CHICAGO UNDERWRITING GROUP

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CUG.COMments

A newsletter from Chicago Underwriting Group, underwriters of D&O and Professional Liability Insurance

In this issue … we conduct one of our periodic updates of past newsletter topics.

Readers of "CUG.COMments" may note that this edition of the newsletter has a different look. This is part of an Old Republic company-wide branding initiative to standardize the Old Republic brand across all active business entities in General, Life, Title and Corporate Service Operations.

The changes you see here are part of a comprehensive branding initiative designed to help us achieve brand consistency, and help us continue to build and grow our brand. You will see that all of our marketing materials, email communications, business stationary, web sites, etc. will evolve as we implement the Old Republic brand standards.

For more information about Old Republic's offerings in the P & C industry, please visit the Old Republic Insurance Group web site at www.oldrepublicinsurancegroup.com.

Item 1: The Decline in Publicly Listed Companies

Issue 78, January 2012

The continued decline in the number of publicly listed companies on American exchanges, as measured by the World Federation of Exchanges (WFE), was the main topic of the January 2012 newsletter. At the end of 2011, according to WFE data, the combined total of listed companies on NYSE Euronext and the NASDAQ stock market was 4,988, down from a 1997 high of 8,823. Our newsletter discussed the somewhat pessimistic implications of this decline for the U.S. economy and the public company D&O market.

More than three years later, has that downward trend continued? The answer —and the good news— is that the trend has been reversed. WFE data at June 2015 shows combined NYSE/NASDAQ listings of 5,292. While the increase of around six percent is modest, it is clearly better than a further reduction.

Item 2: Dodd-Frank becomes law

Issue 69, July 2010

It is almost exactly five years since the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) was signed into law. Its wide-ranging impact on the financial services industry, including the insurance sector, has been often discussed in this newsletter.

But like a distant star from a far-off galaxy whose light is only now reaching earth after a five-year journey, some effects of the legislation are just starting to be felt. The main reason for the time lag is the plethora of rules that the Securities and Exchange Commission (SEC) was mandated to create to facilitate the practical implementation of the Dodd-Frank provisions.

Most of the 250-some rules have been formulated, discussed, and finalized, with the applicable sections of Dodd-Frank passing into usage, but on July 1, 2015, the SEC Commissioners, split 3-2 along ideological lines, published their proposed rules for implementing Dodd-Frank Section 954. This section deals with the recovery from a company's executive officers of incentive-based compensation that was awarded based upon data subsequently found to be erroneous, A.K.A. "clawback."

The proposed rules seek to create a revised framework for return of these funds, building upon the Sarbanes-Oxley Act of 2002, which provided for such clawbacks —but Sarbanes-Oxley only provided for clawbacks from the CEO and the CFO.

Dodd-Frank significantly expands that universe to include "any of the issuer's current or former executive officers who received executive based compensation."Dodd-Frank's clawbacks cover a defined time period during which erroneous data was released ("look-back period"). The Dodd-Frank look-back period would span "three completed fiscal years immediately preceding the date the issuer is required to prepare an accounting restatement." This compares with Sarbanes-Oxley's 12-month look-back period.

Two other features of the 171-page proposal are worth noting: First, the clawback is to be imposed regardless of fault. Even if an individual had no responsibility for the bad data, and had committed no misconduct, any money received must be returned.

Second, the proposal "expressly prohibits listed issuers from indemnifying executives against the loss of erroneously awarded compensation or paying or reimbursing executives for insurance premiums to cover losses under the recovery policy." However, and interestingly, the rules do allow for the possibility of an executive procuring such insurance independently.

The unusually bitter divisions between the five SEC Commissioners, who all issued separate statements concerning the proposed rule, might be reflected in the public feedback during the 60-day period allowed for comment. It will be interesting to see what form the final rules take.

Item 3: NARAB enacted on the coat tails of TRIA

Issue 96, January 2015

For years, insurance professionals have desired the establishment of a National Association of Registered Agents and Brokers (NARAB) to organize and simplify the licensing of nonresident producers, and that goal was finally realized as part of the Terrorism Risk Insurance Act (TRIA) renewal in January of this year. The provisions of the measure require a 13-member board of directors to govern and supervise all activities of the association. Appointments to the board are to be made by the President (with the "advice and consent of the Senate"), and shall include eight state insurance commissioners and five individuals with expertise in producer licensing —three from Property / Casualty, two from Life and Health.

Signifying the National Association of Insurance Commissioners' (NAIC) embrace of the measure, there is keen competition for those eight spots: fourteen commissioners / directors have thrown their hats in the ring and declared themselves interested and willing to serve. Their names were sent to the President in March; the process appears to be moving forward on schedule.❖

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A D&O market-maker for more than 30 years

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