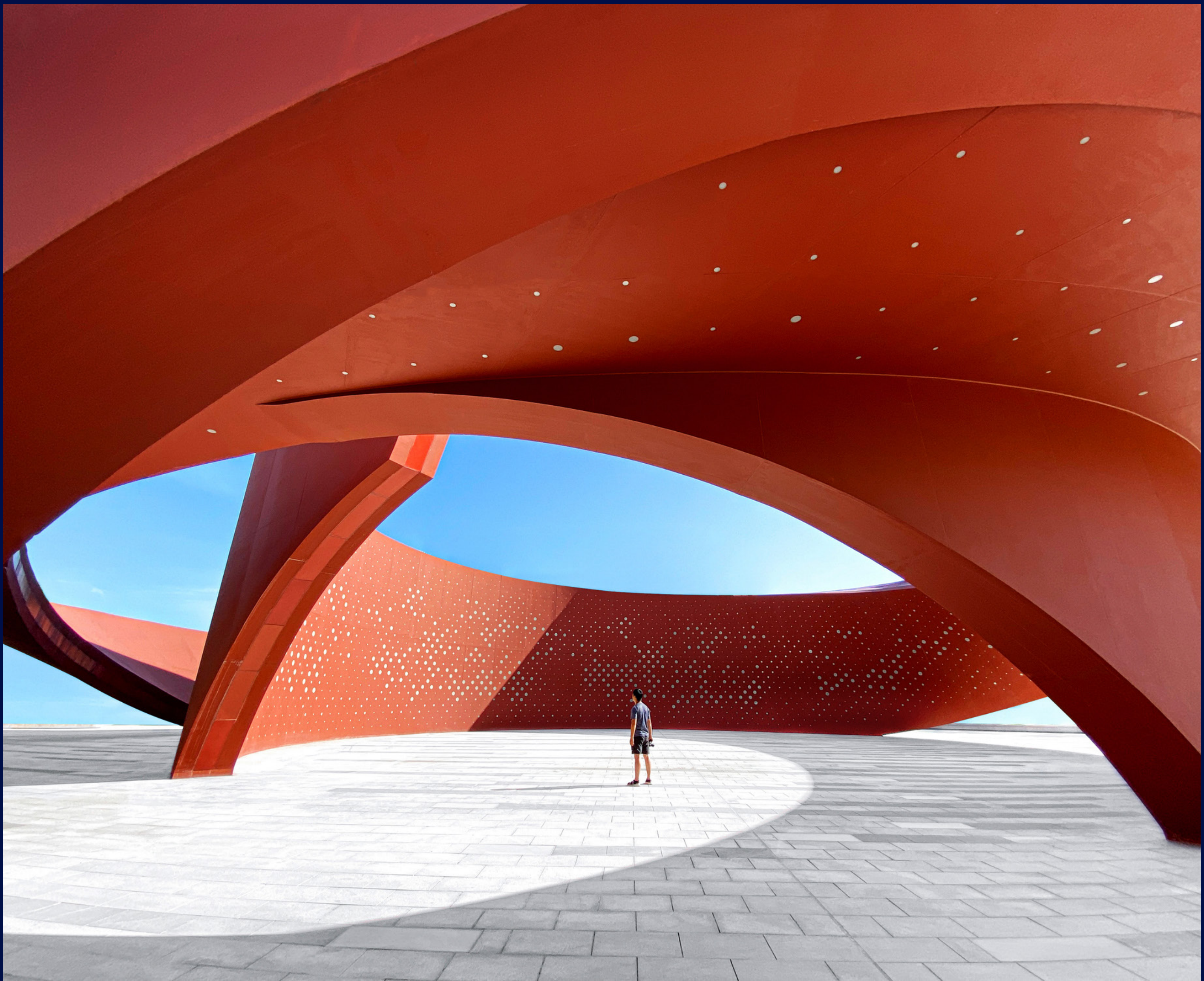
MARSH

Navigating IPO risks

A comprehensive guide for senior leaders



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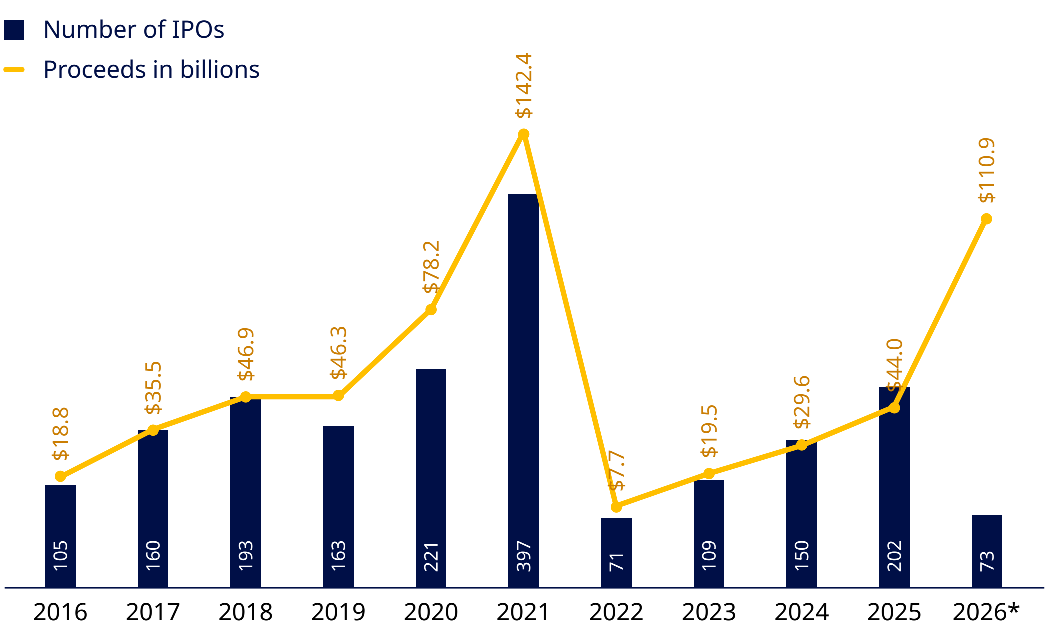
Adapting to a shifting IPO landscape

After a period of subdued activity following a record-breaking 2021, the number of companies going public has increased gradually through 2025, with activity continuing during the first months of 2026 (see Figure 1). The revival in companies seeking an initial public offering (IPO) reflects a combination of macroeconomic factors and pent-up demand from those that have been seeking to go public for some time.

