WOODRUFF SAWYER
A Gallagher Company

Guide to D&O Insurance

for SPAC IPOs

2025 Edition

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As they go through their initial public offering (IPO) and the subsequent merger & acquisition (M&A) process, special purpose acquisition companies (SPACs) face many regulatory, legal, and business hurdles. Obtaining the appropriate amount and type of insurance for each stage of their life cycle is one of them. However, with some smart preparation and the expertise of the right advisors, insurance can go from being a necessary burden to a strategic asset.

Woodruff Sawyer is a market leader for placing directors and officers (D&O) insurance for SPACs and SPAC targets that are going public through a de-SPAC. Woodruff Sawyer is also a nationally recognized leader when it comes to representations and warranties insurance (RWI), something that can be an asset in the SPAC M&A process.

SPAC Life Cycle

When thinking about insurance for a SPAC, it is helpful to think in terms of the SPAC's life cycle. From an insurance perspective, there are three main phases:

Phase One:
SPAC IPO

- S-1 registration statement filed with SEC
- SEC approval is obtained
- SPAC's D&O policy is bound
- SPAC units begin trading on a public exchange

Phase Two:
SPAC Business Combination

- SPAC management identifies an M&A target
- SPAC's insurance broker conducts target company insurance due diligence and advises on Reps & Warranties insurance
- SPACfiles S-4 registration statement and shareholder approval is obtained
- SPAC's insurance broker consults on post-merger D&O coverage

Phase Three:
New Public Company

- The combined company begins life as an operating company with publicly traded shares
- Operating strategy for the combined business is established
- Integration of board and/or management takes place
- Financial and other compliance processes are set

The insurance needs of the SPAC are different at each of these phases. This *Guide* focuses on the first phase of the cycle, the period from a month or two prior to the SPAC IPO until the business combination closes.

Read our SPAC Notebook blog posts for further analysis of all phases of a SPAC and our *Guide to D&O Insurance for De-SPAC Transactions* for additional information on phases two and three of the cycle.

D&O Insurance for a SPAC IPO

As it goes through the IPO process, the main assets of a SPAC are its cash in trust, its management team and directors, and the management team's investment strategy.

SPAC management teams and directors are vulnerable to lawsuits from their public company shareholders as well as regulators like the Securities and Exchange Commission (SEC) and the Department of Justice (DOJ). D&O insurance is designed to mitigate the risk of litigation costs falling on individual directors and officers and the companies they serve.

The vulnerabilities associated with being a public company create a need for D&O insurance coverage for the SPAC's management team and its board. Remember too that national stock exchange rules mandate that most of a SPAC's board must consist of independent board members. Businesspeople who serve as independent board members typically do not accept a board appointment without the promise of good D&O insurance to protect them against lawsuits and regulatory enforcement.

Most Common Types of SPAC Lawsuits

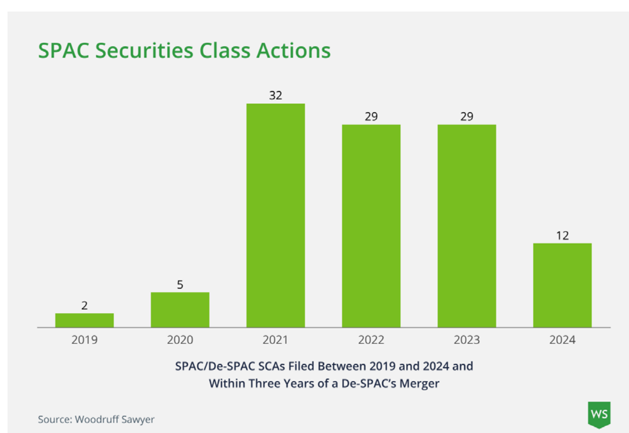
D&O insurance serves a central role in protecting the SPAC and its directors and officers from litigation costs. SPAC litigation has evolved in the last several years. Below are some of the more common types of SPAC lawsuits that may be covered by D&O insurance.

