



# MARKET ALERT

## D&O PRICE INCREASES ACCELERATE IN THE FIRST TWO MONTHS OF 2020

Premiums for Directors & Officers liability insurance have generally been increasing for the last 18 months. Primary premiums have increased gradually, approximately 3 – 5% each quarter over the last 5 quarters, though on an annual basis the compounded increase is more dramatic. For companies with no adverse development in their risk profile, primary premiums for D&O programs renewing in the first quarter of 2020 are often 20% or more higher than 2019 first quarter pricing. Excess rates have increased even more significantly, with increases of 30% or more commonplace and the most challenging risks experiencing increases of more than 500% in some layers. It is worth noting however, that after years of steady premium decreases, today's pricing generally is in line with the premiums of 5 – 7 years ago.

Insurers uniformly point to an increase in both frequency and severity of D&O litigation as the source of their woes, leading to the broad re-pricing of the entire line of coverage. Reductions in capacity and increases in insured retentions are also part of insurers' strategy for reducing their exposure to future losses in a legal environment that does not seem to offer much hope of relief in the near future.

Securities class action filings reached record levels in 2019 following several years where the number of filings significantly exceeded historical norms. Approximately 5.5% of companies traded on US public exchanges were sued by shareholders in 2019 (the number is 8.9% if merger objection suits are counted). Shareholder plaintiff attorneys are not the only ones actively pursuing companies and their directors and officers; 69% of the SEC's more than 500 stand-alone enforcement actions involved charges against one or more individuals.

Though 2019 was a relatively tame year in terms of mega shareholder class action settlements (only two, Cobalt International Energy and Alibaba Group Holdings, exceeded \$200MM and neither exceeded \$400MM), the backlog of potentially catastrophic D&O litigation is at an all time high and D&O insurers are closely watching the pending docket. ISS Securities Class Action Services reports that

the six largest settlements announced in the first 7 weeks of 2020 are worth \$3.11 Billion, an amount approaching the total value of all 101 court-approved settlements of 2019. Two of the six are in excess of \$1 Billion each – American Realty Capital Partners and Valeant Pharmaceuticals. Other pending potential “mega-settlements” (settlements in excess of \$100MM) include the Google antitrust related claim; the Google, Nike, CBS, Wynn Resorts, McDonalds, and Under Armour #me too related claims; the Marriott, Yahoo, and FedEx cyber related claims (Equifax announced a \$149MM settlement on February 13th, the largest cyber related shareholder claim settlement to date), and more. Shareholder derivative litigation has proven significant for D&O insurers as well. Historically these claims have been resolved for attorney's fees and corporate therapeutics but more recently there have been a number of large monetary derivative settlements funded, at least in part, by D&O insurers (McKesson, PG&E, Fox, Wells Fargo) and there are a number of potentially significant cases pending (Tesla, Goldman Sachs, CBS).

*We have compiled a list of additional sources of information about the current D&O marketplace, and the forces driving it, for your convenience.*

- [“Challenging Times: The Hardening D&O Insurance Market”](#), an article written by Carl E. Metzger and Brian H. Mukherjee of Goodwin Procter and posted on the Harvard Law School Forum on Corporate Governance blog on January 29th.
- [“Securities Class Action Filings: 2019 Year in Review”](#), an annual report about shareholder class actions released on January 29th by Stanford Law School's Securities Class Action Clearinghouse, in collaboration with Cornerstone Research.
- [“The Top 100 U. S. Class Action Settlements of All Time as of December 2019”](#), published February 18th by the Institutional Shareholder Services can be downloaded here.
- [US Securities and Exchange Commission Division of Enforcement 2019 Annual Report](#), a detailed summary and statistics of actions undertaken by the SEC's Enforcement Division in FY2019.

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