Figure 1: After a drop post-2021, the number of companies going public has gradually increased



Source: Renaissance Capital (*as of June 12, 2026)

A stabilizing macroeconomic environment over the course of 2025 and the first part of 2026, including lower interest rates, manageable inflationary pressures, and favorable regulatory policy, has reduced financing and valuation uncertainty for many issuers. Stronger-than-expected economic performance in several markets has also bolstered investor confidence, helping reopen windows for public offering dynamics.

Renewed investor appetite for technology and artificial intelligence has driven demand for growth-oriented offerings and encouraged a pipeline of new filings in these sectors. In addition, many private equity firm holdings have gone well beyond the typical three- to five-year target, with PE investors actively exploring exit strategies.

These dynamics suggest a market in cautious recovery: improved macroeconomic and sector-specific tailwinds are encouraging renewed IPO activity, while heightened volatility and geopolitical uncertainty are leading to cautious approaches, with both issuers and underwriters remaining selective.

An IPO represents a pivotal milestone for any company, potentially unlocking significant financial and strategic advantages. Going public enables a company to gain enhanced liquidity and broader access to capital markets, in turn, facilitating growth and expansion. Publicly traded equity also becomes a powerful tool for attracting and retaining top talent, and may help future merger and acquisition activity. Additionally, an IPO elevates a company's public profile.

However, the transition from a private to a public company is accompanied by substantial risk. The IPO process itself requires comprehensive disclosures, especially in the detailing of risk factors in the Form S-1 registration statement, and any missteps can expose the company to heightened regulatory scrutiny and potential legal liabilities.

These risks do not end once senior leaders have rung the opening bell to commence trading in their company's stock. Becoming a public entity fundamentally alters a company's risk landscape, increasing exposure for its directors and officers. Identifying and managing these challenges, especially amid a changing risk landscape, requires robust risk management and insurance strategies to safeguard both the organization and its leadership well beyond the day the company goes public.

Risk mitigation strategies are most effective when paired with specialized, data-driven advocacy that differentiates a company's risk profile in the market. Marsh's team of financial and professional specialists has deep industry specialization and access to analytics to help translate complex exposures into concrete underwriting outcomes and clearer market positioning. Our client-centric value proposition is focused on market and claims advocacy, industry expertise with bespoke coverage solutions, and data-driven underwriting conversations to help our clients secure the most efficient and appropriate protection available to address a company's specific risk profile.

Risk mitigation strategies are most effective when paired with specialized, data-driven advocacy

Protecting leadership through comprehensive insurance

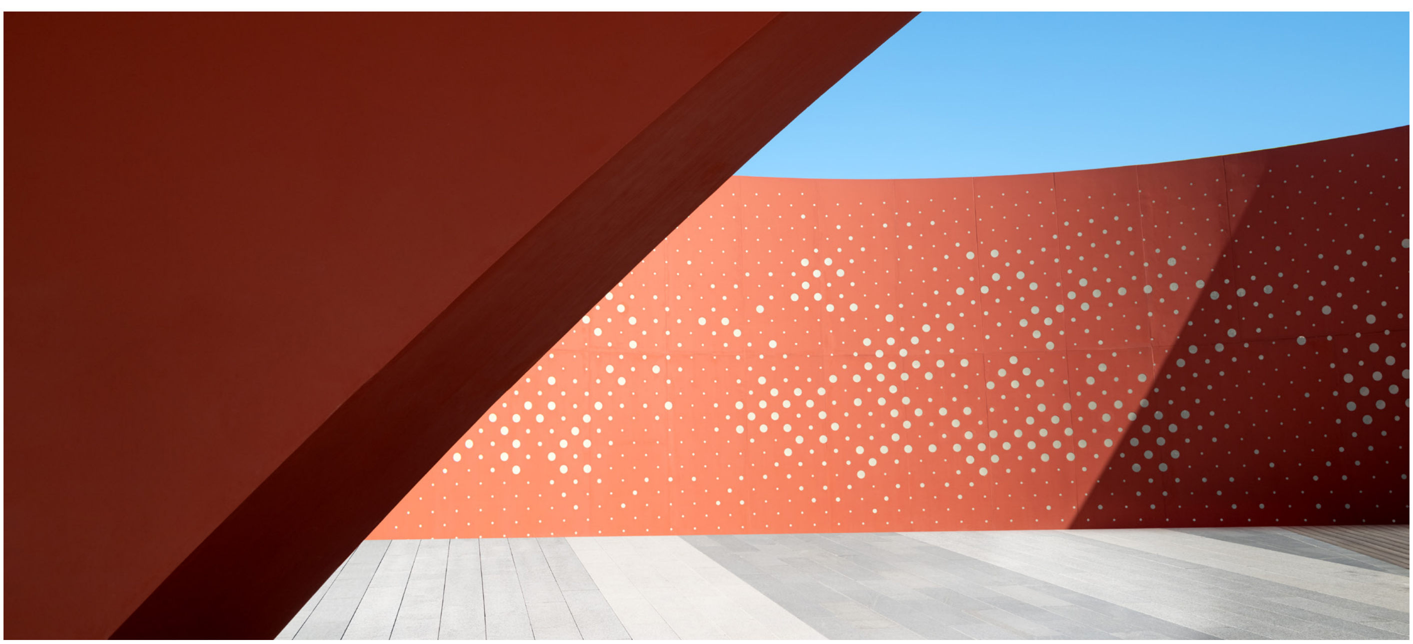
It is critical to recognize that these risks affect not only the company as an entity but also its senior leaders personally, with potential implications for their personal assets. Therefore, implementing risk management and insurance strategies that protect both the organization and its directors and officers is essential to safeguarding the long-term success and stability of the business and its leadership.

The foundation for proper protection for both the company and its directors and officers throughout the IPO process lies in organizations securing robust directors and officers liability (D&O) insurance coverage before they start the journey to go public. This program will require adjustments as the company's exposures evolve during the IPO journey.

Roadshow risks include potential securities liability from statements made to investors, so companies should ensure their D&O policies provide appropriate coverage for pre-IPO roadshow and failure-to-launch situations, including consistency in coverage as they transition from a private to a public company. Partnering with insurers experienced in public company exposures can enable continuity of coverage and help avoid gaps when transitioning from private to public company policies.

