appropriate

LAUNCH

- SPAC provides updated S-1 to broker
- Broker and SPAC discuss results of insurance market negotiations
- SPAC makes final decisions on D&O insurance program structure and limits

FINALIZE

- Keep broker updated on any significant SEC comments, changes to the S-1 or changes to the pricing date
- Broker finalizes D&O insurance program

IMPLEMENT

- Give bird order upon pricing
- Policy is in place before the first trade the next day

SUPPORT

- Keep broker informed about any potential de-SPAC transactions
- Broker conducts insurance diligence on target, as requested
- Implement SPAC's tail policy at the close of the de-SPAC transaction
- Six years of claims support

Source: Gallagher

*Read more in our Guide to D&O Insurance for De-SPAC Transactions.

Your D&O program will remain active from the IPO date until the closing of the business combination. At that time, if the SPAC elects to proceed with tail coverage, the broker will advise on runoff pricing, and the policy will go into runoff (also referred to as placing a tail policy). This means the policy will continue to respond for the rest of its policy term, but only for claims related to events that took place before the closing of the business combination.

In many cases, however, to save money and make the claims process more efficient SPACs may elect to forgo tail coverage and instead negotiate for the go-forward public company's D&O insurance to cover the SPAC and its directors and officers against post-close claims. This coverage is sometimes referred to as the "combo" policy or the "SPACage."

Considerations for limit selection

The choice of how much insurance to buy (the "limit") can be a personal one for the SPAC's directors and officers. Having said that, and due in no small part to pricing pressure, we observed that, over time, SPAC IPO teams have chosen to decrease their coverage limits. The average limit size most SPACs settled on is in the range of $5 million. Surprisingly, this is often regardless of the size of the SPAC.

Exact structuring of these programs (e.g., whether they chose $5 million in Side A-only coverage, ABC coverage or a combination of ABC coverage with additional Side A excess layer) varies according to the preferences and circumstances of each SPAC team. It's important to get the advice and guidance of a knowledgeable SPAC D&O broker to find the right limit and structure for your specific SPAC.

Business combination and D&O insurance logistics

Now that you've successfully completed your SPAC's IPO and have deposited the funds into a trust account, it's time to find the right target company to go public. Once you identify your target, be sure to assign someone on your management team to handle the insurance issues.

At the time of the business combination (Phase 2 of the SPAC's life cycle), keep in mind these five D&O insurance-related considerations:

1. Insurance diligence on the target company
2. Claims handling
3. Tail policy
4. Reps and warranties insurance
5. D&O insurance for the target company

1. Insurance diligence on the target company

One of the benefits of working with a full-service retail broker is being able to have your broker conduct insurance diligence on your target. You'll want to know if any gaps in coverage need to be fixed before your transaction closes. Depending on the amount of work involved, most brokers will charge a small fee for this diligence work.

2. Claims handling

It's not unusual for SPAC shareholders to file suit against the SPAC directors and officers when a merger is announced. It's important to send any litigation (or threats of litigation) to your insurance broker along with instructions to "notice the claim" to your D&O insurance carriers. Remember that insurance carriers must approve your choice of defense counsel. You'll want to coordinate with your broker to maximize any available recovery from your D&O insurance policies. This claims handling role is why it's important to work with a broker that has a robust claims advocacy practice. It's also why you may prefer to work with a broker who places this business directly, as opposed to relying on a wholesaler. A more direct relationship between you and your insurance carrier will usually yield better results at the time of a claim, particularly if your broker does a lot of SPAC business.

3. Tail policy

Contact your SPAC insurance broker around the time you're close to signing your letter of intent (LOI), or at least before you publicly announce your transaction. This gives your broker time to arrange for and place a tail on your D&O insurance program or to offer other structuring options.

What is a tail policy?

Recall that your D&O insurance policy was likely a two-year policy. What happens if you are sued after the policy expires for something that took place before the business combination (e.g., an allegation that the SPAC directors and officers failed to conduct adequate diligence on the target)? Unless special steps are taken, the SPAC's D&O policy won't respond. To avoid this gap in coverage, brokers arrange to put a tail on the D&O insurance policy. This tail takes the form of an endorsement that will hold the policy open, typically for six years, in exchange for additional premium. Your insurance broker may pre-negotiate the amount of the additional premium when the IPO policy is placed or obtain tail pricing after you announce the deal, but you only pay the additional premium at the time the business combination closes if you elect this kind of coverage.

In some cases, SPACs are choosing to forgo purchasing their own tail policy. This only makes sense if the go-forward company's D&O policy provides coverage for the SPAC and its directors and officers for claims that arise after the close of the transaction. You will also want to assess the adequacy of the limit being purchased by the go-forward company given that, if you're sued, the go-forward company may also be in litigation and everyone is sharing the same limit of insurance. The D&O insurance market didn't generally offer this coverage before 2023, and even now, it may only be available in some cases. Discuss this option with a knowledgeable D&O insurance broker who specializes in SPACs.

We often recommend that our clients discuss whether a SPAC D&O tail will make sense for their deal with us and their target's management before making final decisions on buying a tail policy. Those discussions can save the parties anywhere between $1 million and $3 million in premium costs.

