

D&O Insurance

Although the last few years have seen double-digit rate increases and lowered capacity within the directors and officers liability (D&O) insurance segment, market conditions have shifted in recent months. In particular, rate increases have moderated—especially for publicly traded companies. According to industry data, rates increased by an average of 3% among such companies during the first quarter of 2022, decelerating from a 10% jump and a 6% rise in the third and fourth quarters of 2021, respectively.

Taking a closer look at these trends, renewal pricing for primary and lower excess layers of D&O coverage has ranged from flat to single-digit increases so far this year. In contrast,

pricing for mid- and high-excess layers has mostly decreased. Furthermore, capacity for higher excess layers has been on the rise, resulting in increasingly competitive market dynamics. While the D&O segment has also started to stabilize for private and nonprofit companies, these companies are still deemed high risk by insurers compared to their publicly traded counterparts. Thus, rates for these companies have increased by an average of 5%-20% in the first half of 2022, according to industry data. Even as market conditions change, it's important to note that policyholders operating within challenging industries, possessing poor loss history or utilizing insufficient risk management measures could face ongoing coverage difficulties.

Developments and Trends to Watch

New market entrants—Amid increasing capacity and decelerating rates, insurers' overall sentiment toward the D&O market has shifted. Looking ahead, insurers are poised to fuel further segment growth, as evidenced by several new entrants in the market (e.g., IQUW, Rising Edge and Inigo) and, subsequently, greater competition. In order to secure market shares, some D&O insurers have broadened their underwriting appetites by quoting additional layers of coverage and undercutting competitors to attract new business.

Cybersecurity concerns—Cyberattacks continue to increase in both cost and frequency, sometimes leading to litigation and related D&O claims. After all, the decisions made by companies' senior leaders are often intensely scrutinized following cyberattacks. Potential D&O losses can arise from allegations such as senior leaders failing to take reasonable steps to detect and prevent cyberattacks, report these incidents or notify the appropriate parties. Compounding D&O risks stemming from cyberattacks, the U.S. Securities and Exchange Commission (SEC) proposed changes to its existing cybersecurity disclosure requirements for publicly traded companies

on March 9, 2022. These changes include enhanced and standardized rules regarding cybersecurity governance, strategy, risk management and incident reporting. Going forward, the adoption of these changes could result in further litigation and associated D&O losses for affected companies.

Environmental, social and governance (ESG) issues—ESG activism has also made a noticeable impact on the D&O market. Specifically, extreme weather events have contributed to a surge in climate change litigation, with many allegations claiming companies and their senior leaders have failed to adequately disclose the material risks of climate change or take action to ensure eco-friendly operations. Adding to these concerns, the SEC proposed changes to its climate change disclosure rules for publicly traded companies on March 21, 2022. Such changes include requiring companies to share further information on their climate-related risks, associated mitigation measures and greenhouse gas emissions. If adopted, these changes could contribute to increased climate change litigation and subsequent D&O claims for impacted companies.

Tips for Insurance Buyers

- Examine your D&O insurance program structure and limits alongside your insurance professionals to ensure they are appropriate and take market conditions and trends into account.
- Keep your senior leadership team actively involved in monitoring workplace cybersecurity threats.
- Work closely with your senior leadership team and insurance professionals to identify and address any ongoing risks that could lead to D&O losses.