



POST-IPO D&O CONSIDERATIONS

D&O ALERT:
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2022



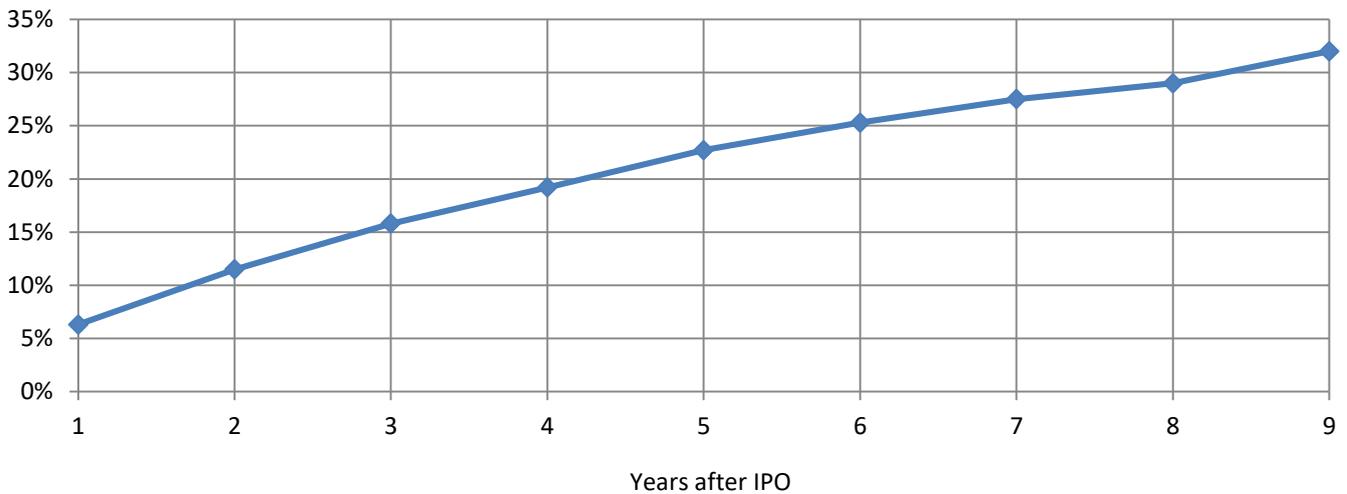
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Post-IPO D&O Exposure

D&O insurance is a significant consideration (and expense) for any newly public company. Unfortunately, the risk of litigation is not limited to the first year following an IPO. As the chart below highlights, the risk of litigation continues well past the IPO date. Because of this, it is important that companies continue to closely monitor the adequacy of their D&O insurance well beyond the IPO date.

Likelihood of Post-IPO Litigation (2009-2020)



The above chart captures the likelihood of all post-IPO D&O litigation, whether offering-related or otherwise, following the 2008 financial crisis. It is important to point out that there are two key laws affecting post-IPO liability: The Securities Act of 1933 ('33 Act) and The Securities Exchange Act of 1934 ('34 Act). Offering-related exposures (including the accurate disclosure of information filed in conjunction with the IPO) are covered under the '33 Act, while the '34 Act covers ongoing exposures and ensures shareholders have equal access to information.

