Going Public: A D&O Discussion

October 2020

Management Liability

Gallagher

Insurance | Risk Management | Consulting

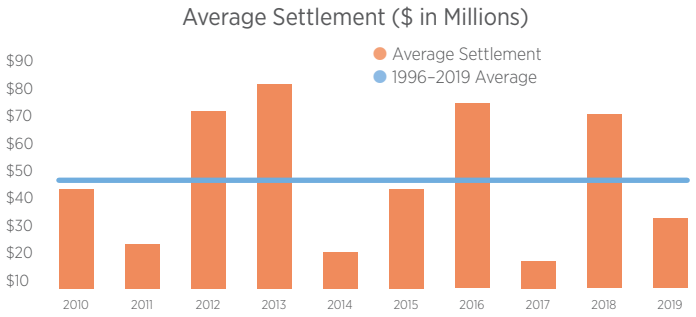
Introduction

Going through an initial public offering (IPO) will put your company under substantially more scrutiny by regulators and the public (including plaintiff attorneys) than previously. As part of the IPO process, you will author a prospectus, complete interim filings, issue press releases, participate in stock analyst reports and conduct roadshows for the investment community. These activities will lead to investor expectations, which are not that the stock price will remain at or below its initial issue price, but that its price will rise over time.

Prospectus
Regulatory/SEC filings
Press releases
Analyst reports
Speaking engagements

} **INVESTOR EXPECTATIONS**

Experience has shown that a stock price drop of 10% to 15% can elicit allegations of securities fraud. More substantial price declines (30% or more) or serious management concerns practically guarantee a lawsuit. The majority of securities claims are settled, thereby avoiding much of the economic cost and management attention required with protracted litigation. Nonetheless, even settlements are costly. The illustration below depicts the average securities class-action settlement values of each year. According to Cornerstone Research, the 20-year average settlement post-PSLRA is $45.5 million, with 2019 data decreasing from the prior year average of $57 million due to fewer mega settlements (i.e., those over $100 million). Emerging law firms play a role in these figures, historically targeting much smaller companies than established law firms do. It is important to remember that these amounts exclude the cost to defend such claims, which makes the financial exposure even more significant. No matter what the outcome, the cost of defending a frivolous action can be high. In one survey studying all class-action cases (not limited to securities claims), over $2.64 billion was spent in 2019 on class-action defense.[1] There can also be a very expensive management attention cost. In the same class-action survey, in-house counsel reported spending 12.2 hours per week on class-action lawsuits.



Source: Cornerstone Research

[1] https://classactionsurvey.com/

Thus, the risk to companies and their directors and officers intensifies significantly with an IPO. To effectively manage the risk of selling shares to the public, one must understand how liability arises and the potential magnitude of exposure. The purpose of this paper is to explain the basis of liability for a public company, discuss the D&O marketplace with respect to IPO exposures and set forth what you can expect from us as your broker in the process. In particular, we will explore the following areas:

- Duties of directors and officers
- Federal securities legislation and case law
- D&O claim trends
- Protecting directors and officers
- What to expect in D&O negotiations
- Underwriting considerations
- Determining appropriate limits
- Conceptual timeline — D&O placement

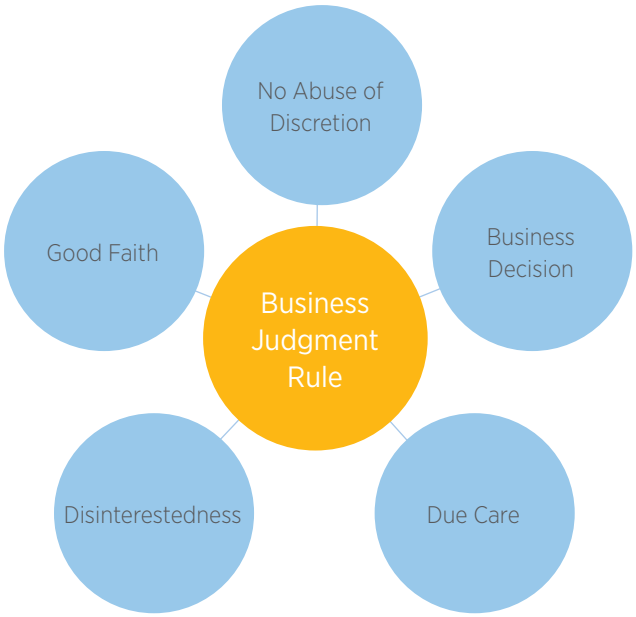
Duties of Directors and Officers, and the Business Judgment Rule

Directors and officers have a fundamental responsibility to represent the best interests of shareholders and other corporate constituencies while directing the business affairs of the corporation. Often, that responsibility is described as being subject to three basic duties:

- **Duty of diligence** — Directors and officers must act with the care that a reasonably prudent person would in a similar position, under similar circumstances.
- **Duty of loyalty** — Directors and officers are required to refrain from engaging in personal activities that would injure or take advantage of the corporation.
- **Duty of obedience** — Directors and officers are required to perform their duties in accordance with applicable statutes per the terms of the corporate charter.

