D&O Market Update: (Q3) 2022

State of the Market

- Most D&O programs are now renewing with decreases after the hard market cycle of 2018 – 2021
- Capital markets activity has slowed significantly in 2022 due to macroeconomic and geopolitical conditions, reducing new business opportunities for D&O insurers (i.e., IPOs and deSPACs)
- New capacity that entered during the hard market cycle with aggressive growth targets is driving rates downward, sometimes significantly
- We expect Q3 2022 D&O **decreases** of 10-15% or higher on most accounts, depending on current pricing and risk characteristics

Legal & Regulatory Developments

- Securities class actions (SCAs) have trended back to historical levels after the high-water mark of 2017-2019
  - ✓ 2022 run rate is currently ~200
  - ✓ The decline is partly driven by reduced merger objection litigation activity in federal court
- ~17% of SCAs in 2022 have been filed against SPACs and/or deSPACs
  - ✓ SEC has proposed new disclosure rules to improve investor protections, which have contributed to a slowdown in new activity
  - ✓ Recent data shows that 90% of filings naming deSPACs occur in the first year that the deSPAC is public
- SEC proposal of enhanced climate change-related disclosures in public filings, and potential impact of recent Supreme Court rulings
- Continuing trend of large cash derivative settlements exposing Side A limits
  - ✓ American Realty; Boeing; Wells Fargo; Renren; FirstEnergy Corp.
  - ✓ DE law allowing captives to write Side A D&O insurance

Coverage Trends: Pricing, Terms & Conditions

- Competition for primary layers is increasing in a decreasing rate environment, including from insurers with limited experience in writing primary layers
  - ✓ Flat renewals are the new baseline for primary layer, with decreases achievable through competition
- Excess layer competition is fierce: legacy insurers are aggressively defending their excess renewals from new entrants
  - ✓ Rates of underlying are trending back down from 80%+ to rates in the 65-75% range
  - ✓ This excess competition compounds any primary decrease achieved
- Decreased retentions and other coverage improvements are all back in play

Emerging Risks & Trouble Spots

- Supply chain risk and inflation of both input and labor costs are top of mind for D&O insurers
  - Economic conditions are leading to strategic shifts, including layoffs in certain sectors (e.g., life sciences and tech)
- Russia/Ukraine exposure and mitigation efforts are an underwriting focus
- ESG efforts are increasingly under investor, SEC and underwriter scrutiny
- Diversity, equity and inclusion programs at both board and employee level
- Robust cyber-protection programs with board oversight are expected
- Life Sciences, fintech/crypto, cannabis and SPAC/deSPACs remain challenging classes of business.
- Impact of the US Supreme Court decision in *Dobbs v. Jackson* (June 2022: Many public and private companies were very quick to announce their intention to support employees seeking reproductive health services in other states – this position may ultimately result in corporate liability and/or directors' and officers' (D&O) liability. The legal landscape on this issue is rapidly evolving but one to watch very carefully.