Source: Cornerstone Research



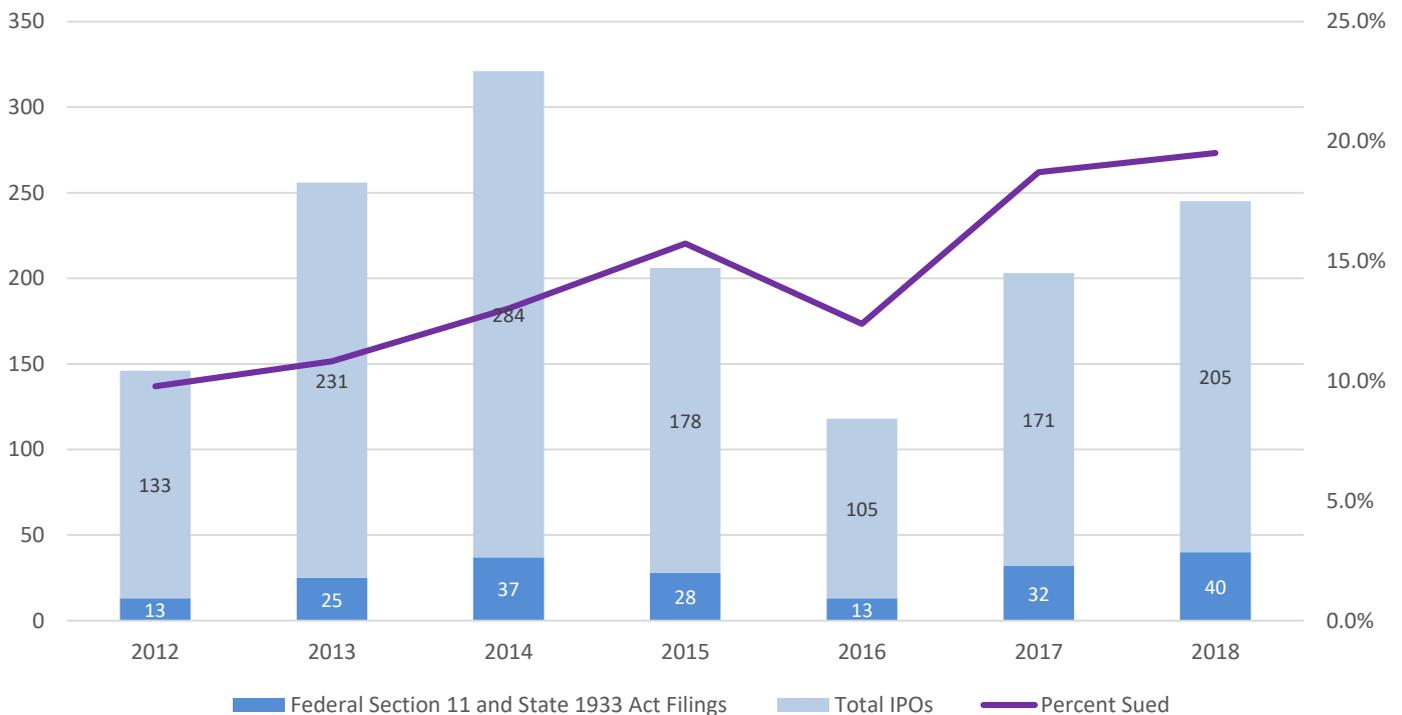
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Litigation Risk Extends Well Beyond IPO

The statute of limitations for an offering-related claim under the '33 Act lasts three years post-IPO, while exposure under the '34 Act is ongoing. Not only does the risk of litigation exist well past the IPO date, it has also been increasing over the last several years. The following chart highlights this trend specifically for offering-related litigation by year, with a noticeable increase in the percentage of companies sued beginning with 2012 IPOs (9.8%, versus 19.5% for 2018 IPOs). With a three-year statute of limitations for '33 Act claims, this chart fully captures all offering-related litigation against companies that completed an IPO through YE 2018. Lastly, although we are still within the three-year statute of limitations for IPOs completed in calendar years 2019-2021, filing rates to date indicate a continued increase in the percent sued, with a most recent projection of over 20%.

IPO Activity and Post-IPO D&O Litigation (2012-2018)



Sources: Cornerstone Research; Stanford Law School Securities Class Action Clearinghouse