These three duties all create exposure for the directors and officers of corporations. However, if directors and officers act in a good faith manner, focusing on the best interests of the corporation, they may look to the business judgment rule as a defense.

The business judgment rule recognizes that, while not all their decisions may work out well for the corporation, directors should not be penalized for acting as reasonable businesspeople. Thus, this rule is the first line of defense for directors and officers. It is not, however, enough to preclude all allegations of negligence and the resulting lawsuits. It is possible that directors and officers can be personally liable for loss to the corporation if the elements of the business judgment rule are not satisfied. The five elements of the business judgment rule are good faith, due care, disinterestedness, business decision and no abuse of discretion. Failure to meet any of these elements will deprive the director or officer of the benefit of the business judgment rule.



Federal Securities Legislation and Case Law

While directors and officers of private companies are not immune to liability, transformation to a publicly traded entity brings a host of new exposures. Although this list is certainly not exhaustive, the most notable follow.

The Securities Act of 1933

- Section 11 regulates misrepresentations and omissions in a registration statement.
- Section 12(a)(2) of this act enforces the liability of the seller in a prospectus or oral communication.
- Section 15 holds liable any person who controls another who is liable under Sections 11 and 12.

In short, the purpose of this statute is to provide investor protection with proper disclosure and access to information, and to create liability for misrepresentation and fraud. It is important to note that liability under Section 11 of the Securities Act of 1933 does not require proof that the shareholder relied on the alleged misrepresentation, that there was intent to defraud or that the misrepresentation caused the loss. Plaintiffs merely need to show that they purchased securities pursuant to the registration statement and that there was a material misrepresentation or omission. Liability under Section 12(a)(2) applies to false or misleading statements in a prospectus or oral communication. For obvious reasons, this statute is of utmost concern to issuers of securities by IPO.

The Securities Exchange Act of 1934

While the '33 Act speaks primarily to the obligations relating to initial registrations and filings, the '34 Act focuses on the subsequent responsibilities of public companies. Most notably, Section 10(b) of the '34 Act and Rule 10b-5 promulgated thereunder regulates fraud committed with a purchase or sale of a security. Such claims normally relate to securities trading decisions that led to financial loss and were made on the basis of allegedly inadequate or inaccurate disclosure from the corporation. While 10b-5 fraud allegations require a relatively high level of specificity, this often leads to a corresponding increase in severity.

The Private Securities Litigation Reform Act of 1995 (PSLRA)

PSLRA affords a safe harbor for potential alleged 10b-5 violations of the '34 Act. It helps protect corporations with ongoing disclosure risk by eliminating professional plaintiffs and raising the pleading standards, which were intended to result in fewer claims and more dismissals. Despite lofty intentions, PSLRA did not extensively reform securities litigation. By setting the bar higher for plaintiffs, nuisance suits were replaced with more substantive allegations that were more difficult to plead and prove. While more cases were dismissed, the ones that remained grew more expensive to settle.

Public Company Accounting Reform and Investor Protection Act of 2002 (Sarbanes-Oxley)

Commonly referred to as Sarbanes-Oxley, the Public Company Accounting Reform and Investor Protection Act of 2002 was enacted in the wake of large public scandals including Enron and WorldCom. It was intended to strengthen accounting oversight and corporate accountability by enhancing disclosure requirements, increasing accounting and auditor regulation, establishing new federal crimes, and stiffening penalties for existing federal crimes. While widely viewed as reinforced emphasis on existing state and federal laws, compliance has been very costly to most companies in terms of both hard costs (increased audit and legal fees) and soft costs (implementation and monitoring). In addition, the strengthened penalties have created greater exposure for executives.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)

Born from the financial crisis of 2008, the Dodd-Frank Act chiefly increased oversight of financial institutions. However, certain statutory provisions, such as compensation and corporate governance, reach beyond financial institutions and apply to any public company. Say-on-pay provisions of the Dodd-Frank Act require that companies take a nonbinding shareholder vote on executive compensation. Companies must also adhere to increased disclosure on compensation, including certain conflicts of interest with compensation consultants, as well as actual executive compensation relative to financial performance. Lastly, executives may face clawbacks on their compensation tied to financial restatement.

