2023 D&O Insurance Midyear

Market Outlook

While the last few years in the directors and officers (D&O) liability insurance segment were met with double-digit rate increases and lowered capacity, market conditions proved more favorable throughout 2022. In particular, most policyholders experienced more moderate rate jumps, with some public companies even encountering rate decreases. As overall sentiment toward the D&O space began to shift, new market entrants also emerged, thus bolstering underwriting appetites and fostering greater competition among carriers. In light of such conditions, the first half of 2023 saw most public companies encounter double-digit rate decreases—between 10% and 25%, according to industry research—and access to more capacity. However, because private and nonprofit companies are considered a higher risk by carriers than their public counterparts, these policyholders have remained subject to additional underwriting scrutiny and less substantial rate decreases. Altogether, industry experts anticipate that favorable segment conditions will continue for the rest of 2023, paving the way for further premium deceleration.

Developments and Trends to Watch

- **Environmental, social and governance (ESG) issues—**ESG activism has made a noticeable impact on the D&O market. Specifically, senior leaders have been held more accountable for upholding their companies' ESG efforts by stakeholders and regulators, thus prompting increased litigation against these leaders and related D&O claims. For instance, the U.S. Securities and Exchange Commission (SEC) proposed new disclosure rules in 2022 requiring public companies to share more information on their climate exposures, possibly posing further D&O risks. Complicating matters, the first half of 2023 shed visibility on a divide between federal regulators pushing for ESG initiatives and some state governments and stakeholders adopting anti-ESG perspectives. This leaves companies and their senior leaders in the crossfire and forces them to make decisions that will ultimately promote their long-term interests and mitigate overall D&O risks.

- **Economic uncertainty—**The economy has shown signs of trouble since 2022, primarily due to high inflation issues and rising interest rates. Although worries of a recession somewhat cooled in the first half of 2023, overall economic concerns have pressed on, evidenced by a surge in corporate insolvencies and the collapse of multiple major banks (e.g., Silicon Valley Bank). Further, a recent survey conducted by insurance company Willis Towers Watson (WTW) and international law firm Clyde & Co found that 63% of global executives listed the economy as their most significant D&O exposure, carrying elevated claim risks and the potential for shrinking market capacity. Considering such trends, it has grown increasingly vital for companies and their senior leaders to monitor the shifting economic landscape and adjust their business practices as needed to demonstrate to insurers and stakeholders that they are equipped to handle their associated risks.

- **Cybersecurity concerns—**Cyberattacks continue to increase in cost and frequency, sometimes leading to litigation against senior leaders and related D&O claims. Potential D&O losses can arise from allegations such as senior leaders failing to take proper steps to protect stakeholders' personal information, implement controls to prevent cyberattacks, and report incidents or notify certain parties. Amid increasing ransomware threats and rising digital warfare exposures brought on by the ongoing Russia-Ukraine conflict, cybersecurity has become a worldwide D&O concern. According to the aforementioned survey from WTW and Clyde & Co, 62% of global directors consider cyberattacks, data loss and digital crime to be among their top D&O risks. What's more, the SEC proposed enhanced disclosure rules in March 2023 that would require public companies to provide more in-depth documentation regarding their cybersecurity procedures, potentially exacerbating associated D&O exposures.

Tips for Insurance Buyers

- Assess and update your organization's ESG initiatives in coordination with your senior leadership team. Make sure these initiatives meet federal and state requirements and reflect the company's long-term goals.
- Monitor your senior leaders' financial operations to ensure they maintain safe and transparent practices.
- Involve your senior leaders in reviewing the company's digital risks and implementing cybersecurity protocols.

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