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Recent Wave of Securities Class Actions Poses Challenges for D&O Insurers, *PropertyCasualty360*

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The impact of the rise in SCAs on D&O insurers is difficult to predict, but certain actions are worth taking given these trends.

A significant factor contributing to the increase in SCA actions is the growth in federal merger-objection lawsuits, which challenge M&A deals on grounds that the company's board of directors breached their fiduciary duties by failing to maximize shareholder value or failed to make adequate disclosures.

Securities class action (SCA) lawsuits are being filed at a heated pace that hasn't been seen in more than two decades.

According to Cornerstone Research, there were a record 325 SCAs filed in the first three quarters of 2017.

Filings in the first half of 2017 were up 49% over the second half of 2016, and represented the highest number of SCA filings over a six-month period since Cornerstone Research began tracking the data in 1996.

What makes these numbers remarkable is that the stock market has been strong with indices trading at record levels, having rebounded in the almost 10 years since the financial crisis in 2008. In addition, the Sarbanes-Oxley Act has had a positive impact on companies' internal controls over financial reporting, which according to research firm Audit Analytics has led to a drop in financial restatements.

Where is the D&O market now and where is it going? Is the current market sustainable?

PricewaterhouseCoopers noted in its 2016 study on securities litigation that there was no apparent relationship between the performance of the S&P 500 index in 2016 and the number of new SCAs filed, although in prior years there had been an inverse relationship.

Factors accounting for the rise

A variety of factors appear to be driving the rise in SCA filings, from changes in the law governing mergers and acquisitions to a disproportionate number of filings by smaller-tier plaintiff's firms. We could be witnessing the lawsuit equivalent of a stock-picker's market: second- or third-tier plaintiffs' firms that are identifying target companies for early settlements, as we often witnessed before the enactment of the Private Securities Litigation Reform Act.