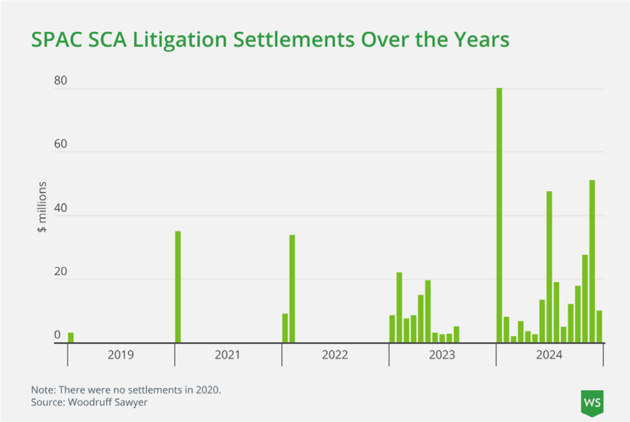
1. Merger Objection Lawsuits

Merger objection lawsuits are not new. In the SPAC context—much like in non-SPAC deals—as soon as a deal is announced, a plaintiff files a suit claiming that the deal is unsatisfactory in some way and should not proceed. The allegations usually revolve around insufficient disclosure about the upcoming merger. These kinds of lawsuits are typically dropped after additional disclosure is filed, and the plaintiffs and their attorneys walk away with a "mootness fee" of a few thousand dollars. This is often referred to as the "M&A tax."

2. Securities Class Actions

Securities class action lawsuits are more serious in nature. These can be brought in federal or state court against the SPAC, its directors and officers, and/or the private company being acquired by the SPAC and its directors and officers.





In some cases, securities class action suits can be brought against SPAC sponsors and other related deal parties.

Depending on the fact pattern, suits typically allege violations of federal securities laws due to material misstatements or omissions in disclosures or public statements. These kinds of cases are typically brought post-merger, but some, like the *Lucid Motors* case, are filed prior to an M&A transaction.

3. Breach of Fiduciary Duty Suits

Several breach of fiduciary duty lawsuits were filed in the Delaware Chancery Court and other courts starting in 2021. Many of these allege that the SPAC structure creates an inherent conflict of interest between the SPAC's sponsor and its board and the SPAC's investors. According to plaintiffs, this conflict of interest diminishes the rigor with which the SPAC's board considers a proposed merger, resulting in a breach of the board's fiduciary duty to the SPAC's shareholders.

The *Multiplan* litigation filed in 2021 is an early example of this line of attack. A more recent example in 2023 is the *Gig3* case. The court in these cases denied the plaintiffs' motion to dismiss.

The court seemed to agree that the conflicts outlined by plaintiffs were potentially serious and concluded that the entire fairness standard, rather than the more deferential business judgment rule, should be applied to these cases. Partly due to court decisions in these cases, most new SPACs have stopped choosing Delaware as their jurisdiction of incorporation.

In May 2024, however, in the *Hennessy* decision, which involved a similar set of facts to those in *Multiplan*, the court granted the defendants' motion to dismiss, ruling that even though the transaction was subject to entire fairness review, the plaintiff failed to plead that the defendants had impaired his right to choose whether to redeem his stock. Although this decision was SPAC-favorable, it has not succeeded in bringing new SPACs back to Delaware and we continue to see the shift away from federal securities class actions filings and towards breach of fiduciary duty cases filings in Delaware.

4. Shareholder Derivative Suits

Shareholder derivative suits are breach of fiduciary duty suits. As a technical matter, shareholders file them on behalf of the corporation against the SPAC's directors and officers. Typically, these lawsuits come on the heels of a securities class action already filed against the SPAC and allege that the acts of the SPAC directors and officers harmed the corporation.

Because Delaware corporations cannot indemnify derivative suit settlements, these suits can pose a serious personal financial risk to the individual directors and officers of the SPAC. Without D&O insurance, individual directors and officers may need to cover settlement costs out of pocket.