Jumpstart Our Business Startups (JOBS) Act of 2012

To boost a recovering economy after the financial crisis, Congress passed the JOBS Act to give emerging companies better access to public capital without some of the regulatory hurdles. If a company meets the statutory requirements to be an emerging growth company (revenue less than $1 billion during their last fiscal year), they have the ability to file a confidential registration statement with the SEC to obtain their comments. Additionally, for up to five years post-IPO, they are allowed to phase in certain disclosure and compliance measures that other issuers cannot. However, with these lower barriers to entry, D&O underwriters tend to view these IPOs with a bit more conservatism.

Omnicare[2] and Section 11 Pleading Standard

In 2015, the Supreme Court clarified that an issuer may be held liable under Section 11 of the Securities Act of 1933 for statements of opinion made in a registration statement if the issuer failed to hold the belief professed or failed to disclose material facts about the basis for the opinion that rendered the statement misleading. A Section 11 plaintiff must identify particular and material facts to support their allegations as misleading to a reasonable person reading the statement in context.

Cyan[3] and State Court Jurisdiction for '33 Act Claims

In 2018, the Supreme Court held that the Securities Litigation Uniform Standards Act of 1998 (SLUSA) does not eliminate state courts' jurisdiction over claims brought solely under the Securities Act of 1933, and that the cases cannot be removed to federal court. There were many implications from this ruling, including increased costs from (1) the increase in '33 Act claims in state courts, and issues with duplicative cases, multi-jurisdiction litigation and forum shopping, and (2) the lack of PSLRA safeguards, such as limiting discovery until the court determines the pleadings conform to federal law. The insurance market responded swiftly to *Cyan* by increasing retentions, reducing capacity and increasing rates. Many carriers once interested in writing primary were no longer interested in doing so. In short, *Cyan's* impact was almost instantaneous and remains the biggest issue in D&O underwriting for IPOs until the legislature passes amendments to SLUSA.

Thus, the question is not whether or not the claims will be filed, but rather who will be the target.

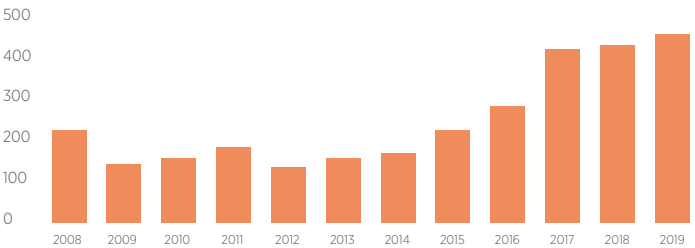
Since then, the Delaware Supreme Court held in *Sciabacucchi* that federal forum clauses in corporate charters are facially valid. This holding provides some relieve from *Cyan's* implications, at least in Delaware. The remaining question is how persuasive the case would be in other jurisdictions. Recently, California decided in *Restoration Robotics* that the federal forum selection clause facially met California state law. It remains to be seen whether other states will also uphold these clauses to chip away at the impact of *Cyan,* or whether a federal amendment to SLUSA will be necessary to create consistency on the issue.

D&O Claim Trends

The graph below tracks annual federal securities class-action filings over time. In 2017, a record number of securities class-action claims were filed. with 2018 not too far behind. Filings in 2019 set a new record. As the highest number seen since 2002, it is with nearly double the historical average.

While we did see a reduced frequency of filings in the first half of 2020 due to COVID-19, many speculate that will be offset by an uptick in the second half.

Federal Securities Class-Action Litigation



Source: Cornerstone Research

[2] Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund, 135 S. Ct. 1318 (2015)
[3] Cyan, Inc. v. Beaver County Employees Ret. Fund, 137 S. Ct. 2325 (2017)

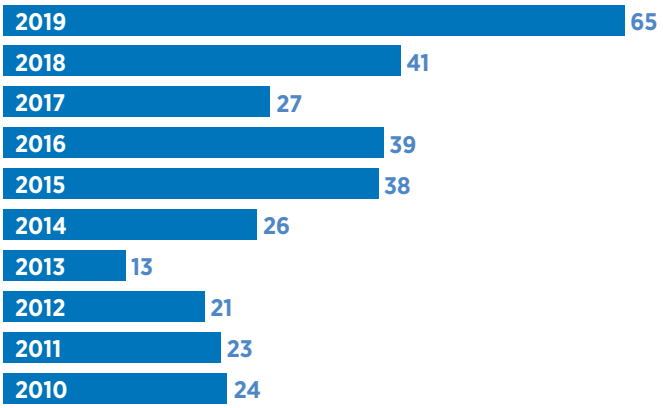
It is interesting to note certain trends throughout the years. Since 2000, we have witnessed a spike in filings every few years related to a particular industry or issue. Examples include laddering claims (310 in 2001), analyst and mutual fund claims (100 between 2002 and 2004), backdating/stock option claims (110 in 2006 alone), and more than 100 subprime-related claims from 2008. About one-third of the financial institutions industry in the S&P 500 has faced securities litigation as a result of the credit crisis.

