

# US Securities Class Actions

## International US-Listed Companies | FY 2020



### Actions Against Foreign Filers at an Historical High

This past year has seen interesting and emerging activity arising in securities litigation in United States courts against foreign filers. Companies with headquarters or principal places of business outside the United States (“non-US issuers”) continue to be targets of securities class action lawsuits filed in the United States. In 2020, the number of securities class actions filed against non-US issuers reached a historical high. **1**

As the graphs on pages 4 and 5 show, in 2020, there were 65 <sup>2</sup> core securities class actions filed against non-US issuers, representing 33.7% of all federal cases filed in 2020, and a 16% increase from the 56 core filings made in 2019. This was the largest year-over-year increase in the past 5 years and the highest annual number of securities class action suits against non-US issuers in history.

### Listing Characteristics

Nearly half of all non-US issuers (46%) named in a securities class action in 2020 were listed on a US exchange using an American Depositary Receipt (ADR) program rather than a full stock exchange listing. That breaks down to Level 3 ADRs (60%), Level 2 (14%) and Level 1 (26%). <sup>3</sup> Statistically, the level of exposure to securities litigation of ADR listings is beginning to equal to that of a full listing, regardless of type.

The recent US appellate court decision in [Stoyas v. Toshiba Corp](#) held that a foreign issuer could be liable under US securities laws for selling securities in the US, even if the company was not involved in the sale (e.g. an “*unsponsored*” ADR). This ruling increases the likelihood that foreign companies with US securities will be subject to a securities class action. Our whitepaper, [US securities law liability for securities issuers outside of the United States in a post-Toshiba environment](#), co-authored with Norton Rose Fulbright, provides additional insight into this ruling.

From an exchange perspective, there were 30 suits filed against NASDAQ listed businesses, 26 suits against NYSE listed firms, and 9 against OTC-BB listed companies. Historically, NASDAQ-listed issuers have seen the larger proportion of yearly securities class action suits.

Cases were brought in courts across the US including New York (56%), California (25%), New Jersey (11%), Oregon and Pennsylvania (3% each), and Delaware (2%). The most popular district in New York was the Southern District, and in California, the Central District. In terms of circuit split, 37 complaints were filed in the Second Circuit, 18 in the Ninth Circuit and 10 in the Third Circuit.

### Diverse Geographic Distribution

As in recent years, the geographic spread of class actions was weighted towards companies with headquarters in China, with 24 filings in 2020, a sharp increase from 17 the previous year. This is partly attributable to differences in public-company accounting practices between China and the US which often lead to compliance issues with US listing rules. Statistically, Chinese issuers tend to engage in higher risk sectors – technology, online commerce, and financial services. The second largest number of filings were

<sup>1</sup> Compiled using data from Stanford School of Law – [Securities Class Action Clearinghouse](#), a collaboration with Cornerstone Research and used with permission. [Core filings](#) are all federal securities class actions, excluding those defined as M&A filings, consolidated into one to prevent double counting. Differences in review methodology mean AIG’s totals may be different to the ones in other sources.

<sup>2</sup> This tally excludes the 11 cryptocurrency cases, and the case against the Republic of Ecuador.

<sup>3</sup> ADRs Level 1 requires the least amount of compliance and regulatory oversight. whereas ADRs Level 2 and 3 are required to fulfil all registration and reporting requirement imposed by the SEC.

against Canadian businesses, with 12 cases, 4 of which relate to cannabis sales and distribution. This was followed by Germany and Israel with 4 filings each.

The national securities class action legal regime in China recently changed with the enactment of “[The New Securities Law](#),” at the end of 2019. Our white paper, [Securities Class Actions under the New Securities Law in China](#) provides further detail of this new legislation. It is too early to predict whether this new law will have a material effect on US class action filings.

Regionally, Asia took the lead with 28 filings, followed by Europe with 16 filings. In past years, the numbers of cases against issuers from Asia and Europe have reversed but historically the two regions have always incurred the largest percentage of the overall suits against non-US issuers.