5. Assorted, Creative Suits

SPACs have been a laboratory of litigation for the plaintiffs' bar. For example, consider the novel allegations directed against SPACs in August 2021 when plaintiffs sued Bill Ackman's Pershing Square Tontine. Plaintiffs alleged that SPACs are investment companies and should register as such under the Investment Company Act of 1940.

Not all SPAC-related cases came out on the side of the plaintiffs. You can read about several notable and interesting SPAC "wins"—decisions that went in the defendant's favor.

Another example is the technical challenge to the manner in which SPAC shareholders were being asked to vote for deals such as in the *Mudrick Capital Acquisition Corporation II* case and the *Boxed* case.

Or consider the *FAST Acquisition Corp*. case involving a dispute over who gets to keep the proceeds of a breakup fee—management or SPAC shareholders.

While it is difficult to predict what the next creative case will be, it is clear there will be more creative litigation in SPAC world—underscoring the need for SPACs to have robust D&O insurance.

Regulatory Enforcement Against SPACs

Private litigation actions are not the only things that a SPAC's directors and officers need to worry about when considering the correct structure and limits of their D&O insurance coverage. Regulatory investigations and enforcement actions can also prove very costly.

The SEC, the DOJ, and the Financial Industry Regulatory Authority (FINRA) are continuing to focus on the SPAC market. Since 2021, the agencies brought several enforcement and investigative actions against SPACs, their directors and officers, their sponsors, the targets, and the target's directors and officers and notably in 2023 against SPAC professional advisers. Enforcement actions like the ones the SEC brought against Momentus/Stable Road and Nikola, as well as their directors and officers, resulted in $8 million and $125 million fines, respectively.

In 2022, the SEC brought its first enforcement action against an investment adviser, Perceptive Advisors. The SEC charged the adviser with violating the Investment Advisers Act in connection with its involvement with SPACs and subsequently settled for $1.5 million.

Notable Regulatory Enforcement Actions & Settlements

Lordstown Motor Corp.
$25.5 million

Hyzon Motors Inc.
$25 million

Zymergen Inc.
$21 million

Cantor Fitzgerald, L.P.
$6.75 million

Considering the enormous number of SPACs that went public and announced or completed mergers in 2021 and 2022, and taking into account that, on average, it takes about nine months after the merger for a lawsuit to be brought, additional lawsuits and enforcement actions are virtually guaranteed in 2025.

D&O Costs for SPAC IPOs Are More Manageable

Considering this litigation and enforcement activity, it is not a question of whether SPACs and their targets need D&O insurance, but rather of what kind of D&O coverage and how much of that coverage (the size of the limit) is prudent. For better or worse, the answer to that question often depends on the cost of the coverage.

The cost of D&O insurance for SPAC IPOs has certainly come down compared to the nose-bleed heights it reached by early 2022. At that point, prices started to fall—and, taking into account the continuing dearth of IPOs and increasing competition among D&O carriers in the market, the cost of D&O insurance for SPAC IPOs has decreased to significantly more manageable levels in 2025 and will likely stay manageable in the near future.

While increased competition among carriers has allowed for significant price reduction in premiums over the last year, the continuing steady stream of litigation and regulatory risk continues to inform carrier appetite.

Given how dynamic the current D&O insurance market is, you will want to talk to your insurance broker to get an indication of current pricing sooner rather than later.

A broker who specializes in SPACs will also be able to suggest ways to reduce premium costs not only for the SPAC IPO but also for the upcoming D&O coverage for the post-merger entity. It must be said: If you are asking these questions of someone who does not place a lot of D&O insurance for SPACs and de-SPACs, you are at risk of working with someone who does not realize that they do not know the answers to your questions.

Given the dynamic D&O insurance market, talk to a SPAC-specialty insurance broker to understand current pricing and the most effective policy structuring sooner rather than later.