By proactively engaging in this process, companies can better protect their financial interests and provide senior leaders with the confidence that their personal assets are shielded from potential liabilities arising during this critical transition.

This report explores the principal challenges companies may encounter as they navigate the IPO journey and provides strategies that senior leaders can adopt to protect their organization and their people. We will also explore the importance of a robust directors and officers liability (D&O) program to protect senior leaders.



Key risks in the IPO journey

The journey from private to public company is fraught with new risks and exposures.

Risks increase significantly once the IPO process is complete since public companies are subject to greater regulatory scrutiny than private companies and must comply with extensive securities laws designed to enhance public trust and corporate governance. Disclosure requirements for public companies can create significant liability. All statements made during a roadshow or contained within the prospectus, and any subsequent public disclosures of material information, should be carefully considered and reviewed by outside counsel.

Class action and derivative lawsuits

Public companies face significant civil liability risks, especially in the years immediately following an IPO — especially during the three-year statute of limitations window for Section 11 securities claims arising from registration statements. This makes it imperative for directors and officers to understand their heightened exposures.

Direct class actions

Federal securities laws — particularly the Securities Act of 1933, the Exchange Act of 1934, and the Sarbanes-Oxley Act of 2002 — present the primary exposure for directors and officers. These laws all impose various obligations and potential liabilities. Claims brought under these statutes are often brought as class actions, with damages or settlements paid directly to shareholders.

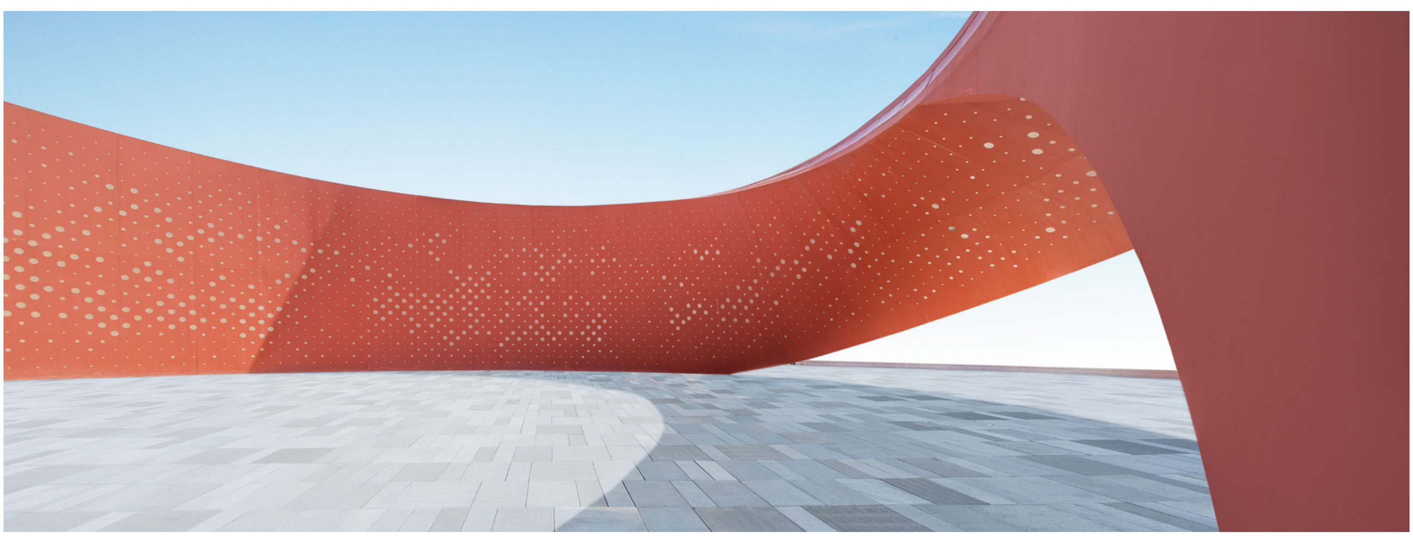
The Securities Act of 1933 was specifically designed to target fraud in securities offerings by mandating full disclosure. Section 11(a) of the Act allows investors to sue if a registration statement (including for an IPO) contains false or omitted material facts. While companies are strictly liable, directors and officers may avoid responsibility by showing they reasonably believed the disclosures were accurate. This is a lower standard of proof than applied under Section 10(b)(5) of the 1934 Securities Exchange Act against companies, which covers false or misleading statements in subsequent securities filings, such as quarterly 10-Q earnings reports.

The 2018 US Supreme Court decision in *Cyan, Inc. v. Beaver County Employees Retirement Fund* expanded litigation risk by confirming that state courts have concurrent jurisdiction over Section 11 class actions. This dual jurisdiction increased the risk of inconsistent rulings, higher defense costs, and complex litigation strategies. As a result, IPO claim activity rose dramatically and issuers were faced with the uncertainty of these filings being in state court. In a 2020 decision, the Delaware Supreme Court effectively ended this period of uncertainty and heightened litigation activity by upholding the inclusion of a federal forum provision in an issuer's bylaws. The provision requires any Section 11 claims against a company to be filed in federal court. Since then, Section 11 suits alleging securities fraud in an IPO have returned to being litigated in federal court, providing greater certainty for issuers.

In a more recent development, in September 2025, the SEC provided guidance allowing companies to go further than the federal forum provisions and to include a mandatory arbitration clause in their bylaws, opening up the possibility of an even more favorable venue for issuers to have this litigation adjudicated.

On June 12, 2026, SpaceX finalized the biggest IPO in history. Beyond its size, what makes this offering especially notable is the inclusion of a groundbreaking arbitration provision in the bylaws controlling how securities class actions and derivative actions will be adjudicated.

While it is still too early to determine whether many other companies will seek to take advantage of the favorable arbitration venue opportunity, it is already clear that the recent developments — including the elimination of state court as a venue for Section 11 litigation and the promise of an even more favorable arbitration proceeding in which to adjudicate any lawsuits — have contributed to an improved legal landscape for issuers.



Securities claims have remained relatively stable in recent years, following a drop from record levels between 2017 and 2019 (see Figure 2). The number of securities claims dropped by 11% between 2024 and 2025 according to the National Economic Research Associates (NERA), with a material increase — 34% — in the number of cases dismissed. The aggregate settlement amount also shrank, from $3.9 billion in 2024 to $2.9 billion in 2025, but the median settlement increased by 21%, with the share of settlements between $21 million and $50 million being the largest in five years.

