



Q4 2023 MARKET TRENDS

# Executive Liability



The Executive Liability insurance landscape is marked by evolving dynamics, from heightened regulations to shifting IPO trends and legislative changes. As the market softens, organizations are urged to proactively address risk and compliance to navigate this transforming landscape effectively.

## D&O: Cyber Regulations

The spotlight on cyber-related exposures within the D&O insurance realm continues to intensify. Notably, regulators are monitoring companies failing to adequately secure or disclose cyber incidents. This increased scrutiny is prevalent among public companies, where incident disclosure has long been expected and extends to a more comprehensive review of cybersecurity practices.

The U.S. Securities and Exchange Commission (SEC) recently adopted [final rules pertaining to cybersecurity disclosures](#). These rules mandate companies to disclose material cybersecurity incidents as they occur and require annual disclosure of material information concerning their cybersecurity risk management and governance. This heightened regulatory environment underscores the growing importance of cybersecurity in the D&O insurance space.

## D&O: SEC Executive Compensation Requirements

The SEC starts the new Executive Compensation Clawback Requirements this year. Publicly listed companies must approve and disclose a written policy on how they will recover erroneously awarded incentive-based compensation in the event of a restatement. The exposure for Insureds is on a No-Fault Basis. Discussions are currently going on in the market on what coverage(s) will be available.

## Public Company: IPO Trends

The IPO landscape is experiencing a noticeable shift in the public company sector. Currently, there are 105 IPOs, reflecting a significant decline compared to the 181 IPOs in the previous year. This marks the second consecutive year of diminishing IPO numbers, following a historic high of 1,035 IPOs in 2021.

With over 1,500 companies going public since 2020, capacity, with resulting premium dollar increases, has benefitted insurance carriers. These events, combined with the entry of new markets into the space, create a scenario conducive to a softening insurance marketplace.

### Nevada Liability Legislation

On July 21, Nevada approved legislation that limits the erosion of liability lines due to defense costs, impacting customers domiciled in Nevada. Effective October 1, 2023, this law applies to certain policies, but its implications vary.

Further details can be found in the release from the Department of Insurance.

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## Underwriting Scrutiny

Overall, the market is experiencing a softening rate environment. However, underwriting standards remain dependent on claims history, financials and jurisdiction. Organizations with financial challenges and higher claims frequency are subject to increased scrutiny from underwriters, particularly concerning retentions and limits.

A recurring theme from the previous quarter is the heightened scrutiny surrounding internal controls related to Fiduciary Liability, Commercial Crime and Employment Practice Liability (EPL). The main areas of concern are excessive fee cases for fiduciary and social engineering/ impersonation fraud for crime/ bonds. Carriers increasingly request additional information regarding an organization's controls, which may require supplemental applications.

## Financial Institutions

In the third quarter, KeyBank announced the need to reset its target earnings, leading to a shift in share price. This raised concerns over potential bank liquidity misrepresentation, resulting in a shareholder lawsuit. The market is closely monitoring this situation and its potential ramifications.

While the overall impact of such incidents remains limited, financial institutions are under continued scrutiny, underscoring the need for robust risk management and transparency.



## How Brown & Brown Can Help

Connect with our Brown & Brown team to learn about our knowledge in your industry, how we build our risk mitigation strategies and how we can aid your business in building a cost-saving property & casualty program.

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