### Technology Remains the Most Frequently Litigated Sector

Claims against non-US issuers were brought against companies in a wide group of sectors, ranging from transportation to consumer, financial services, and healthcare.<sup>4</sup> The most frequently litigated sectors in 2020 were technology (18), healthcare (13), financial (10) and services (8).

All of these industries tend, by their very nature, to attract scrutiny. Technology companies continue to be targeted for litigation based on the outcome of new project launches. Pharmaceutical companies’ statements about product performance and marketing practices may leave them open to litigation.

The vast majority of lawsuits alleging misrepresentations arose out of inadequate or insufficient internal and external controls — such as accounting practices, financial disclosures, and bribery, corruption, and money-laundering. Other filings related to opioids, data breaches, the environment, and occupational safety.

### Dismissals / Settlements

Keeping in mind the high costs associated with lengthy and drawn-out litigation proceedings, the number of dismissed securities class actions in 2020 were at unprecedented levels. Out of the core foreign filers, only five cases were dismissed quickly – ranging from three days up to five months. The remaining 60 cases are still ongoing. We also observed a surge in settlements. For the first time since 2016, two settlements worth more than one billion dollars were reached.

### Looking Towards 2021

Looking to 2021, it is unlikely that the volume and frequency of securities class actions will slow down. Legislative changes and external events continue to create new exposures. In 2020, California enacted Assembly Bill No. 979 which requires a publicly held domestic or foreign corporation with principal executive offices located in California to have a minimum of one director from an “*underrepresented community*”<sup>5</sup> no later than the close of calendar year 2021. NASDAQ submitted a proposal to the US Securities & Exchange Commission (SEC) to adopt new listing rules related to board diversity and disclosure in December 2020.

Four class actions involved IPOs and prospectus liability, while one case involved a Special Purpose Acquisition Company (SPAC) transaction. This filing<sup>6</sup> alleged the Defendants failed to disclose material, adverse facts about the company’s business, operations, and prospects as relating to the transaction. Given the increasing number of SPAC IPOs during 2020, we expect further securities class actions in this area. Recent filings support this hypothesis as 5 SPAC securities class actions were filed in the first two months of 2021, compared to 4 SPAC-related suits in all of 2020.

<sup>4</sup> The numbers of industries represented are 12.

<sup>5</sup> “Director from an underrepresented community” means an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender.

<sup>6</sup> Triterras, Inc.

Companies should also be aware of concerning trends in a rise in shareholder derivative lawsuits being filed in the US courts against the boards of non-US issuers. In 2020, there were 6 derivative class actions against non-US issuers in US courts. Many of the 6 companies traded in the US as ADRs. For directors and officers, this heightened environment of litigation exposure should be of great concern. These risks can be mitigated by boards actively monitoring their public disclosures, ensuring strong corporate governance, and maintaining robust enterprise risk management practices.

The D&O insurance market for non-US issuers has undergone significant changes and retraction in the past 24-36 months with a lack of insurers who are willing to provide D&O capacity despite a steep rise in demand resulting in tougher market conditions. The hardening insurance market is making it more expensive and more difficult to secure D&O coverage.

AIG's underwriting teams are available and eager to discuss insured's D&O needs with their brokers. Our claims team has significant experience assisting clients in the defence and settlement of securities class actions, providing helpful insight and support when directors and officers need it most. At AIG, our strong claims expertise means we will not only offer specialist help when a claim occurs, but will also assist in mitigating potential claims in the first place.

**We hope you find these quarterly updates valuable. To receive these updates or other information on D&O claims trends from AIG, [sign up here](#).**

# Class Actions FY 2020 <sup>7</sup>

## Number of Class Action Filings FY 2020

Total Number of  
Class Actions (Inc US)