These spikes make forecasting claim susceptibility rather difficult. While some industry observers tend to discount certain spikes as irregularities (e.g., another rash of laddering or backdating claims is unlikely in the near future), one can reasonably predict a new litigation focus on the part of the plaintiffs' bar. Thus, the question is not whether or not the claims will be filed, but rather who will be the target.

Emerging plaintiff law firms played a significant role in the 2017 uptick in frequency, targeting companies that may have previously flown under the radar of the more established plaintiff law firms. This remains the case today.

The graph below, from Cornerstone Research's *Securities Class Action Filings: 2019 Year in Review,* highlights IPO-related litigation as a subset of the overall frequency shown in the prior graph.

Federal and State 1933 Act Filings



Source: Cornerstone Research

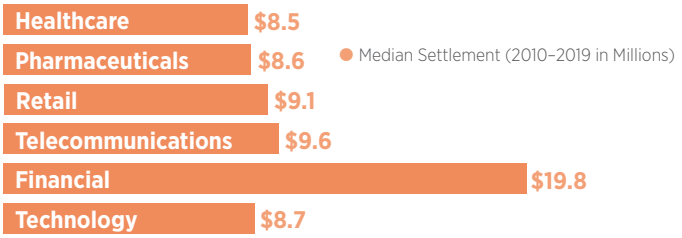
Ultimately, with the '33 Act's strict liability, *Cyan's* implications on jurisdiction and discovery, and the role that emerging law firms are playing in securities litigation as a whole, IPO claim frequency will continue to increase.

While certain trends are difficult to predict as suggested above, others are more observable on a macro level. The next few sections provide additional claim trend data based on various macro-level criteria, including industry, plaintiffs and claim allegations.

Industry Trends

As a result of the financial crisis, we have seen an unprecedented outbreak of claims involving financial institutions. While their claims have also been more costly, industry has not historically been an indicator of claim size on a consistent basis. The graph shows median settlement costs for additional sectors, including perennial favorites healthcare, pharmaceuticals and retail, which are relatively similar, with financial institutions as an outlier.

Median Settlements Differ Slightly by Industry

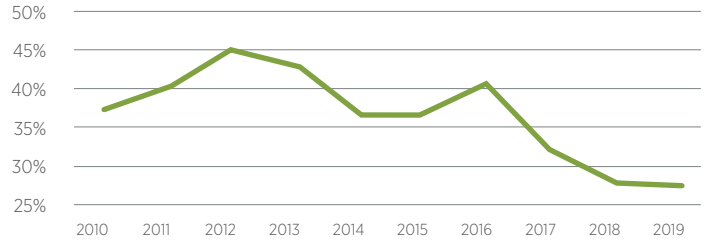


Industry does seem to correlate with claim frequency. According to Cornerstone Research, for the last nine years, the consumer noncyclical industry represented the largest percentage of filings. This sector includes biotechnology, pharmaceutical and healthcare companies, which also tend to be the industries initiating IPOs.

Plaintiffs

Institutional investors' shareholder activism has historically played a role in shareholder litigation. However, according to Cornerstone Research, settlements with institutional shareholders as lead plaintiff have fallen to their lowest level in 10 years. Typically, institutional shareholders will initiate claims where damages are higher, the case is more complicated, and the defendants are larger; these are also the same factors that drive settlement values.

Settlements With Institutional Investors as Lead Plaintiff



Source: Cornerstone Research

Allegations

The alleged statutory violations in a complaint also drive settlement values. As you recall, Sections 11 and 12(a)(2) of the '33 Act apply to material misrepresentations or omissions in the registration statement, prospectus or oral communications. Meanwhile, 10b-5 regulates fraud in securities trading on the exchanges with respect to the ongoing disclosure obligations of the corporation. The following table from Cornerstone Research analyzes settlements from 2010 to 2019 by allegation.

