

Buying SPACtacular Coverage: Special Considerations for SPACs in Purchasing D&O Insurance

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PRACTICES Insurance Recovery, Litigation

Special purpose acquisition companies (“SPACs”) have become the predominant form of initial public offerings (“IPOs”) in the last couple of years, and their popularity continues to grow. In 2020, SPAC IPOs outpaced traditional IPOs in both total number of offerings and capital raised, according to a report in Nasdaq. And the outlook for SPACs in 2021 is even more promising. SPAC IPOs in the first quarter of 2021 alone outpaced all of 2020 in number of offerings (298 versus 248) and collective capital raised (\$88 billion versus \$83 billion), according to a report in Kiplinger.

SPACs differ from traditional IPOs in that they have no commercial operations—they are formed solely for the purpose of raising funds, through an IPO, to acquire an existing target company that is later identified after the SPAC goes public. For that reason, they are often referred to as “blank check companies.” Because the directors and officers liability (“D&O”) insurance marketplace traditionally has focused on operating companies, placing D&O coverage for SPACs raises a host of unique issues. While a handful of insurers have now developed specialized D&O policy forms to address certain of these SPAC-specific issues, much of the D&O coverage issued to SPACs continues to be written on traditional D&O policy forms.

D&O policies are not written on a standard insurance industry form, so there tends to be material variation in language among policy forms issued by different insurers—and even among different policy forms issued by the same insurer. Moreover, the specific language of D&O policies tends to be more negotiable than with other types of policies. The recent proliferation of SPACs has stretched the underwriting capacity of the D&O marketplace, and their unique risk profiles and underwriting needs have tested the insurance industry’s resolve to cover them. This has resulted in some SPACs having limited availability of policy form options and negotiating leverage. That said, where a SPAC does have some choice of available policy language, it should pay particular attention to the following provisions—all of which have potentially significant D&O coverage implications for SPACs.

Read the full alert [here](#).

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