**193**

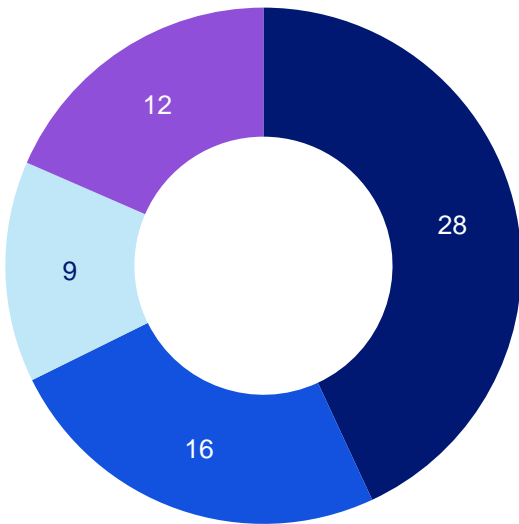
Class Actions Against  
Foreign Companies

**65**

Foreign Issuers  
as % of Total

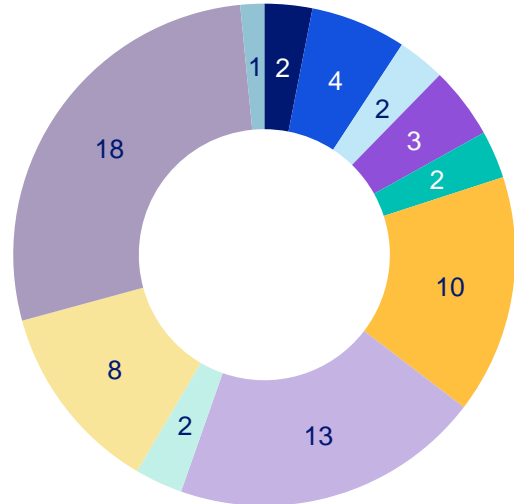
**33.7**

### Foreign Filings by Headquarter Location FY 2020



■ Asia ■ Europe ■ Other ■ Canada

### Foreign Filings by Sector FY 2020



■ Auto ■ Materials ■ Capital goods  
 ■ Consumer ■ Energy ■ Financial  
 ■ Healthcare ■ Mining ■ Services  
 ■ Technology ■ Transportation

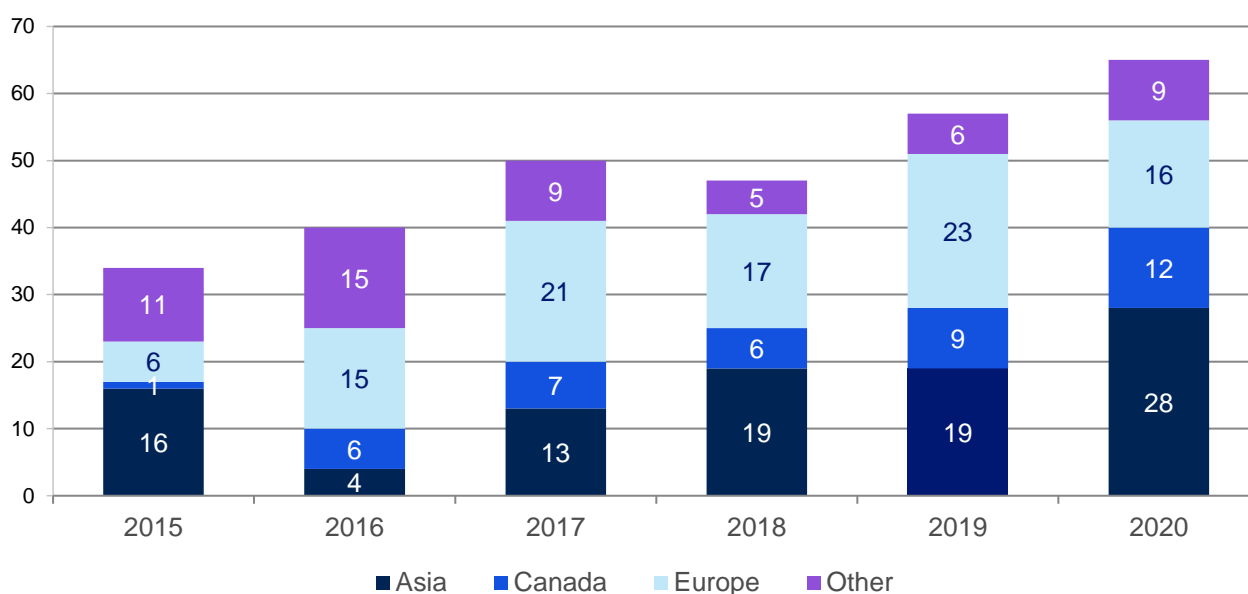
<sup>7</sup> Compiled using data from Stanford School of Law – [Securities Class Action Clearinghouse](#), a collaboration with Cornerstone Research and used with permission. [Core filings](#) are all federal securities class actions, excluding those defined as M&A filings, consolidated into one to prevent double counting.