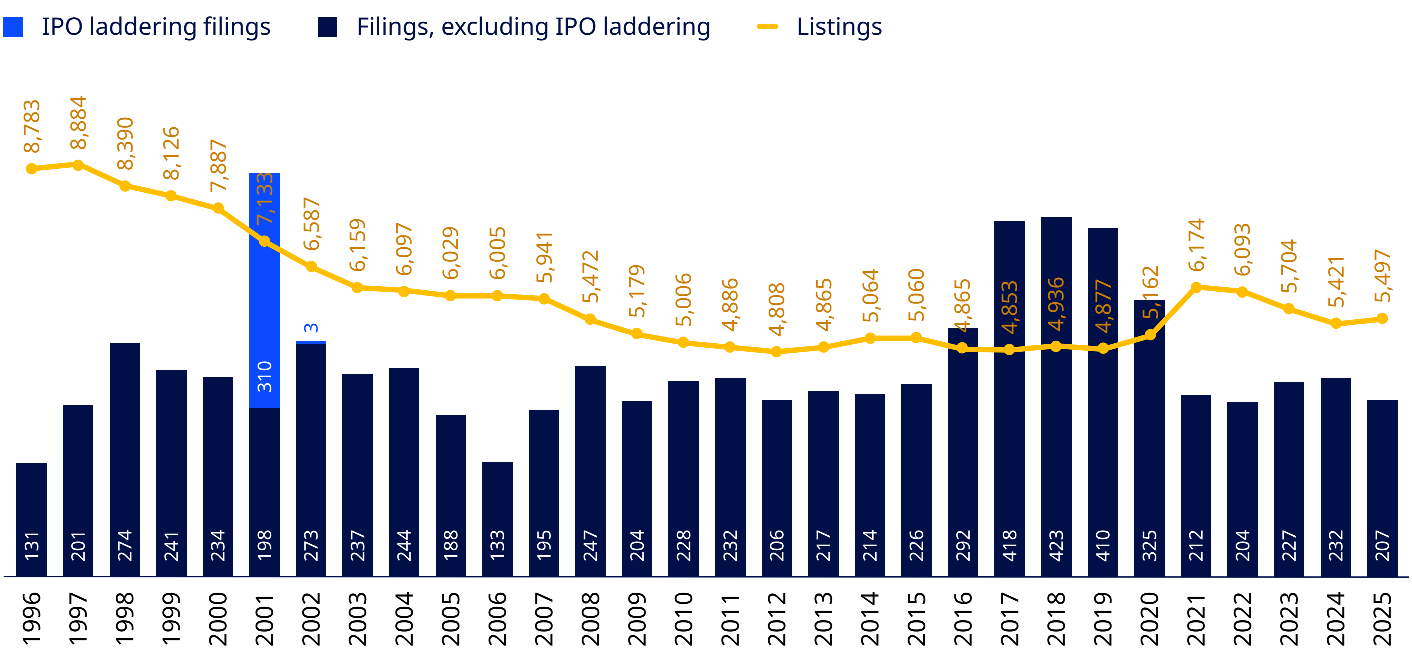
Shareholder derivative suits

Shareholder derivative suits are filed by shareholders on behalf of the company against individual directors and officers. While historically these cases rarely led to large monetary recoveries, since 2014 more than 20 cases have settled at or in excess of $100 million, with some settlements significantly higher. Financial awards generally benefit the company itself rather than individual shareholders. These suits often coincide with related class action lawsuits and may be pursued across multiple jurisdictions, sometimes resulting in inconsistent rulings.

Shareholder derivative actions typically pivot around two common bases of liability:

- Duty of care requires directors and officers to make informed, prudent decisions in the company's best interest. They are typically protected by the business judgment rule if they act in good faith and with due diligence.
- Duty of loyalty demands that directors and officers avoid conflicts of interest and act honestly for the company's benefit. To minimize risk, senior leaders should disclose conflicts, abstain from related decisions, and seek expert advice when needed.

Figure 2: Federal filings and the number of companies listed in the US, 1996 to 2025



Source: National Economic Research Associates (NERA)

Tapping into data to better understand IPO risks

As companies prepare to go public, D&O decisions often hinge on a few high-stakes questions: How likely is a claim, how large could it be, and what limit/retention structure best fits our risk tolerance?

Comprehensive data analysis, including that provided by Marsh's Blue[i] D&O analytics, helps answer these questions using company-specific modeling that enable senior leaders to make more confident, defensible decisions as their risk profile evolves through the IPO process and into life as a public company.

Analytics can help leaders better understand:

- **Claim likelihood (frequency):** Reviews of existing claims provide a modeled view of the probability of a D&O claim (including securities class actions, derivative suits, or regulatory actions) over the coming 12 months, along with the most important drivers of that likelihood. These drivers can include industry, market capitalization, valuation and performance shifts, and selected stock metrics. Blue[i] D&O can also reflect certain event-related factors that may matter for public companies, such as future securities offerings and M&A activity, that help management understand which attributes are most likely to influence exposure.
- **Loss magnitude (severity):** Modeling a range of total costs (defense plus settlement) that might occur if a claim reaches settlement can help senior leaders understand what outcomes could challenge the balance sheet and where current (or proposed) limits and retentions may be insufficient. This is particularly useful when evaluating how different claim scenarios could develop under changing market conditions.
- **Program design insights (optimization):** Comparison of alternative D&O program structures (for example, varying limits, retentions, and towers) can help evaluate the expected total cost of risk and understand volatility. This allows issuers to weigh trade-offs, such as minimizing cost, reducing tail risk, and quantifying the expected return on every dollar spent, enabling them to select a structure that aligns with balance sheet protection goals and the board's risk appetite.

Together, these comprehensive analytics help leadership teams move beyond broad peer benchmarking to an evidence-based rationale for D&O program design. They also support clearer, board-ready communication by translating complex risk drivers and insurance structures into a concise narrative about exposure, risk tolerance, and the financial impact of different insurance choices.

Understanding indemnification nuances

Corporate directors and officers may be indemnified from suits, but a company's ability to indemnify its directors and officers is primarily governed by the laws of the state where the company is incorporated. All states provide frameworks for when indemnification is permitted or even required.