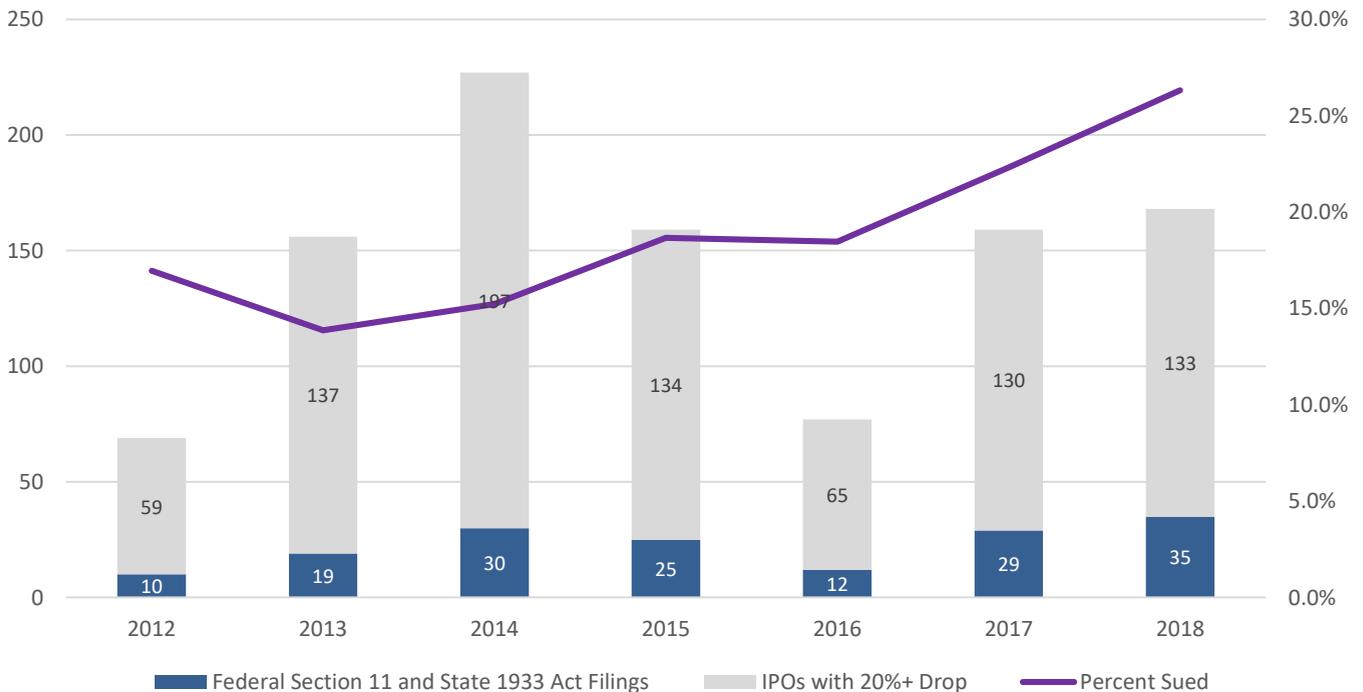
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The Impact of Stock Volatility on Post-IPO Litigation

The frequency of litigation against post-IPO companies is even higher for those with a noticeable decrease in share price following the IPO. This is most likely driven by the way loss is determined for offering-related litigation. For '33 Act claims, damages are generally calculated by measuring the difference in share price at the time of the IPO against the price at the time the claim is filed. The following chart examines the frequency of litigation against post-IPO companies that suffered a 20% or greater decrease in share price within the three-year statute of limitations. Similar to the prior chart, the percentage of companies sued has been increasing over the last several years.

Post-IPO Stock Drops and Related D&O Litigation (2012-2018)



Sources: Cornerstone Research; Stanford Law School Securities Class Action Clearinghouse

