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# The New Administration and the Impact on D&O Liability

September 18, 2025



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# Questions

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# Meet Your Presenters

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# Overview

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## New Administration.....

- New Executive Orders (EOs)
  - 143 in 100 Days. The Most in Any Presidency.
  - 40% Relate to Governmental Reform or Deregulation
  - 120 Lawsuits Challenging These EOs
  - Tariffs....What Will Be The Impact?
- New Regulatory Priorities
- New Cryptocurrency Rules
- New ESG Risks

Today we are exploring how these political changes are reshaping the D&O landscape, influencing underwriting considerations and the effects on litigation trends and the claims process.

.....**NEW D&O RISKS!**

# D&O Risks – Which way is up?

D&O Risks (neutral or decreasing)	D&O Risks (increasing)
Stock market appreciation continues	<ul style="list-style-type: none"> <li>• A steep stock market decline/correction could potentially lead to more SCAs with larger settlements due to the larger market cap losses</li> <li>• Lackluster jobs growth could signal a correction</li> </ul>
Tariff impact still unclear	<ul style="list-style-type: none"> <li>• Recent securities class action (SCA) filed - allegations of misleading statements about the impact the tariffs.</li> <li>• Also, tariff-related False Claims Act (FCA) (Qui Tam) litigation</li> </ul>
<p>“Hands-off” regulators:</p> <ul style="list-style-type: none"> <li>• The SEC has lost 15% of staff and ended its court defense of climate change disclosure guidelines</li> <li>• Anticipated HHS deregulatory actions to increase (“10-1”)</li> </ul>	<ul style="list-style-type: none"> <li>• A new SEC taskforce to “.combat cross-border fraud harming U.S. investors”</li> <li>• The FTC - enforcement of misleading “Made in USA” claims</li> <li>• New Cryptocurrency laws untested</li> </ul>
Securities Class Actions (SCAs) frequency is down YoY: Projected to be ~200 FY 2025	<ul style="list-style-type: none"> <li>• SCA severity is UP: Average settlement in 1H 2025 - \$56M, a 27% YoY increase</li> <li>• <u>New-age SCAs</u>: AI, Cryptocurrency and ESG</li> </ul>
Interest rates cut	Rate cuts perhaps a sign of economic/jobs weakness
DExit (Delaware Exit): TX and NV incorporated firms – potentially less D&O risk	Delaware responds/DExit has not been prominent among companies to date

# Regulatory Issues

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- The SEC is Denying a Record Percentage of Whistleblower Claims
- FCA as a Principal Legal Tool to Enforce Objectives
  - Civil and Criminal
  - FCA for Cybersecurity Vulnerabilities (Products Sold to the Government)
  - Combatting “Illegal DEI”
- Anti-money Laundering (AML) Requirements, and Anti-bribery and Corruption Laws
- Cryptocurrency – GENIUS Act
  - First-ever Federal Regulatory System for Stablecoins
- FCC - Freedom Of Speech/Press Issues
  - Defamation Claims
  - Media Broadcast License Scrutiny

## July 2025:

One of the Trump administration’s first publicly filed False Claims Act (FCA) enforcement action focused on alleged tariff evasion

FCA liability represents a serious corporate liability risk

# ESG, Immigration and DExit

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- ESG
  - “Illegal DEI”
  - Corporate Social Responsibility (CSR)
- Immigration-related Exposure
  - DOJ Expands Corporate Enforcement to Include Immigration Violations
  - Recently Filed Securities Lawsuit – alleged understatement of visa-related risks / failed disclosure related to international student enrollment risks
- DExit Discussion



# Underwriting and Claims

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- Underwriting Considerations
  - Financial Condition – Increased Bankruptcy Risk
  - Trading Partners – Supply Chain Disruptions
  - Increased M&A Activity
  - Governance Practices and Disclosures
  - Board's Oversight Of Cybersecurity and the Use of AI
  - Rollback of ESG Initiatives And DEI
- Claims Trends
  - Public Companies, Private Organizations and Financial Institutions
  - Outlook for Q4 2025 And 2026
  - Other Management Liability Risks: EPL, for Example

# Key Takeaways for All

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- Unprecedented Uncertainty Remains
  - Tariff Impact Still TBD, But Negative Signs Are Showing
  - Less SEC Regulation But More FCA Threats
  - Will Litigation (With Litigation Funding) Fill Any Regulatory Void?
- All Organizations on Alert
  - Public, Private, Financial Institutions, Not-for-profit, Governmental
- Underwriters And Brokers Will Continue to Monitor Frequency and Severity of Claims

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# Thank you!