For example, Delaware law authorizes indemnification only if the company's governing documents allow it. Typically, the company's bylaws or charter outline the specific conditions for indemnification. Directors and officers should regularly review indemnification provisions and agreements with legal counsel to understand their rights and obligations. Liability protections often exclude breaches of loyalty, bad faith, intentional misconduct, or legal violations.

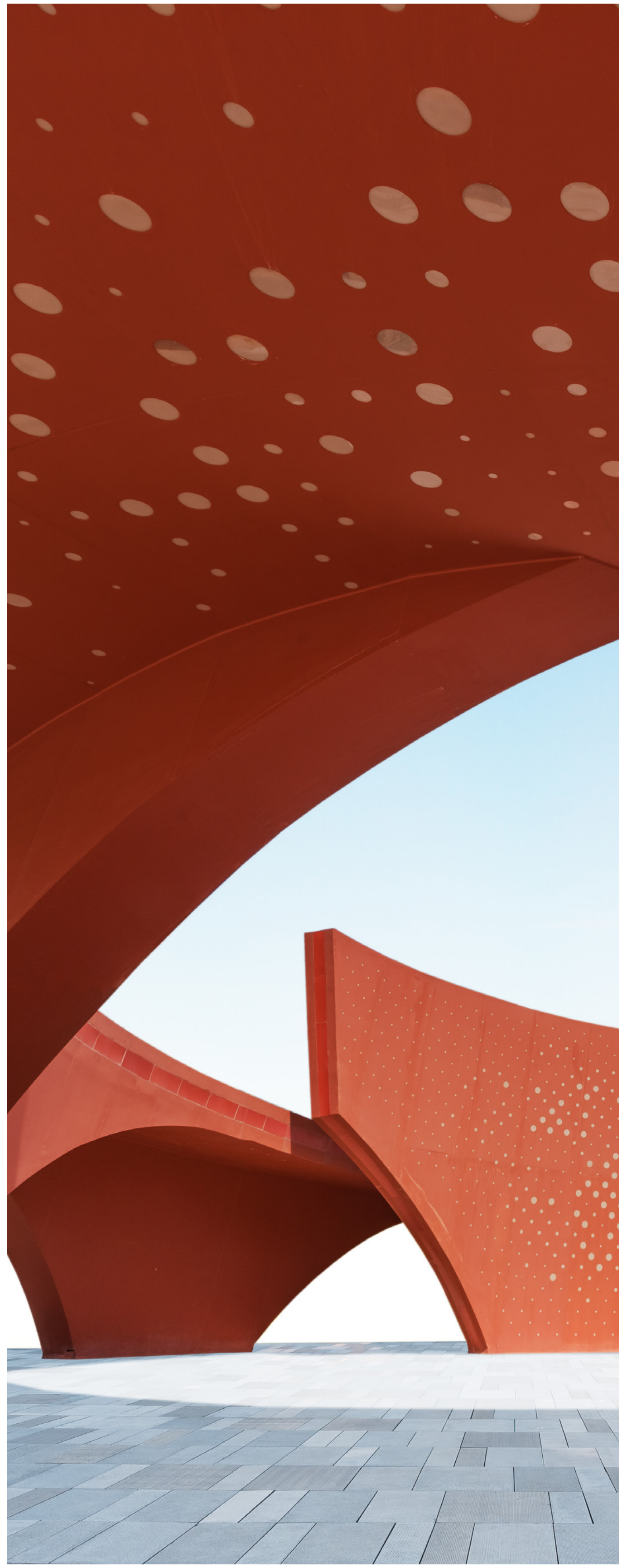
Legal frameworks governing indemnification

Companies typically indemnify their directors and officers when the individual acted in good faith and in the company's best interests. However, some state laws limit indemnification, such as prohibiting coverage for settlements or judgments in shareholder derivative suits. Liability limits also vary by state and often exclude misconduct or disloyalty.

In addition to indemnifying directors and officers, many IPO companies indemnify their deal underwriters against legal claims arising from the offering. While this indemnification is intended to protect investment banks, it can expose the IPO company to substantial financial risk, especially when underwriters are named as defendants alongside the company in shareholder lawsuits and when the IPO company is required to indemnify its directors and officers. Traditional D&O policies do not cover these indemnification obligations, which can lead to escalating legal fees, settlements, and regulatory penalties unless specialized underwriter coverage is purchased. This highlights the importance of comprehensive insurance strategies that protect both the company's financial interests and its senior leaders.

If the company cannot or will not indemnify, directors and officers may seek reimbursement directly from the company's D&O insurance, which is subject to policy terms. It is also important to consider how and when the D&O program is expected to respond and how and when the limits are eroded.

Directors and officers may also be entitled to an advancement of defense costs to help them manage legal risks. This is distinct from indemnification and often requires a written commitment to repay in case indemnification is ultimately denied.



How can D&O insurance protect the corporate balance sheet and personal assets?

Even when boards diligently fulfill their duties, directors and officers may still face the risk of legal claims. Shareholders and other stakeholders, sometimes encouraged by plaintiff attorneys, may initiate legal action if they believe they have been wronged.

This means that fulfilling their governance responsibilities with care is not always sufficient to protect directors and officers from litigation. And without an adequate D&O program, their personal assets may be at risk.

D&O policies generally include three core coverage components:

- **Side A** protects the personal assets of directors and officers when the company is unable or unwilling to indemnify them. Side A coverage typically does not require the director or officer to pay a deductible or retention.
- **Side B** reimburses the company for expenses incurred when indemnifying directors and officers. This coverage typically involves a deductible, often referred to as balance sheet protection.
- **Side C** provides coverage for the company against securities claims made directly against it, which is also subject to deductibles.

While companies can tailor their D&O insurance programs to fit their unique needs, many opt for a policy structure where a single liability limit is shared across all three coverages, providing combined protection for both personal and corporate exposures.

However, this approach may leave senior leaders at risk. Traditional Side ABC coverage can be exhausted by indemnifiable losses, such as a securities claim against the company and its directors. To address this risk, many companies purchase Side A difference-in-conditions (Side A DIC) coverage in excess of Side ABC limits.