## Annual Statistics 2015 – 2020 <sup>8</sup>

### Number Of Class Actions Filings

	Total Number of Class Actions	Class Actions Against US Issuers	Class Actions Against Foreign Issuers	Foreign Issuers as % of Total
<b>2020</b>	193	128	65	33.7
<b>2019</b>	245	187	56	23
<b>2018</b>	220	173	47	21.4
<b>2017</b>	213	163	50	23.5
<b>2016</b>	187	147	40	21.4
<b>2015</b>	173	139	34	13.9

### Foreign Filings by Country or Region



<sup>8</sup> Compiled using data from Stanford School of Law – [Securities Class Action Clearinghouse](#), a collaboration with Cornerstone Research and used with permission. [Core filings](#) are all federal securities class actions, excluding those defined as M&A filings, consolidated into one to prevent double counting.

## US Class Actions – International Listed Companies <sup>9</sup>

A list of all the class actions against foreign filers in 2020

Filing Name <sup>10</sup>	Filing Date	District Court	Exchange	Ticker	HQ	Sector
CD Projekt S.A: ADRs	12/24/2020	C.D. California	OTC-BB	OTGLY	Poland	Technology
Restaurant Brands International Inc.	12/21/2020	S.D. New York	New York SE	QSR	Canada	Services
Triterras, Inc.	12/21/2020	S.D. New York	NASDAQ	TRIT	Singapore	Technology
Sona Nanotech Inc.	12/17/2020	C.D. California	OTC-BB	SNANF	Canada	Healthcare
Qivi plc: ADRs	12/11/2020	E.D. New York	NASDAQ	QIWI	Cyprus	Financial
Semiconductor Manufacturing International Corporation: ADRs	12/10/2020	C.D. California	OTC-BB	SMICY	China	Technology
Changyou.com Limited: ADRs	12/08/2020	E.D. New York	NASDAQ	CYOU	China	Services
Northern Dynasty Minerals Ltd.	12/04/2020	E.D. New York	New York SE	NAK	Canada	Basic Materials
JOYY Inc.	11/20/2020	C.D. California	NASDAQ	YY	China	Technology
Alibaba Group Holding Limited	11/13/2020	S.D. New York	New York SE	BABA	China	Services
Neovasc Inc.	11/05/2020	S.D. New York	NASDAQ	NVCN	Canada	Healthcare
Bayerische Motoren Werke Aktiengesellschaft: ADRs	10/27/2020	D. New Jersey	OTC-BB	BMWYY	Germany	Consumer
Innate Pharma S.A: ADRs	10/23/2020	C.D. California	NASDAQ	IPHA	France	Healthcare
Turquoise Hill Resources Ltd.	10/14/2020	S.D. New York	New York SE	TRQ	Canada	Basic Materials
Loop Industries, Inc.	10/13/2020	S.D. New York	NASDAQ	LOOP	Canada	Basic Materials
Mesoblast Limited: ADRs	10/08/2020	S.D. New York	NASDAQ	MESO	Australia	Healthcare
Aurora Cannabis Inc.	10/02/2020	D. New Jersey	New York SE	ACB	Canada	Healthcare
Pintec Technology Holdings Limited: ADRs	09/29/2020	S.D. New York	NASDAQ	PT	China	Financial
Garrett Motion Inc.	09/25/2020	S.D. New York	New York SE	GTX	Switzerland	Consumer
Golar LNG Limited	09/24/2020	S.D. New York	NASDAQ	GLNG	Bermuda	Energy
Teva Pharmaceutical Industries Limited: ADRs	09/23/2020	E.D. Pennsylvania	New York SE	TEVA	Israel	Healthcare
Nano-X Imaging Ltd.	09/16/2020	E.D. New York	NASDAQ	NNOX	Israel	Healthcare
GOL Linhas Areas Inteligentes S.A.	09/11/2020	E.D. New York	New York SE	GOL	Brazil	Transportation
Lexinfintech Holdings, Ltd.	09/09/2020	D. Oregon	NASDAQ	LX	China	Financial