Risk Factors Examined by Insurance Underwriters

D&O cost, of course, depends on the risk insurers take on. When deciding premium and the self-insured retention (a self-insured retention is like a deductible) for a SPAC IPO D&O policy, insurers typically examine the following factors, among others:

1. Experience of the sponsor team

Insurers will consider whether the SPAC sponsor team has successfully executed previous SPAC IPOs, comes with relevant public company experience, and has expertise in the industry of the target company it plans to acquire. Premiums are higher for more inexperienced sponsor teams that lack a substantial track record, public company knowledge, or familiarity with raising money for SPACs, and for teams seeking targets outside of their area of expertise.

2. Jurisdiction of the SPAC entity and the potential target

If the SPAC is based outside of the United States or aims to acquire targets in riskier markets, the premium pricing can go up considerably. But SPACS organized in Delaware will not get the best prices. Recent Delaware court rulings have been very tough on SPACs. As a result, a Cayman-based, rather than Delaware-based, SPAC typically gives the insurance underwriter more comfort.

3. Size of IPO raise

The larger the SPAC IPO, the riskier it is from an insurer's perspective, thereby resulting in higher D&O premiums.

4. The SPAC's plans with respect to the redemption of shares

SPAC are continuing to see high redemptions, often as high as 90+%. Insurers now routinely ask SPACs to outline their plans for counteracting a potentially deal-breaking number of redemptions.

5. Length of the SPAC's investment period

If a SPAC allocates only 15 to 18 months as its period to find a suitable merger target, the underwriters may question that decision. Considering the dearth of private target companies and PIPE financing, the increased difficulties in the overall finance market, the increases in the length of time the SEC has been taking to approve pre-merger filings, and the number of lawsuits brought against SPACs that are close to their deal deadlines, insurers are becoming increasingly weary of artificially short investment periods.

The Process of Securing D&O Insurance for Your SPAC IPO

The process of securing D&O insurance for your SPAC begins with choosing the right D&O insurance broker. (See Choosing the Right Insurance Broker: Questions to Ask on page 13).

Ideally, in advance of the first filing of your confidential Form S-1 registration statement, your broker will launch the process by sending non-disclosure agreements to the relevant insurance carriers. Once your S-1 has been filed with the SEC (confidentially or otherwise), your broker will send the S-1 registration statement to insurance carriers. The S-1 registration statement will serve as the insurance underwriters' primary underwriting document. Your broker will then negotiate with the insurance carriers on your behalf while keeping you informed and updated.

Critical decisions you will make with your broker's guidance will include:

- The total D&O insurance limit
- The structure of the program (the break-down between traditional "ABC" insurance versus "Side A" insurance)
- The amount of the self-insured retention (like a deductible)

Learn More About Insurance Basics with Whiteboard Breakdowns

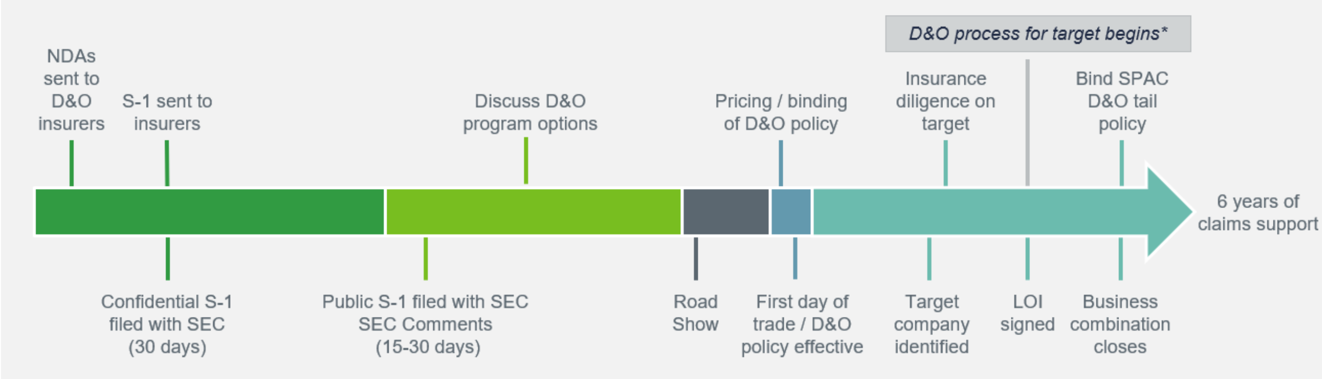
Making the complex simple with three-minute videos. We cover:

