

What has contributed to the rising cost of Directors and Officers (D&O) Liability Insurance for new public companies?



Over the past year, the cost of obtaining D&O insurance for new public companies has increased substantially. Rates have increased from \$50-60,000 per million dollars of coverage to over \$150,000 per million dollars of coverage. Along with increased premiums, retention amounts have increased substantially (from \$5 million to \$10 million for smaller public companies up to \$30 million for very large public companies). The increased cost of D&O insurance has been driven by the record level of securities class action filings over the last three years, as well as the increased settlement value of such actions (44% higher average settlement value in 2018 than the average of the past nine years according to Cornerstone Research). Further contributing to the increased cost is the U.S. Supreme Court's ruling in the 2018 case, *Cyan, Inc. v. Beaver County Employees Retirement Fund*, that state courts can hear securities claims under the Securities Act of 1933, creating additional uncertainty regarding the outcomes of such cases. These factors in turn have caused some carriers to limit (or entirely eliminate) underwriting D&O insurance for new public companies.

Given that securities class action suits are filed against companies in the life science industry more than any other industry, life sciences companies have been especially impacted by the increased cost of D&O insurance premiums, with rates continuing to rise materially on a monthly basis. One oncology company was given an initial premium estimate of \$2.3 million for a June 2019 IPO closing, but ended up paying a premium of \$4.3 million when its IPO closed in September 2019. Given these changes in the D&O insurance marketplace, we recommend that companies engage a D&O insurance broker early on in the IPO process to ensure that they will be able to obtain competitive and comprehensive coverage and to avoid last minute surprises when their boards of directors are being asked to approve such high-cost packages. We recommend you contact your Goodwin life sciences or corporate lawyer for further guidance on obtaining D&O insurance.