Settlements by Nature of Claims	# of Settlements	Median Settlements (in Millions)	Median Simplified Statutory Damages	Median Settlements as a % of Simplified Statutory Damages
Section 11 and/or 12(a)(2) only	77	$7.2	$118.8	7.4%
Both Rule 10b-5 and Section 11 and/or 12(a)(2)	115	$15.1	$390.0	5.8%
Rule 10b-5 only	524	$8.5	$212.5	4.6%

Source: Cornerstone Research

Thus, while claims alleging only Section 11 or 12(a)(2) violations may settle for a higher percentage of damages sought, the value of those claims as measured by median settlements are significantly less than those alleging violation of Rule 10b-5 alone. However, if the plaintiff can allege violations of all three, they are likely to do so to bolster settlement values. With increased IPO activity over the past three years, it is likely that we will see an uptick in these claims.

Protecting Directors and Officers

Directors and officers are fiduciaries who must exercise prudence and good faith in the management of corporate affairs. **They can be held personally liable if their negligence results in a loss to the corporation, its shareholders or third parties.** Liability may result from negligence or omission, participation in or approval of a particular action, or acquiescence to the actions of others, including the failure to take action. Protection generally comes from two sources: **(1) indemnification by the corporation and (2) directors and officers liability insurance.**

Indemnification by the Corporation

Directors and officers generally expect to be indemnified by the corporations they serve. The extent to which corporate indemnification may be provided is governed by the bylaws of the corporation as well as the state laws of domicile. These statutes typically outline provisions identifying the circumstances under which companies are either permitted or required to indemnify directors for claims made against them, as well as circumstances in which indemnification is prohibited.

While indemnification is obviously a valuable source of protection, there are limitations on the corporation's ability to provide it. Some officers and even some corporate advisors believe that corporate indemnity provides such broad-based protection that directors and officers liability insurance is unnecessary. This is simply not the case.

Corporations are not legally able to indemnify under all circumstances, depending on particular state or federal law. There is also the risk that the corporation, while legally permitted to indemnify, simply doesn't have the financial ability to do so due to solvency constraints. Therefore, it is appropriate to provide board members with further protection through the purchase of insurance.

Directors and Officers Liability Insurance

Directors and officers are largely concerned about claims against them that are not indemnified by the corporation. This is a claim in which the corporation has not indemnified the individual directors or officers because they are not legally permitted to, do not have sufficient funds or simply have chosen not to do so. Under such circumstances, director and officer defendants would have to rely on their own personal assets for defense expenses and indemnity awards or settlements—**unless** they have D&O insurance to protect them.

Various governmental bodies allow corporations to obtain insurance to protect their directors and officers as long as the insurance does not cover losses incurred as result of willful or criminal misconduct. While directors and officers liability insurance is not a cure-all for lawsuits being brought against a director, it is an essential element of a risk management program to alleviate the potential exposure of directors and officers, and/or the financial drain upon corporate assets.

There are many elements to a D&O insurance policy. A few of the key features are described below. Please note this is intended to provide a general overview of certain coverage components only. We suggest referring to your actual policy form for further details.

Insuring Agreements (or Clauses)

Insuring agreements indicate whether the policy is triggered by setting forth how the policy operates using defined terms. The three common insuring agreements in a directors and officers liability insurance policy are as follows:

1. Coverage for the personal liability of directors and officers who are not indemnified by the corporation. This is commonly referred to as **Side A coverage**.
2. Coverage for the corporation's loss of assets resulting from the indemnification to directors and officers. This is commonly referred to as **Side B coverage**.
3. Coverage for the corporation's loss in the event of a securities claim. This is commonly referred to as **entity coverage or Side C**.

Definitions

Policy definitions typically include insureds, wrongful acts, claims, loss, defense expense and many others. Careful attention should be paid to pertinent definitions as they establish whether the insuring agreement is triggered, including who is covered, what is covered and what constitutes an actual claim. Below are typical policy definitions, but please note these can differ drastically among forms; thus, actual policy forms should be reviewed.

Wrongful act: Any actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect or breach of duty by the directors or officers, individually or collectively, in the discharge of their duties solely in their capacity as directors or officers of the company.

Claim: A written demand for monetary, nonmonetary or injunctive relief; a civil proceeding; a criminal proceeding; or a formal administrative or regulatory proceeding; a civil, criminal, administrative or regulatory investigation of an insured person, etc.