Prioritizing personal asset protection

To shield directors and officers from having to pay retentions personally when corporate indemnification is refused, many public companies acquire Side A DIC insurance. This policy supplements traditional D&O coverage by providing broader protection and typically responds at the primary level without requiring a retention if indemnification is refused. Side A DIC coverage provides additional limits that are dedicated to individuals, addressing gaps in primary Side ABC insurance in several key scenarios:

- **When the company refuses indemnification.** A company may indemnify only if the director or officer acted in good faith and reasonably believed their conduct was in, or not opposed to, the company's best interests. The company may not indemnify individuals whose actions fail to meet these standards, though insurance coverage might still apply if consistent with policy provisions. If the company declines to indemnify a director or officer, Side A DIC might still provide coverage and protect the individual's personal assets.

Marsh's innovative underwriter coverage provides additional protections

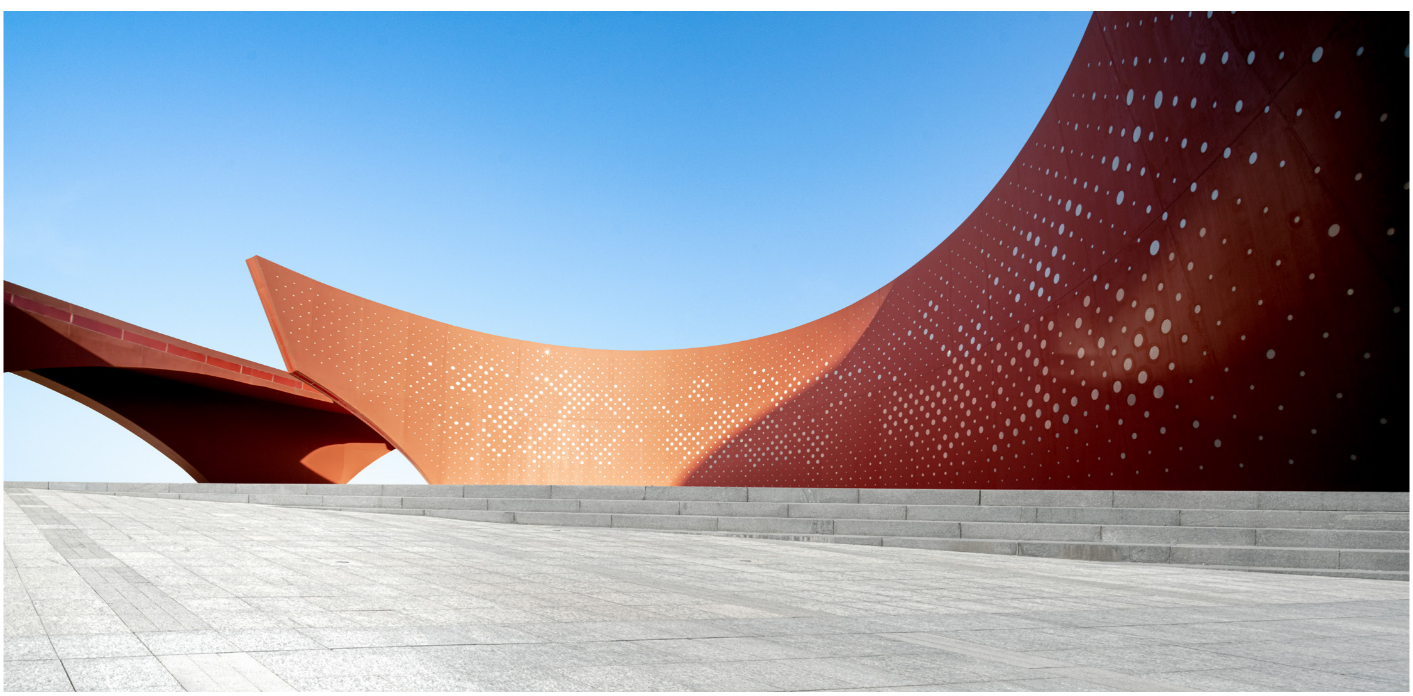
In 2025, Marsh's FINPRO team created a solution to specifically address previously uninsured risks associated with the IPO company's obligation to indemnify the banker underwriting an IPO transaction.

This coverage is a specialized extension to traditional D&O policies that addresses a critical gap in protection for IPO companies by covering the financial risks associated with indemnifying investment banks involved in the public offering.

When underwriters face shareholder lawsuits related to the IPO, companies typically must cover legal costs and settlements, which standard D&O insurance does not cover. This tailored coverage helps IPO companies manage potential liabilities, safeguard their balance sheets, and demonstrate a comprehensive risk management approach to investors and regulators during the IPO process.

Marsh's team has successfully negotiated underwriting coverage limits from as low as $5 million to in excess of $100 million for numerous IPO clients in both 2025 and 2026, creating a new market for added protection that was previously not contemplated.

- **When the company fails to provide indemnification or advance defense costs.** If the company fails to indemnify its directors or officers within a specific timeframe or refuses/delays advancement of defense costs, Side A DIC will typically respond to protect the individual's personal assets.
- **When indemnification is legally prohibited or limited.** State law or public policy bars (for example, derivative suit judgments or certain securities registration/antifraud claims) can prevent corporate indemnification; in such circumstances, Side A DIC may provide coverage, subject to policy terms and exclusions.
- **If the company is approaching insolvency.** As a company nears insolvency, directors and officers may owe fiduciary duties to creditors. The company might withhold indemnification to avoid breaching these duties or triggering claims by a bankruptcy trustee. Insurance coverage may still be available if policy limits remain unaffected.
- **In the case of insurer insolvency.** When an underlying insurer is unable to fulfill its obligations due to insolvency, Side A DIC offers a backstop that provides continued protection for directors and officers.
- **If primary limits are exhausted.** Traditional Side ABC policies share limits among the company and its directors and officers that can be depleted by indemnifiable losses, such as securities claims. Side A DIC provides additional limits that are dedicated exclusively to individuals.
- **If the underlying insurance is rescinded, voided, or canceled.** When either of these actions are taken by an underlying insurer, Side A DIC can act as an additional backstop for the protection of the directors and officers.