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<sup>10</sup> ADRs = [American Depositary Receipts](#)

Filing Name <sup>10</sup>	Filing Date	District Court	Exchange	Ticker	HQ	Sector
Coty Inc.	09/04/2020	S.D. New York	New York SE	COTY	Netherlands	Consumer
HDFC Bank Limited: ADRs	09/03/2020	E.D. New York	New York SE	HDB	India	Financial
Neonode Inc.	09/02/2020	D. Delaware	New York SE	NEON	Sweden	Technology
Braskem S.A: ADRs	08/25/2020	D. New Jersey	New York SE	BAK	Brazil	Basic Materials
Qutoutiao Inc: ADRs	08/20/2020	S.D. New York	NASDAQ	QTT	China	Services
Baidu, Inc.	08/19/2020	E.D. New York	NASDAQ	BIDU	China	Services
Airbus SE: ADRs	08/06/2020	D. New Jersey	OTC-BB	EADSY	Netherlands	Capital Goods
The Republic of Ecuador	07/29/2020	S.D. New York	Other Foreign	N/A	Ecuador	Sovereigns
Wins Finance Holdings Inc.	07/24/2020	C.D. California	NASDAQ	WINS	China	Financial
Tufin Software Technologies Ltd.	07/21/2020	S.D. New York	New York SE	TUFN	Israel	Technology
Sky Solar Holdings, Ltd: ADRs	07/17/2020	S.D. New York	NASDAQ	SKYS	China	Utilities
Bayer Aktiengesellschaft: ADRs	07/15/2020	N.D. California	OTC-BB	BAYRY	Germany	Healthcare
Deutsche Bank Aktiengesellschaft	07/15/2020	D. New Jersey	New York SE	DB	Germany	Financial
Wirecard AG	07/07/2020	E.D. Pennsylvania	OTC-BB	WCAGY	Germany	Technology
China XD Plastics Company Limited	07/06/2020	S.D. New York	NASDAQ	CXDC	China	Consumer
Mylan N.V.	06/26/2020	W.D. Pennsylvania	NASDAQ	MYL	United Kingdom	Healthcare
Cheetah Mobile, Inc: ADRs	06/25/2020	C.D. California	New York SE	CMCM	China	Technology
Endo International plc	06/19/2020	D. New Jersey	NASDAQ	ENDP	Ireland	Healthcare
Kandi Technologies Group, Inc.	06/10/2020	C.D. California	NASDAQ	KNDI	China	Consumer
Hebron Technology Co., Ltd.	06/09/2020	S.D. New York	NASDAQ	HEBT	China	Capital Goods
Qiagen N.V.	05/29/2020	D. Delaware	New York SE	QGEN	Netherlands	Healthcare
Willis Towers Watson Public Limited Company	05/14/2020	D. Delaware	NASDAQ	WLTW	United Kingdom	Financial
Akazoo S.A.	04/24/2020	E.D. New York	NASDAQ	SONG	Luxembourg	Services
Phoenix Tree Holdings Limited: ADRs	04/24/2020	S.D. New York	New York SE	DNK	China	Services
Baidu, Inc.	04/21/2020	N.D. California	NASDAQ	BIDU	China	Services
Jumei International Holding Limited: ADRs	04/21/2020	N.D. California	New York SE	JMEI	China	Services
GSX Techedu Inc. ADRs	04/17/2020	D. New Jersey	New York SE	GSX	China	Services
iQIYI, Inc: ADRs	04/16/2020	E.D. New York	NASDAQ	IQ	China	Services