Exclusions

Exclusions are specific items that the carrier does not intend to cover. They tend to fall into certain categories:

1. Those that are intended to be covered by other insurance products, such as exclusions for ERISA or bodily injury and property damage
2. Those that are uninsurable as a matter of public policy or that create a moral hazard, such as contractual liability and adjudicated fraud
3. Those that are risks the insurer does not want to cover

In addition to base policy forms that may include as many as 15 or 20 exclusions, insurers have a vast array of policy endorsements that can be incorporated into their contracts to further restrict coverage, add new exclusions, or improve or delete exclusions. For example, does the exclusion apply to all matters "based upon, arising out of, attributable to" the subject of the exclusion, or does it simply (and more narrowly) apply to those claims "for" the subject of the exclusion? Does it apply to all insuring agreements? Does it apply to all insureds? Are there certain scenarios in which the exclusion should not apply?

It takes a broker with both a keen understanding of policy language and a superior working relationship with the insurer to negotiate the best possible language on your behalf.

What to Expect in D&O Negotiations

Private Company D&O and the IPO

Making sure your private company D&O policy is properly negotiated is critical for effective insurance coverage in the IPO process. As a company gearing up for a future IPO, certain activities, such as debt restructuring or organizational changes, create additional exposure for claims. Coverage under private D&O policies includes broad entity coverage, not limited just to securities claims as is the case with public D&O forms. However, private company D&O policies contain an exclusion for public securities exposures. How, then, does insurance address the pre-IPO activities that can create liability prior to becoming a publicly traded company? We negotiate language that carves out coverage from the exclusion for roadshow coverage relating to those statements made as a private company in the course of presentations to analysts and potential investors in your IPO. We also negotiate language that carves out coverage for a failure to launch claim—those matters where current stakeholders rely on representations about the IPO, the company's valuation, etc.

It is critical to have a knowledgeable broker negotiating coverage on your behalf.

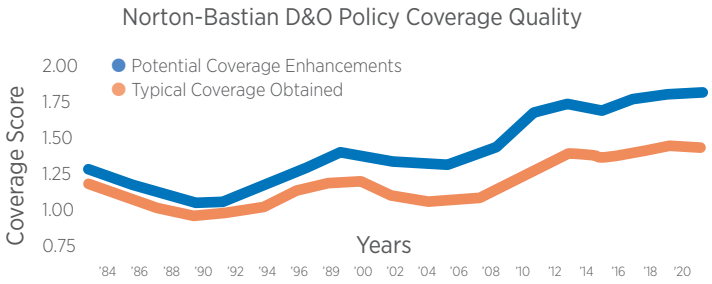
Public Company D&O and the IPO

It bears repeating that D&O policies do not have standardized language, varying significantly from form to form.

There are numerous coverage considerations to address as evidenced by the fact that any given public company policy form tends to include 25–75 endorsements specifically tailored to the organization. Below are just a few and are in no way exhaustive:

- Breadth of investigations coverage
- Selling shareholder coverage
- Controlling shareholder coverage
- Counsel selection
- Additional personal protection for the directors and officers: Side A DIC policies, IDL, CEO/CFO policies, Dodd-Frank 954/Sox 304 clawback coverage, etc.

Typically, this takes a knowledgeable broker with recognized marketplace clout to obtain critical coverage enhancements needed to ensure that potential claims are handled optimally and that your insurance recoveries are maximized. We view such policy analysis and negotiations as another distinct differentiator for Gallagher. The Norton-Bastian index below tracks coverage quality over time, highlighting the coverage gap between off-the-shelf policies and the value of negotiated terms and conditions. We apply a micro-application to score coverage terms to ensure that coverage is as broad as possible.



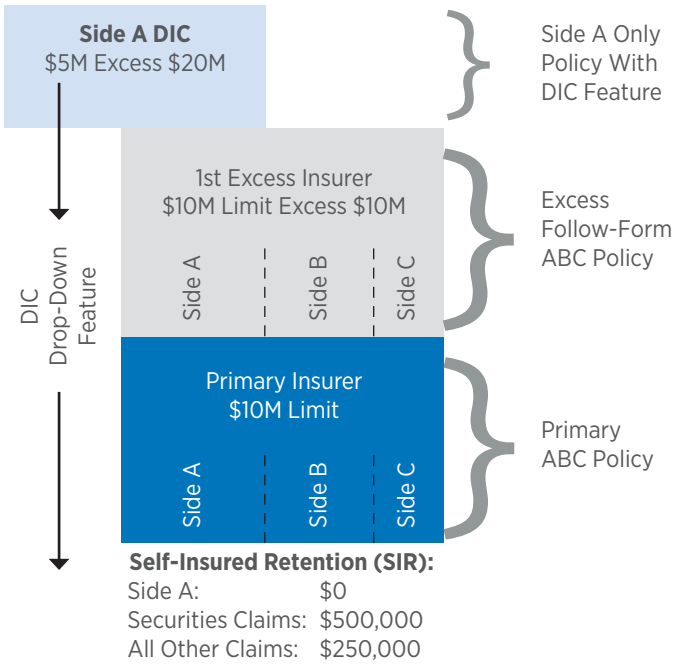
D&O Policy Structure

The following depicts a typical program structure and thus values are for illustrative purposes only.