- Directors and Officers Liability
- Mergers & Acquisitions: Transactional Risk

The duration of the D&O insurance policy for a SPAC's IPO will normally match the duration of the investment period of the SPAC. In addition, at the time you place the D&O insurance for your SPAC IPO, your broker will negotiate the terms of the six-year "tail" (also referred to as "runoff") policy. (More on this below.)

Once your broker has presented you with options and you have made your choices, the broker will wait to hear from you that your deal has priced. If your deal might be delayed, upsized, or downsized, be sure to tell your broker in case there is a need to refresh your insurance carriers' quotes. Above all, remember to call your broker on the day of pricing, confirm the price, and instruct your broker to bind your D&O program so it is active before your first trade the next day.

SPAC IPO Timeline



D&O Insurance Process

PREPARE
- Implement carrier NDA
- Discuss preferred D&O insurance program structure and limits
- Broker sends S-1 to D&O insurance market
- Organize insurance underwriting call if appropriate

LAUNCH
- SPAC provides updated S-1 to broker
- Broker and SPAC discuss results of insurance market negotiations
- SPAC makes final decisions on D&O insurance program structure and limits

FINALIZE
- Keep broker updated on any significant SEC comments, changes to the S-1 or changes to the pricing date
- Broker finalizes D&O insurance program

IMPLEMENT
- Give bind order upon pricing
- Policy is in place before the first trade the next day

ON-GOING SUPPORT
- Keep broker informed about any potential de-SPAC transactions
- Broker conducts insurance diligence on target, as requested
- Implement SPAC's tail policy at the close of the de-SPAC transaction
- 6 years of claims support

Source: Woodruff Sawyer

* Read more in our Guide to D&O Insurance for De-SPAC Transactions

Your D&O program will remain active from the IPO date until the closing of the business combination. At that time, if the SPAC pays the pre-negotiated additional premium and elects to proceed with tail coverage, the policy will go into runoff (this is also referred to as a tail policy being put into place). This means the policy will continue to respond for the rest of its policy term, but only for claims related to events that took place before the closing of the business combination. In some cases, to save money and to make the claims process more efficient, SPACs may elect to forgo tail coverage and instead negotiate for the go-forward public company's D&O insurance to cover the SPAC and its directors and officers against post-close claims. This is sometimes referred to as the "combo" policy or the SPACage.

Considerations for Limit Selection

The choice of how much insurance to purchase (the "limit") can be a personal one for the directors and officers of the SPAC. Having said that, and due in no small part to pricing pressure, we observed a gradual decrease in coverage limits chosen by SPAC IPO teams over the last three years, with the average limit size settling in the range of $5 million for most SPACs, regardless of SPAC size.

Exact structuring of these programs (e.g., whether they chose $5 million in ABC coverage or supplement ABC layers with Side A only coverage) varies according to the preferences and circumstances of each team. It is important to get the advice and guidance of a knowledgeable SPAC D&O broker to find the right limit and structure for your deal.

Business Combination and D&O Insurance Logistics

Now that you have successfully completed your SPAC's IPO and have deposited the funds into a trust account, it is time to find the right target company to go public. Once you identify your target, be sure to assign someone on your team to handle the insurance issues.