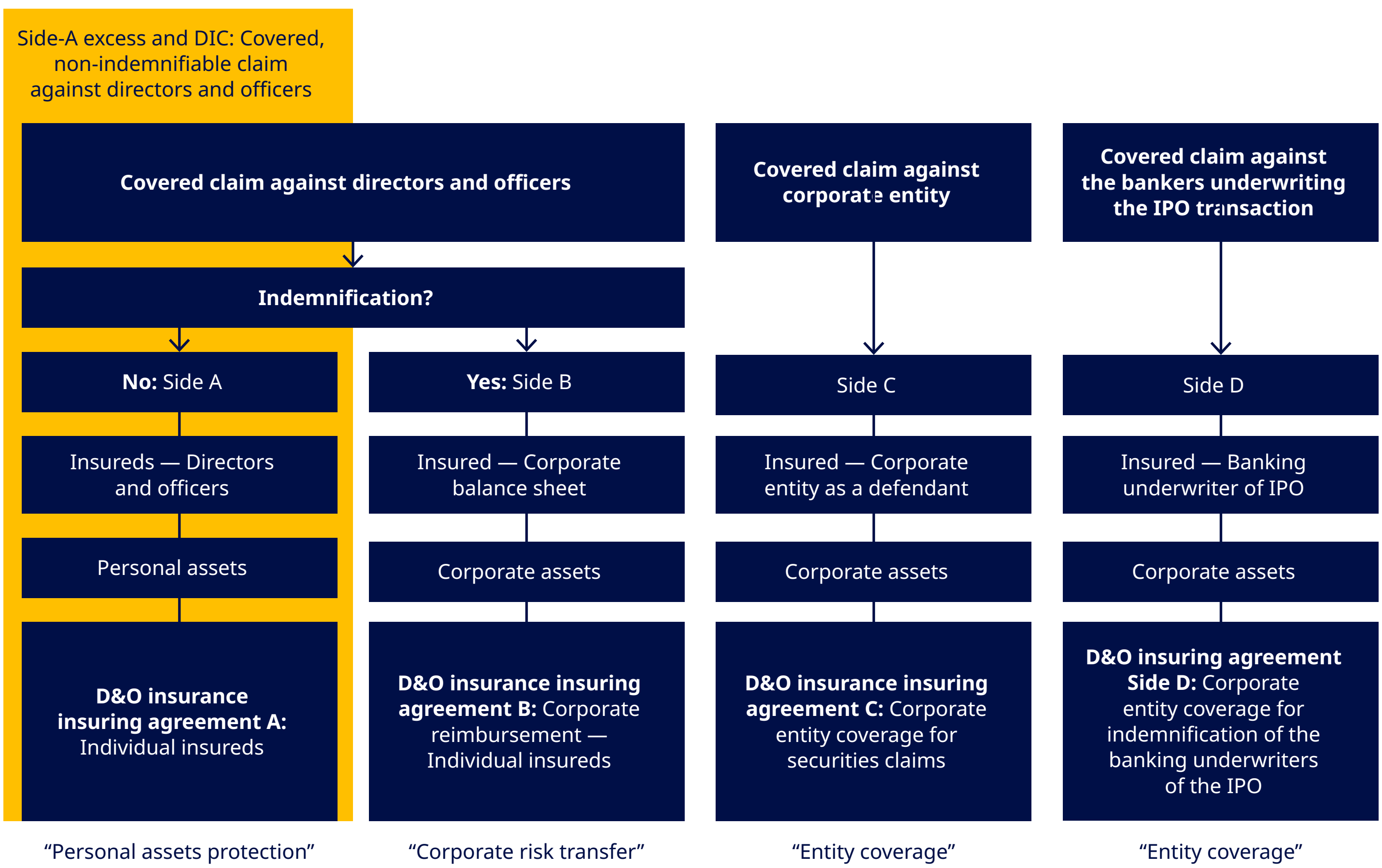


The importance of a proactive approach

Building an effective D&O program before launching an IPO is essential. Businesses should work with their insurance advisors to build a D&O insurance program that addresses their critical risks well before, during, and after an offering. This includes:

- Assessing limit adequacy and optimizing the program's structure so that it is tailored to the current regulatory, derivative, and securities class action environment
- Differentiating the company's risk profile to highlight positive underwriting characteristics
- Preparing for meetings with potential insurers using the draft prospectus and latest financial statements
- Negotiating, evaluating, and selecting D&O program structure, including consideration for international exposures
- Preparing and presenting the D&O program to the company's board or audit committee
- Ensuring proper placement of coverages for ancillary lines such as cyber, employment practices liability, fiduciary liability, and crime
- Conducting midterm stewardship meetings with underwriting and claims teams from the primary insurer

This comprehensive approach provides protection for both the company and its senior leaders throughout the IPO journey and beyond, providing peace of mind and financial security amid evolving risks.



Implication for foreign filer IPOs

Foreign filers — companies incorporated outside the US but seeking a US listing — face a materially different D&O risk landscape than their US-domiciled peers. These companies must reconcile competing regulations, tax challenges, and underwriting constraints that may shape where and how a D&O policy can be placed and how senior leaders can be defended and indemnified.

The nuances related to foreign filers underscore the importance of considering a robust placement strategy early on. Main considerations include:

- **Admission and placement constraints.** Many US insurers cannot issue admitted D&O policies to entities domiciled outside the US, requiring programs to be placed in other markets.

- **Indemnification and legal variance.** Jurisdictional differences related to whether and how a company may indemnify directors and officers may materially affect insurance design.

- **Litigation and securities exposure.** US listings can increase the risk of securities litigation, while exposure to derivative suits is generally less pronounced for companies incorporated outside the US.

- **Tax and regulatory constraints.** Local tax rules and insurance admission regimes may restrict the use of non-admitted policies or require local placements and endorsements, which may complicate insurance program design.

Marsh's global team of D&O specialists combines local legal and market knowledge with US securities expertise to design compliant, market responsive D&O programs tailored to a company's needs and risk profile. We provide access to global capacity, proprietary underwriting facilities, and data-driven analytics to translate jurisdictional differences into a clear case for insurers and to optimize placement structure, pricing, and terms.

How can D&O insurance help indemnify senior leaders

When a company refuses or is unable to indemnify directors and officers, their personal assets may be at stake. This can also happen in circumstances where a company delays indemnification or the advancement of defense costs.

A common assumption is that the company's D&O policy will automatically cover these costs. But this is not always the case. In cases where a company refuses to indemnify its directors and officers, traditional D&O policies may require the individuals implicated in a case to satisfy a self-insured retention or deductible — which could be substantial — before they are able to access insurance funding in what is known as a presumptive indemnification requirement.