Traditional ABC Coverage

As discussed, traditional D&O policies typically provide coverage for non-indemnifiable claims brought against individuals, indemnifiable claims against individuals and securities claims brought against the entity itself. These coverage components are commonly referred to as Side A, Side B and Side C, respectively, in relation to standard insuring agreements.

Depending on the total limits purchased, D&O programs are often structured with a primary insurer/policy and one or more excess carriers/policies. The primary policy is intended to provide the foundation of coverage terms and conditions, while the ABC excess policies are intended to provide follow-form coverage.



Side A DIC Coverage

Because policy limits of traditional D&O policies are shared among individuals and the entity, boards are concerned that the coverage originally placed to protect their personal assets may be overly diluted or tied up as an asset of the estate in bankruptcy proceedings. To address these concerns, dedicated Side A policies are available that will only respond to non-indemnifiable claims against individuals (in reference to the first insuring agreement within traditional D&O policies). As a reminder, Side A claims include claims in which the corporation is legally unable to indemnify, as well as situations in which it is unable to indemnify due to financial insolvency.

The best Side A policies contain difference-in-conditions (or DIC) features that enable the excess Side A policy to drop down when the underlying policy does not respond. This may be in situations where the terms of the Side A policy are more favorable than the underlying ABC coverage, where the underlying insurer has failed to pay the loss or in the event of carrier solvency issues. Since Side A policies generally have fewer exclusions/restrictions than traditional D&O policies, this DIC feature is an extremely valuable benefit to consider.

Underwriting Considerations

The IPO marketplace can best be described as a hard market within a hard market. IPO retentions range between $7.5 million to as high as $20 million depending on the industry, size of the capital raise and post valuation. Underwriting appetite for primary capacity is also limited. Primary pricing varies based on the aforementioned factors, in addition to location. Foreign domiciled companies and California-based risks are considered the higher risk and could see primary pricing at $300k per million or even higher. The excess market appears to be improving slightly as additional capacity has come into the market, bringing increased limit factors back to the 75-85% range for first excess layers. Factors influencing actual pricing for your D&O program likely include the following:

D&O Limit Analysis — a Unique Gallagher Advantage

Determining an appropriate amount of risk to assume or transfer is one of the most challenging of all risk management responsibilities. This is especially difficult when evaluating D&O exposures for an IPO, given the lack of available trading data and uncertainties related to how the offering will be received. To help arrive at a more informed determination, Gallagher utilizes the following methodologies:

- **Peer analysis** surveys limits purchased by peer companies based on size and industry.
- **Stock analysis** models potential plaintiff demands and settlement values based on anticipated trading patterns; this proprietary model keys off of data from your prospectus filing.
- **Historical claims** reviews claim trends over the past decade.
- **Other methodologies provide** additional market-based rules of thumb.

Once your initial prospectus is filed and/or additional information is available regarding the offering size, expected price, insider holdings and market capitalization, we will be able to complete our limit analysis. We will work closely with you to define our assumptions regarding future stock appreciation, sell-off by insiders, secondary offerings, etc. Our findings will be presented as part of our management liability report along with other important considerations regarding your D&O insurance program.

While we model the D&O exposure at the time of IPO, it is possible to increase limits midterm. We routinely track our clients' stock performance to monitor any major changes in exposure, mainly driven by market capitalization and public float. For some of our clients who have had very successful IPOs, this has resulted in buying more limits midterm to account for the market capitalization appreciation or increased exposure.