At the time of the business combination (Phase Two of the SPAC's life cycle), there are at least five D&O insurance-related considerations to keep in mind:

1. Insurance Diligence on the Target Company
2. Claims Handling
3. Tail Policy
4. Reps and Warranties Insurance
5. D&O Insurance for the Target Company

1. Insurance Diligence on the Target Company

One of the benefits of working with a full-service retail broker is being able to have your broker conduct insurance diligence on your target. You will want to know if there are gaps in coverage that need to be fixed before your transaction closes. Depending on the amount of work involved, most brokers will charge a small fee for this diligence work.

2. Claims Handling

It is not unusual for SPAC shareholders to file suit against the SPAC directors and officers at the time a merger is announced. It is important to send any litigation (or threats of litigation) to your insurance broker along with instructions to "notice the claim" to your D&O insurance carriers. Remember that insurance carriers must approve your choice of defense counsel. You will want to coordinate with your broker to maximize any available recovery from your D&O insurance policies. This is where choosing a broker that has robust claims advocacy practice is important.

3. Tail Policy

Contact your SPAC insurance broker around the time you are close to signing of your Letter of Intent (LOI), or at least before you publicly announce your transaction. This gives your broker time to prepare to place a tail on your D&O insurance program or to offer other structuring options.

What Is a Tail Policy? Recall that your D&O insurance policy was likely a two-year policy. What happens if you are sued after the policy expires for something that took place before the business combination (e.g., an allegation of inadequate diligence on the target by the SPAC directors and officers)? Unless special steps are taken, there will be no D&O insurance response from the SPAC's D&O policy. To avoid this gap in coverage, brokers arrange to put a tail on the D&O insurance policy. This tail takes the form of an endorsement that will hold the policy open, typically for six years, in exchange for additional premium. Your insurance broker will pre-negotiate the amount of the additional premium when the IPO policy is placed, but you only pay the additional premium at the time the business combination closes if you elect this kind of coverage.

In some cases, SPACs are choosing to forgo purchasing a tail policy. This only makes sense if the go-forward company's D&O policy provides coverage to the SPAC and the SPAC's directors and officers for claims that arise after the close of the transaction. This is something that the D&O insurance market did not generally offer before 2023, may only be available in some cases, and should be discussed with a knowledgeable D&O insurance broker who specializes in SPACs.

We often recommend that our clients discuss whether a SPAC D&O tail will make sense for their deal with us and their target's management before making final decisions on the purchase of a tail policy. Those discussions can save the parties anywhere between $1M and $3M in premium costs.

4. Reps and Warranties Insurance

For a relatively low premium, RWI provides an insurance backstop to the buyer if the seller's representations and warranties turn out to be flawed, or worse, fraudulent. Perhaps even more importantly, the diligence review that the insurance underwriters and their counsel conduct as part of the placement of the RWI policy provides a written trail of issues that were known and unknown ahead of the merger. More and more SPACs, especially those backed by PE firms, are folding RWI into their acquisition strategies. RWI is used in about 95% of PE transactions and is considered market standard in the PE world. With close to 30 insurers competing against each other in the RWI market, and RWI premiums reaching historic lows in 2024, a good broker who specializes in SPAC RWI will be able to find several attractive options for coverage.

An RWI policy can offer protection against seller fraud and can be an important differentiator for a SPAC that is courting a reluctant private company or a private company with multiple suitors. For a SPAC that is competing against PE firms or other SPACs for the same target, not offering the benefits of a RWI policy may mean a failed acquisition attempt and costly time delays. Since SPACs are under extra pressure to close their acquisition transactions before their combination deadline, having management spend time and effort on a failed auction process can be disastrous.

For SPACs competing against PE firms, not having an RWI policy may result in a failed acquisition attempt and costly time delays.

Read our *Guide to R&W Insurance* to navigate the complex space of reps and warranties.

Consider as well that that many of the recent lawsuits brought against SPACs center around insufficient diligence performed prior to the business combination. The RWI process may serve as a kind of safety net for anything the SPAC's diligence team could have missed while reviewing the target's business and operations. This could go a long way to counteract allegations of shoddy due diligence and can help to ring-fence potential litigation exposure.