Such nuances underscore the importance that directors and officers consult with their insurance brokers and legal counsel to understand how their D&O policies address access to coverage when the company is unwilling to provide indemnification or advancement. Well-structured D&O policies are designed to protect individual directors and officers when the company's indemnification or advancement obligations fall short.

> Well-structured D&O policies are designed to protect individual directors and officers when the company's indemnification or advancement obligations fall short.

Selecting the right D&O insurance program

Choosing an effective D&O insurance program requires careful evaluation of the company's risk profile, market practices, and insurer stability. The goal is to design a policy that balances protection, cost, and coverage needs for both the company and its leadership.

Key considerations include:

- Assessing the company's vulnerability to class action lawsuits or regulatory enforcement
- Estimating potential defense and settlement costs in the event of litigation
- Reviewing coverage limits, policy structures, and retentions commonly adopted by peer companies
- Optimizing the trade-off between coverage scope, limits, retentions, and premium expense
- Evaluating the financial strength and claims-paying reputation of prospective insurers
- Addressing exposures for foreign directors and officers in a cost-effective manner

Building a D&O program, especially ahead of an IPO, involves navigating complex choices to align coverage with the company's values and risk tolerance. Many companies opt for policies that protect both the entity and individual directors and officers, sometimes with shared limits. To avoid exhausting coverage on large claims, additional limits dedicated solely to individual directors and officers — or specifically to independent board members — may be purchased.

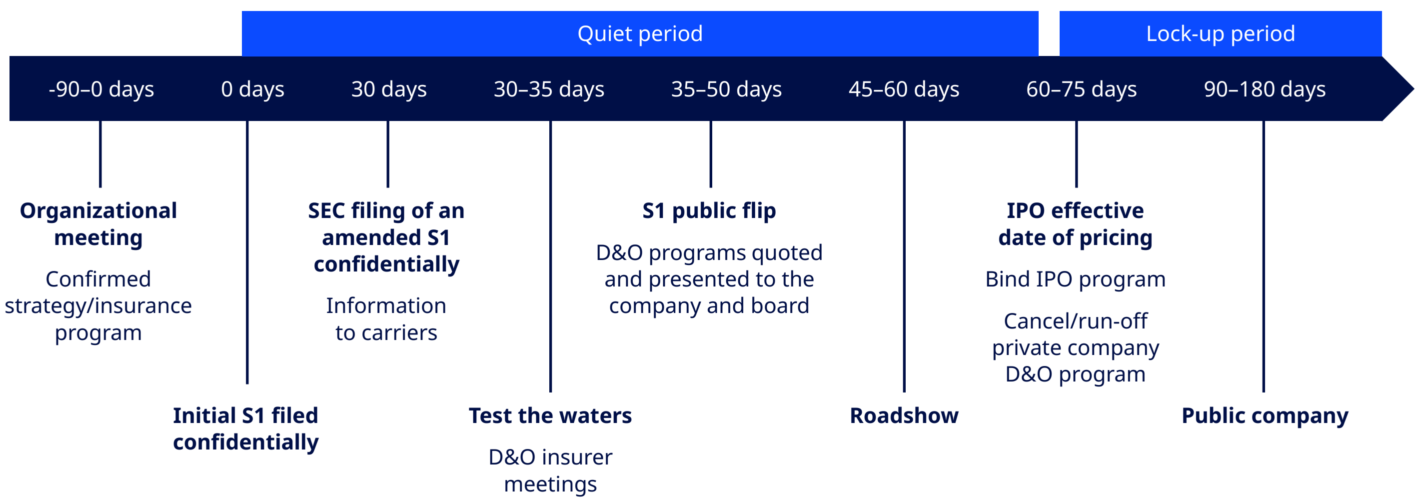
Determining appropriate limits is increasingly data-driven, combining peer benchmarking with detailed analysis of the company's litigation risk and potential settlement amounts. Given recent market volatility, thorough evaluation of insurer creditworthiness and ongoing financial monitoring are essential to managing counterparty risk.

Finally, companies with international subsidiaries must carefully consider tax, regulatory, and coverage implications of foreign D&O exposures. Tailored solutions may be necessary, influencing the selection of primary insurers and overall program design.

Purchasing D&O coverage to protect a company through the IPO process

Securing D&O coverage is a critical step as a company prepares to go public. One key question for private companies to consider is at what point in the IPO process they should purchase this coverage. Typically, the D&O policy takes effect on the date the company's registration statement for its securities becomes effective. The timeline and process can vary, but should be tailored to the company's specific needs.

Below is a streamlined overview of key steps to finalize coverage:



Selecting the right insurance advisor is also critical to building a robust program that protects your people throughout the IPO process and once the company goes public.

Organizations should consider a team that provides consistent service and advocacy, has industry-specific knowledge with specialists that understand your exposures, and access to analytics to help you quantify what matters to underwriters. That combination tends to produce clearer underwriting dialogue and more durable placement outcomes.

Marsh's team of financial and professional liability specialists has vast knowledge and on-the-ground experience working with organizations, helping design tailored solutions intended to safeguard their company and people. Our bespoke coverage solutions and data-driven underwriting expertise enable our team to help organizations make informed decisions to mitigate and manage exposures and enhance business resilience.

About Marsh FINPRO

Marsh's Financial and Professional Liability (FINPRO) Practice is dedicated to providing insurance and risk solutions to address organizations' financial and professional exposures. Our team of specialists designs solutions across management liability coverages — including directors and officers liability (D&O), fiduciary liability, employment practices/wage and hour liability, crime, and special crime — to help safeguard our clients and their employees, enabling them to focus on their business. By leveraging proprietary analytics, industry insights and innovative approaches, our FINPRO team empowers clients to mitigate risks, allowing them to continue operating with confidence in an ever-evolving marketplace. Through our commitment to excellence and client-centric service, Marsh's FINPRO Practice stands as a trusted partner in safeguarding organizations' financial health and reputation.

About Marsh Risk

Marsh Risk is a business of Marsh (NYSE: MRSH), a global leader in risk, reinsurance and capital, people and investments, and management consulting, advising clients in 130 countries. With annual revenue of $27 billion and more than 95,000 colleagues, Marsh helps build the confidence to thrive through the power of perspective. For more information about Marsh Risk, visit marsh.com, or follow us on LinkedIn and X.

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