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Complex conditions – but signs of stabilization emerging

Patrick Whalen • September 11, 2023

Since my February update on what to expect from the D&O market in 2023, several trends I identified have been realized, especially the market's softening trajectory. However, with a number of months elapsed, we now appear to be inching closer to stabilization. Here's the latest on the state of the D&O market for the second half of the year.

The nature of the market is softening

The D&O insurance market is still softening, with rates consistently dropping across various segments of the Executive Risk division. However, the manner and magnitude of these reductions are not consistent across the board; they are significantly influenced by the specific industry and the unique circumstances of each company. For instance, for companies post-IPO, DeSPAC situations, or industries that have been particularly affected by the pandemic, the decreasing rates appear to be a form of normalization. Conversely, in certain sectors, the reductions seem more like an overcorrection, with rates plummeting below pre-hard-market premium levels. This diverse softening trajectory prompts us to consider what the optimal hard market correction should look like.

While some accounts are seeing decreases and rates are materially lower than at their previous peak, we are seeing signs of leveling as premiums hit critical lows. The prior rate correction was necessary and we are now at the point where some excess placements are underpriced. We are also seeing the exit of some of the newer capacity that rushed in during the hard market thereby extracting some supply. We can appreciate that customers want to see premium savings, however, the opportunity cost of cheap insurance can be carrier stability.

Policy specifics are showing mixes signals

Coverage limits: There's a discernible shift in coverage limits, which

have in some areas risen from US$5m to US$10m. However, carriers exhibit caution when it comes to endorsing US$15m limits. Although such limits are customary for established blue-chip corporations, they are becoming challenging to advocate for in the case of smaller entities, especially when the prevailing rates do not support these elevated ceilings.

Capacity: The capacity environment is ever-evolving. In some pockets, ample capacity is still evident. However, as previously mentioned we have started to see the exit of a number of carriers and new entrants have been limited given the market dynamics. Carriers are beginning to pushback more as pricing lows hit an inflection point.

Self-insured retentions (SIR): SIR determination remains largely situational. Established public entities have witnessed minimal alterations in their retentions, but for DeSPACs and newly listed public companies, we have seen a decline in SIR, transitioning from peaks of US$10-15m to a range of US$3.5-5m. The retention shifts are not necessarily indicative of company performance, as a significant number of DeSPAC companies remain under pressure, but rather a simple outcome of the market's aggressive appetite. As Security Class Action frequency ticks upward, on track to surpass yearly totals for each of 2021 and 2022, we may begin to see a leveling out of retentions as carriers get a better understanding of loss trends.

Terms & Conditions: There's a growing trend of brokers securing increased sublimits for derivative demands, which appears to be a recurring theme in most negotiations. There have also been increased conversations around adding Entity Investigation, but these conversations typically come with additional premium for the added risk exposure.

For SPACs specifically, there is a normalization occurring – they are seeing less restrictive terms than in the previous SPAC craze years, especially as the rate at which SPACs have launched remains low. That said, there remain only a few markets willing to quote and insure SPACs.

The banking crisis has had a ripple effect on the D&O market

The most pronounced impact of the banking crisis has been heightened risk exposure in financial institutions coverage lines. This is largely because these coverage lines directly address the fallout from disruptions in the banking sector. However, from a more indirect perspective, the emerging trend of restricted access to capital due to the crisis carries grave consequences. Should this capital constraint persist, many companies might grapple with solvency issues, as they face mounting pressures from interest expenses and looming debt maturities. The evidence of this can already be seen with several high-profile firms declaring bankruptcy. This situation inevitably reverberates within the D&O realm, giving rise to shareholder class actions and other related challenges.

Various factors fuel optimism for a more balanced D&O horizon in the near future

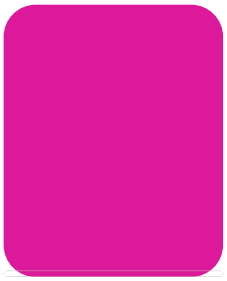
There's an apparent consensus among brokers, clients, and carriers regarding the dynamics shaping the present market conditions. This

shared understanding ensures responses are grounded in informed anticipation, not mere reactions.

Reflecting on the influence of the broader macroeconomic landscape, the D&O market has surprisingly veered in a direction that contrasts with the somber economic forecast. Despite mounting concerns of economic instability and looming recession, the market has emerged as more client-centric and competitive. However, it's crucial not to overlook the expansive economic canvas. In our analysis, we assess accounts individually, keeping the economic context as a backdrop. We focus on how companies align their operations with the current economic environment and whether they're implementing strategies to protect against potential negative impacts of economic downturns.

As rates dip, companies previously underinsured and constrained by pricing are encountering fresh opportunities. These enterprises are now venturing into higher coverage limits, marking a natural progression in their insurance journey. At the same time, positive strides in the equity markets also paint an encouraging picture. These advances hint at a probable uptick in equity market transactions later this year.

In all, prevailing data suggests an impending stabilization, boding well for all stakeholders. After all, a consistent market environment often spells good news for brokers, clients, and carriers alike.



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