5. D&O Insurance for the Target Company

Typically, one or more of the SPAC board members will join the board of the target company, which, of course, will be a publicly traded company at the conclusion of the merger transaction. The target company will have to significantly up-level its D&O insurance since its private company D&O insurance policy will no longer be sufficient.

Read our *Guide to D&O Insurance for De-SPAC Transactions*

Details on how to obtain D&O insurance for the new public company are covered in our *Guide to D&O Insurance for De-SPAC Transactions*. Note that the private company's process for obtaining D&O insurancefor itself as a public company typically starts with the S-4 filed by the SPAC in connection with the merger transaction.

Choosing the Right Insurance Broker: Questions to Ask

Given the rapidly changing nature of the D&O insurance market and the peculiarities of SPAC IPO companies, your choice of insurance broker is consequential.

A quirk of the insurance market is that, to optimize your result, you must choose one insurance broker to approach all the viable insurance markets on your behalf. Sending multiple insurance brokers into the market will lead insurance carriers to conclude that you don't know what you are doing and that you are not a serious candidate for their insurance capacity. For this reason, if you are interviewing D&O insurance brokers, instruct them to refrain from sending your name into the market until you have informed them that you have chosen them to be your broker.

Like bankers, lawyers, and accountants, different insurance brokers bring with them varying levels of experience and resources. Work with a broker who places a significant amount of premium with the major insurance carriers.

To get the optimal D&O insurance coverage at the best possible price, here are some questions to ask potential D&O insurance brokers before you choose one.

1 What level of experience does the brokerage team you are talking to (not just the brokerage firm, but your particular team) have when it comes to placing D&O coverage for SPACs?

It is critical that your D&O insurance broker has extensive and current experience working with SPACs, de-SPACs, IPO companies, private equity firms, mature public operating companies, and RWI deals. The market for SPAC-related insurance changes very rapidly. Unless your broker is in the market every day, you will miss out on the latest developments in the terms and conditions of your policy, which are critical elements of your negotiated, customized D&O insurance program.

2 What reach does the brokerage team have in the D&O and RWI markets?

Ask whether the brokers on your team have extensive and long-term relationships with SPAC D&O and RWI underwriters. Having a broker with years of experience and rapport built into their underwriter relationships can make a significant difference in the terms and pricing of your policies and the speed with which they can be placed.

3 Will the broker be using a wholesaler, or making a direct placement?

Many brokers only do a limited amount of SPAC/de-SPAC/IPO/RWI/public company D&O business. These brokers may be excellent in other areas but will inevitably have to use a "wholesale" broker to work on your business if they do not transact a large volume of this business routinely. That can be a big negative for you, especially if there is a claim, because the person you are talking to will have no relationship with the insurance carrier that will be deciding whether to pay or deny your claim. Choose a broker who accesses the insurance market directly.

4 Can your broker clearly articulate the business and legal risks you face?

There is little chance your D&O or RWI insurance broker will do a good job of ensuring you have insurance coverage for critical risks if your broker cannot clearly articulate them. If your broker is not an expert in understanding the risks you face, you are talking to the wrong person.

5 What experience does your broker have in terms of advocating for coverage payments with carriers on behalf of clients with complex claims?

Many brokers have an anemic claims function at best, and often the same claims person who handles client auto or workers' compensation claims is also being asked to handle your difficult D&O insurance or RWI claims. Given the complexity of D&O insurance and RWI claims, this is a mistake. Find out if your broker has specialists who can swing into action on your behalf.

You will enjoy better insurance outcomes when you work with a broker with the kind of deep SPAC experience and expertise to be able to recommend the most strategic insurance program placement options. While you hope you will not need it, you also want to work with a broker with extensive experience managing SPAC-related claims.

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D&O Notebook ⟶

About Woodruff Sawyer

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SPAC Resources

SPAC Notebook

Guide to D&O Insurance for De-SPAC Transactions

Guide to D&O Insurance for IPOs and Direct Listings

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