4. Reps and Warranties insurance

For a relatively low premium, RWI provides an insurance backstop to the buyer if the seller's representations and warranties turn out to be flawed, or worse, fraudulent. Perhaps even more importantly, the diligence review the insurance underwriters and their counsel conduct as part of the RWI policy placement provides a written trail of the effort that went into the diligence process, including the issues that were known and unknown ahead of the merger.[9]

More and more SPACs, especially those backed by private equity firms, are folding RWI into their acquisition strategies. RWI is used in about 95% of PE transactions and is considered standard. A good broker who specializes in SPAC RWI can find several attractive coverage options.

An RWI policy can be an important differentiator for a SPAC that is courting a reluctant private company or a private company with multiple suitors. For an SPAC that is competing against PE firms or other SPACs for the same target, not offering the benefits of an RWI policy may mean a failed acquisition attempt and costly time delays. Since SPACs are under extra pressure to close their acquisition transactions before their combination deadline, having management spend time and effort on a failed auction process can be disastrous. Importantly for the SPAC, an RWI can also offer protection against seller fraud.

> **For SPACs competing against PE firms, not having an RWI policy may result in a failed acquisition attempt and costly time delays.**
>
> **Explore new insights into RWI Coverage Limits — and What's Driving Optimal Coverage Today.**

Consider, as well, that many lawsuits brought against SPACs center around insufficient diligence performed before the business combination. The RWI process may serve as a kind of safety net for anything the SPAC's diligence team could have missed while reviewing the target's business and operations. This step could go a long way to counteract allegations of shoddy due diligence and can help to ring-fence potential litigation exposure.

5. D&O insurance for the target company

Typically, one or more of the SPAC board members will join the board of the target company, which, of course, will be a publicly traded company at the conclusion of the merger transaction. The target company will have to significantly up-level its D&O insurance since its private company D&O insurance policy will no longer be sufficient.

Details on how to obtain D&O insurance for the new public company are covered in our Guide to D&O Insurance for De-SPAC Transactions. Note that the private company's process for obtaining D&O insurance for itself as a public company typically starts with the S-4 the SPAC filed in connection with the merger transaction.

> **Read our Guide to D&O Insurance for De-SPAC Transactions.**

Choosing the right insurance broker: Questions to ask

Given the rapidly changing nature of the D&O insurance market and the peculiarities of SPAC IPO companies, your choice of insurance broker is consequential.

A quirk of the insurance market is that, to optimize your result, you must choose one insurance broker to approach all the viable insurance markets on your behalf. Sending multiple insurance brokers into the market will lead insurance carriers to conclude that you don't know what you're doing and that you're not a serious candidate for their insurance capacity. For this reason, if you're interviewing D&O insurance brokers, instruct them to refrain from sending your name into the market until you have informed them that you've chosen them to be your broker.

Like bankers, lawyers and accountants, different insurance brokers bring with them varying levels of experience and resources. Work with a broker who places a significant amount of premium with the major insurance carriers.

To get the optimal D&O insurance coverage at the best possible price, here are some questions to ask potential D&O insurance brokers:

1. What level of experience does the brokerage team you are talking to (not just the brokerage firm, but your particular team) have when it comes to placing D&O coverage for SPACs?

It's critical that your D&O insurance broker has extensive and current experience working with SPACs, de-SPACs, IPO companies, private equity firms, mature public operating companies and RWI deals. The market for SPAC-related insurance changes very rapidly. Unless your broker is in the market every day, you'll miss out on the latest developments in the terms and conditions of your policy, which are critical elements of your negotiated, customized D&O insurance program.

2. What reach does the brokerage team have in the D&O and RWI markets?

Ask whether the brokers on your team have extensive and long-term relationships with SPAC D&O and RWI underwriters. Having a broker with years of experience and rapport built into their underwriter relationships can make a significant difference in your policy's terms and pricing and the speed with which the policy can be placed.

3. Will the broker be using a wholesaler or making a direct placement?

Many brokers only do a limited amount of SPAC/de-SPAC/IPO/RWI/public company D&O business. These brokers may be excellent in other areas, but if they don't transact a large volume of this business routinely, they'll inevitably have to use a "wholesale" broker to work on your business. This means your broker will not be able to answer your questions without talking to someone else first. Also, at the time of a claim, a broker who used a wholesaler is one who will not be able to advocate for you directly with the insurance carrier. It's better to work with a broker who is both an expert and can access the insurance market directly on your behalf.

4. Can your broker clearly articulate the business and legal risks you face?

There is little chance your D&O or RWI insurance broker will do a good job of ensuring you have insurance coverage for critical risks if your broker can't clearly articulate them. If your broker isn't an expert in understanding the risks you face, you're talking to the wrong person.

5. What experience does your broker have in terms of advocating for coverage payments with carriers on behalf of clients with complex claims?

Many brokers have anemic claims capabilities at best, and often the same claims person who handles client auto or workers' compensation claims is also being asked to handle your difficult D&O insurance or RWI claims. Given the complexity of D&O insurance and RWI claims, this claims structure is a mistake. Find out if your broker has specialists who can swing into action on your behalf.

You'll enjoy better insurance outcomes by working with a broker that has the deep SPAC experience and expertise needed to recommend the most strategic insurance program placement options. While you hope you won't need it, make sure you work with a broker with extensive experience managing SPAC-related claims.

Questions about this Guide? Comments? Compliments?

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