

## **Directors' and Officers' Insurance**

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Directors' and Officers' (D&O) insurance is intended to protect the directors and officers of a company from any liabilities that result from their decisions. This sector of the insurance market first drew major public attention during the scandals involving Enron and WorldCom. Recent trends show a substantial decrease in the frequency of D&O claims over the past year as well as a considerable increase in the severity of those claims. The low frequency of claims and growing competition has created a buyers market for D&O insurance as premium decreases and coverage increases.

Choosing a D&O carrier is extremely important because the insurance involves a transfer of both personal and balance-sheet risk. Currently, D&O policies are not standardized; therefore each company must consider its own needs and carefully inspect the terms and conditions of a policy. Companies should also search for carriers with substantial financial strength and a strong understanding of the risks associated with the management of a business.

With the growing volume of historical information available, underwriters are using increasingly objective methods of pricing D&O policies. Objective factors that affect the price include market capitalization, industry, jurisdiction, ownership, assets, revenue, beta, and credit rating. Subjective factors that a company can attempt to emphasize for better rates include financial performance, stock performance, corporate governance, investor profile, internal code of conduct, secondary offerings, corporate transactions, restatements, auditor changes, legal activity, accounting practices, and insider trading. A good relationship with the insurer may also yield a better price for the company. The terms and conditions of a D&O policy are largely negotiable. Items of

concern for a company include a crime/fraud exclusion, punitive damage coverage, and regulatory investigation coverage.

Two major issues surrounding the current D&O insurance market are option dating and global warming. Well over 100 investigations are underway concerning the process of backdating options to increase their value. This may or may not be covered under the existing D&O policies, depending on the specific language of each individual policy. Also, with global warming becoming an increasingly pressing concern, legal cases are split as to whether or not global warming coverage is included as parts of some pollution coverage in existing policies. Some additional current items of debate include claims concerning employee benefits and bankruptcy.