Next Step: Our Management Liability Assessment and Report

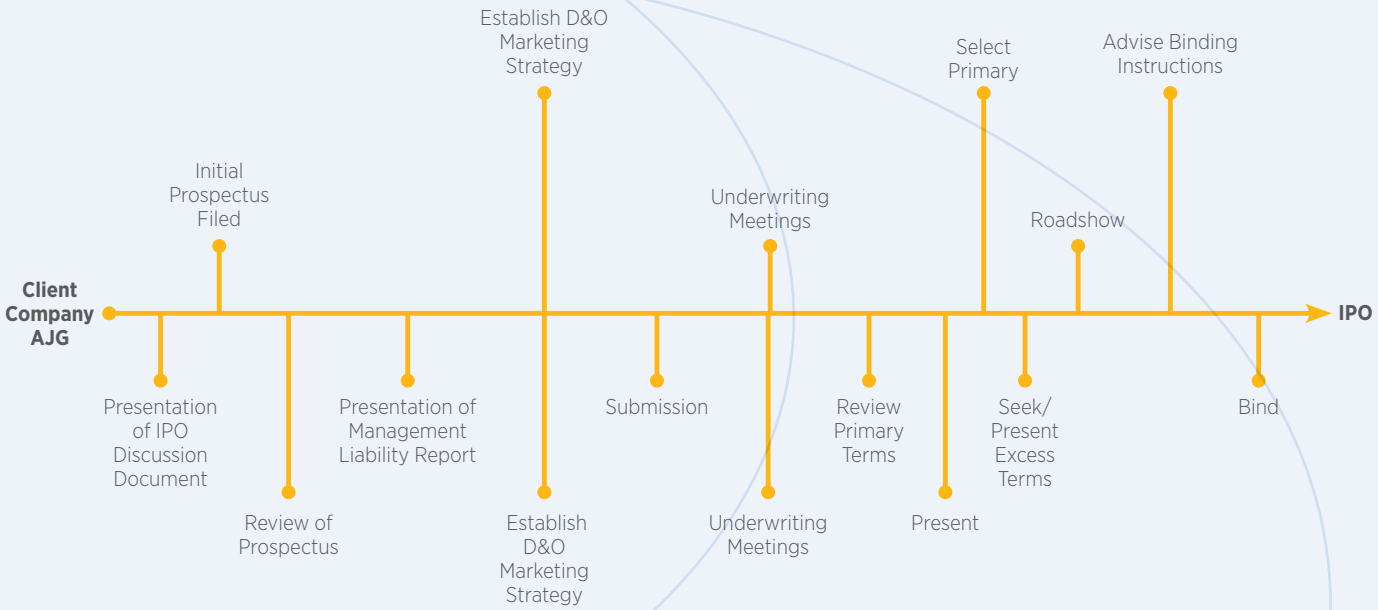
Upon filing of the prospectus, Gallagher will be able to further analyze your specific exposures and provide a more comprehensive assessment of your needs. The results of our findings will be presented in our management liability report. This report will provide an in-depth review of the following areas:

- Recommendations regarding potential primary and excess carriers
- Limit analysis
- Retention analysis
- Coverage recommendations
- Pricing expectations
- Proposed marketing strategy
- Revised timeline

As suggested above, our management liability report will serve as a discussion platform regarding critical components of the D&O placement from which we can collectively form an agreed-upon strategy for approaching the marketplace in such a way that best addresses your needs and expectations. We look forward to furthering these discussions with you. Such discussions will include a timeline that we jointly construct. A sample is provided next, giving you a better idea of the D&O placement process.

Conceptual Timeline—D&O Placement

The IPO process can be rather unpredictable and prove challenging for allocating enough time for the D&O liability placement. While we are currently unable to set a definitive timetable, the following timeline of key events will provide a general idea of the necessary steps.



Gallagher's Management Liability Practice

Gallagher's Management Liability practice (MLP) is a global practice dedicated to the development and implementation of risk management and risk transfer programs. MLP specializes in protecting individuals and their companies against an array of executive risks and other professional liabilities. Our specialized coverage expertise includes:

- Directors and officers liability
- Employment practices liability
- Fiduciary liability
- Employee dishonesty (crime)
- Professional liability
- Kidnap and ransom
- Cyber liability
- M&A and transactional liability

Gallagher's Management Liability Practice: Global Overview

Established: 1998

Professionals: 200+

Premium volume: $2.6 billion

Primary locations: Chicago, London, Los Angeles, New York, Boston, Boca Raton, Birmingham, Bermuda, Canada and Australia

Our clients choose us for our custom solutions. We listen to your needs. Of all brokerage houses, Gallagher has the highest ratio of senior management liability experts to accounts; this means that our top talent will truly be available for you.

We view the role of a good broker as a consultative partner that consistently provides open and honest feedback on the market; operates with the highest ethics; and builds a long-term, stable relationship by having low staff turnover and low account-to-broker ratios—all Gallagher hallmarks.

We thank you for considering us as a potential partner for consultation, placement and servicing of your management liability program. We look forward to introducing our capabilities to you and demonstrating how Gallagher's Management Liability practice desires to become a valuable member of your risk management team.

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