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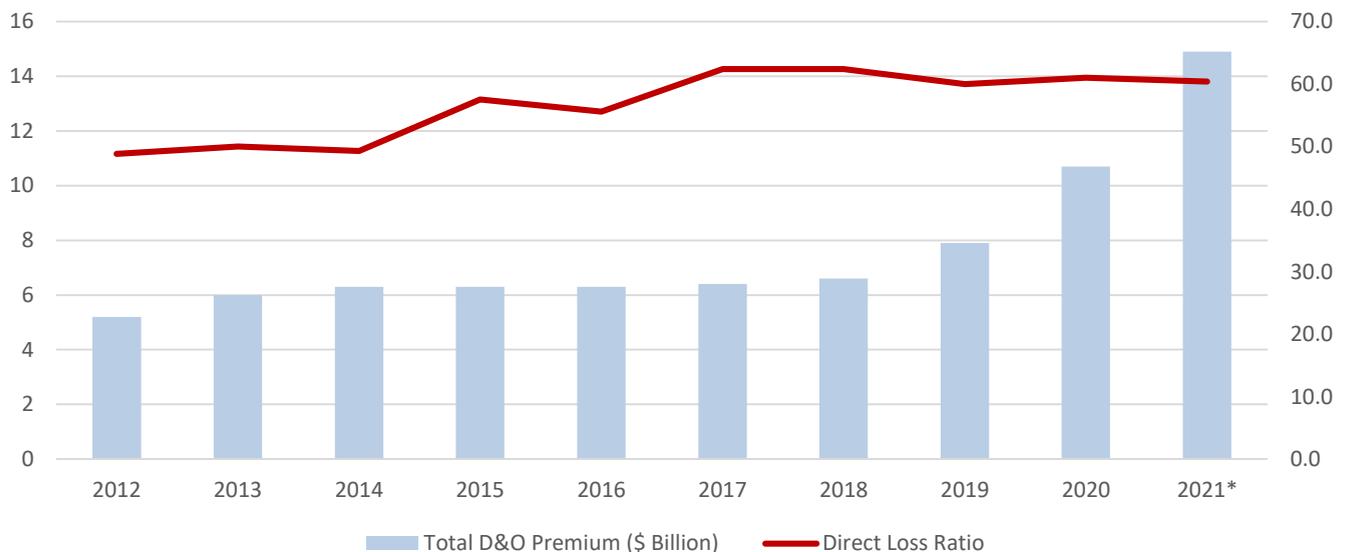
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D&O Insurance Considerations

Companies that complete an IPO face unique and challenging risks, including a heightened risk of litigation for a three-year period following the IPO. Whether there is a material stock drop or not, the risk of litigation is at an all-time high, with approximately 20% of post-IPO companies now being sued. By comparison, the frequency of litigation against non-IPO companies is much lower, below 4%. In addition, dismissal rates for post-IPO claims are lower than those for non-IPO claims (47% versus 58%). Lastly, the median settlement amount for post-IPO claims is 45% higher than it is for non-IPO claims.

For the reasons mentioned above and detailed throughout this report, D&O insurance companies have seen increasing loss ratios over the last several years, as detailed in the following chart. This is despite a significant increase in premiums over the same general time period, particularly the last two years.

D&O Premiums and Direct Loss Ratio (2012-2021)



For companies completing an IPO, D&O premiums have increased substantially over the last few years. Furthermore, because of the high risk of litigation, D&O carriers will often try to provide a limited scope of coverage for newly public companies. For any company considering an IPO, it is crucial to make sure the D&O program is properly designed to respond to the newest litigation trends, at a competitive cost and with carriers that have shown an ability and willingness to pay claims in the current environment.

Sources: A.M. Best Data and Research; Stanford Law School Securities Class Action Clearinghouse



*As of 9.30.21; Full-Year Total Premium estimate based on actual results through 3Q21

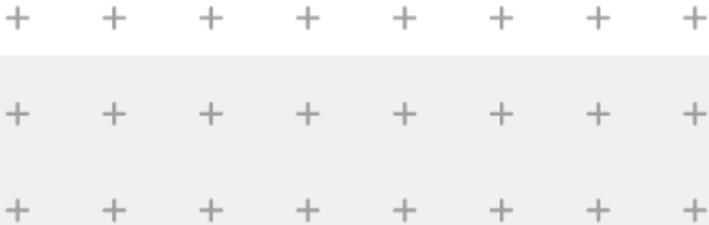
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IMA Executive Risk Solutions is our world-class team of 20+ professionals focused on providing thoughtful advice, a unique legal perspective, a broad range of executive risk insurance solutions, and excellent service to our valued clients. Our professionals have deep experience handling complex executive risk exposures for a variety of clients – from pre-IPO start-ups to multi-billion dollar corporations.

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