Filing Name <sup>10</sup>	Filing Date	District Court	Exchange	Ticker	HQ	Sector
Mylan N.V.	04/13/2020	D. Delaware	NASDAQ	MYL	United Kingdom	Healthcare
E-House (China) Holdings Limited: ADRs	04/09/2020	S.D. New York	New York SE	EJ	China	Services
FGL Holdings	04/09/2020	D. Delaware	New York SE	FG	Cayman Islands	Financial
Silver Lake Group, L.L.C: Intelsat S.A.	04/07/2020	N.D. California	New York SE	I	Luxembourg	Services
Tufin Software Technologies Ltd.	04/06/2020	C.D. California	New York SE	TUFN	Israel	Technology
Block.One	04/03/2020	S.D. New York	N/A	N/A	N/A	N/A
BProtocol Foundation	04/03/2020	S.D. New York	N/A	N/A	Israel	Technology
HDR Global Trading Limited	04/03/2020	S.D. New York	N/A	N/A	Other	Financial
KayDex Pte. Ltd.	04/03/2020	S.D. New York	N/A	N/A	Singapore	Financial
KuCoin	04/03/2020	S.D. New York	N/A	N/A	Singapore	Financial
Status Research & Development GmbH	04/03/2020	S.D. New York	N/A	N/A	Switzerland	Technology
Tron Foundation	04/03/2020	S.D. New York	N/A	N/A	Singapore	Technology
Golden Star Resources Ltd.	04/01/2020	C.D. California	New York SE	GSS	Canada	Basic Materials
DouYu International Holdings Limited: ADRs	03/24/2020	C.D. California	NASDAQ	DOYU	China	Services
XP Inc.	03/21/2020	E.D. New York	NASDAQ	XP	Brazil	Financial
Delphi Technologies PLC	03/18/2020	D. Delaware	New York SE	DLPH	United Kingdom	Consumer
Front Yard Residential Corporation	03/18/2020	D. Delaware	New York SE	RESI	Other	Financial
Cronos Group Inc.	03/11/2020	E.D. New York	NASDAQ	CRON	Canada	Healthcare
NMC Health Plc: ADRs	03/10/2020	C.D. California	OTC-BB	NMHLY	United Kingdom	Healthcare
Gilat Satellite Networks Ltd.	03/06/2020	D. Delaware	NASDAQ	GILT	Israel	Technology
PharmaCielo Ltd.	03/06/2020	C.D. California	OTC-BB	PCLOF	Canada	Healthcare
Tilray, Inc.	03/06/2020	E.D. New York	NASDAQ	TLRY	Canada	Healthcare
Canaan, Inc: ADRs	03/04/2020	D. Oregon	NASDAQ	CAN	China	Technology
Luckin Coffee Inc: ADRs	02/13/2020	S.D. New York	NASDAQ	LK	China	Services
SORL Auto Parts, Inc.	02/13/2020	D. Delaware	NASDAQ	SORL	China	Consumer
Sasol Limited: ADRs	02/05/2020	S.D. New York	New York SE	SSL	South Africa	Energy
AquaVenture Holdings Limited	02/04/2020	D. Delaware	New York SE	WAAS	British Virgin Islands	Utilities
Westpac Banking Corporation: ADRs	01/30/2020	D. Oregon	New York SE	WBK	Australia	Financial



Filing Name <sup>10</sup>	Filing Date	District Court	Exchange	Ticker	HQ	Sector
Opera Limited: ADRs	01/24/2020	S.D. New York	NASDAQ	OPRA	Other	Technology
Qudian Inc: ADRs	01/22/2020	S.D. New York	New York SE	QD	China	Financial
Central European Media Enterprises Ltd.	01/21/2020	D. Delaware	NASDAQ	CETV	Bermuda	Services
500.com Limited	01/15/2020	D. New Jersey	New York SE	WBAI	China	Services
Wright Medical Group N.V.	01/15/2020	D. Delaware	NASDAQ	WMGI	Netherlands	Healthcare

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