

US Securities Class Actions

International US-Listed Companies | FY 21 & Q1 22



Actions against Foreign Filers falls from 2020 historic high but remain a threat

The past decade has shown a steady year on year rise in securities litigation filed against companies domiciled or headquartered outside of the United States (non-US issuers). From an historic high of 65 core filings in 2020, we saw a fall in 2021, with filings slightly below the annual 10-year average of 42 cases.

There were 45 securities class actions (SCAs) filed against non-US issuers in 2021, of which 39 were core cases which did not involve merger objection litigation. Of these 39 core cases, there were also 5 parallel suits brought in state courts. For the purposes of this report, we will focus on the 39 core filings.

Though it is still too early to draw any firm conclusions from this year-over-year decrease in filings, the effects from ongoing Covid-related lockdowns in 2021 are likely to be a material mitigating factor. This mirrors wider SCA activity against domestic US companies, where total core filings fell. Filings against non-US issuers still made up over a quarter of all filings in 2021 and remains a highly exposed segment for the US plaintiff bar.

Listing Characteristics

There were 21 suits against filers listed on NASDAQ, 14 suits against filers trading on the NYSE and 4 OTC listed firms. While there were cases against involving sponsored ADRs, no suits were filed against companies with unsponsored Level 1 ADRs.

It is worth noting that in January 2022, the Ninth Circuit reversed an earlier judgment by the Second Circuit in the [Stoyas v Toshiba](#) case where a suit was filed against Toshiba by holders of its unsponsored Level 1 ADRs. The Ninth Circuit held that the Toshiba case did not meet the second component of the two-stage test in [Morrison v. National Australia Bank](#) relating to domesticity of the transaction. The decision represents a further hurdle for shareholders holding Unsponsored Level 1 ADR's wishing to pursue securities litigation in the US. The wider impact of this decision is yet to be determined and is an area of litigation we continue to monitor.

In terms of the plaintiff bar, the 2nd Circuit continues to be the venue of choice for SCA litigators by far, attracting the majority of suits filed. While California has historically been popular, its numbers dropped significantly in 2021.

Asia Continues to Dominate

As with prior years, the geographic spread of class actions in 2021 was weighted heavily towards companies headquartered in Asia, with Chinese companies representing 49%.

Historic class action trends with Chinese filers have been driven by accounting and disclosure irregularities. In 2020, a case against [Luckin Coffee](#) saw allegations of overstated revenues culminate in a settlement in October 2021 for \$175m.

Chinese issuers also tend to engage in industry sectors that attract litigation, such as technology, online commerce, and financial services. Cases in 2021 were no different, with half of the cases in the technology sector. Of the 18 filings against Chinese companies, 17 were filed following enforcement actions by local regulators in relation to consumer data usage.

The second largest number of filings were against Canadian businesses, although there was a decrease in the number compared to the previous year (5 suits in 2021, compared to 12 in 2020). Notable is the drop off in Canadian actions relating to cannabis sales and distribution. Canada was followed by Bermuda, Ireland

and Israel. Overall, breakdown by geography in 2021 was broadly consistent with the last 10 years of SCA activity.

Technology Remains the Most Frequently Litigated Sector

Claims against non-US issuers involved companies operating in a wide range of sectors. The most frequently litigated sectors in 2021 were technology (12), services (8) and healthcare (7). This mirrors 2020. The only difference relates to the financial sector where 10 actions were filed in 2020 and only 3 were filed in 2021. The litigation these sectors attract reflect their more highly regulated nature.

Settlements & Dismissals

A total of 26 cases were settled in 2021 for a total of \$703m, with an average settlement value of \$27m. The largest settlements were Luckin (\$175m), Allergan (\$130m) and Novo Nordisk (\$130m). All these cases were settled in the discovery or early pleading phase of litigation.

A total of 39 cases were dismissed in 2021 with 12 cases dismissed without prejudice, 21 cases dismissed with prejudice and 6 cases voluntarily withdrawn by the plaintiff.

There are currently 125 active and ongoing cases against foreign filers (114 from 2018-2021) yet to be fully litigated. Based on prevailing settlement and dismissal trends, these cases may prove to be expensive to resolve.

Looking Ahead

The first quarter of 2022 has already shown similar pace to 2021, with 10 class actions against non-US filers of which 9 were core. We are cautious about speculating about what the US securities litigation landscape will look like for non-US filers for 2022 and beyond, but current indications about key exposures will focus on:

- SPACs & de-SPACs
- Derivative actions
- Growing financial, political and economic risks
- Environmental, Social & Corporate Governance
- Regulatory compliance and oversight

Of these exposures, two of the most interesting are SPACS and De-SPACs, and derivative litigation:

SPACs & De-SPACs

Over 600 SPACs were listed on US exchanges in 2021. SPACs have attracted heavy regulatory scrutiny and spawned growing levels of litigation commonly involving allegations of misrepresentations and fraudulent statements. SPACs accounted for nearly 15% of all SCAs in 2021 but only 2 of these SCAs involved non-US SPAC filers. This is expected to increase in 2022 as domicile changes following the 2021 *Multiplan* court decision with many SPACs reverting to the Cayman Islands to avoid Delaware law and gain certain tax exemptions.

Despite the number of SPAC-related SCAs filed in 2021, few cases have reached the motion to dismiss stage. It remains to be seen how these lawsuits will fare. We expect SCA filings against SPACs and de-SPACs to continue.

Derivative Shareholder Litigation

A joint paper published by AIG and Clyde & Co. in September 2021, [Shareholders Increasingly Targeting D&Os Of Foreign Companies In New York Derivative Actions](#), highlights that over the course of 2021, there was an increase in derivative actions by shareholders involving non-US companies. At least ten derivative actions in New York State courts were filed on behalf of non-US companies, alleging violations of the companies' home country laws. If the New York actions proceed, shareholders may pursue more derivative claims against the directors and officers of non-US companies in US courts.

Two recent dismissals in December 2021 in favor of Bayer AG and UBS Group AG cast some doubt over whether derivative actions against non-US issuers will survive in US courts. Similar derivative cases are pending.

Conclusion

All of the above comes at a time where we've seen stock market volatility in Q1 2022, amid worsening existing macro-economic challenges, such as inflation and supply chain disruption. Expect further uncertainty ahead which may affect the SCA environment.

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 2021 ¹

Number of Class Action Filings

Total Number of Core Federal Filings (Inc US)

151

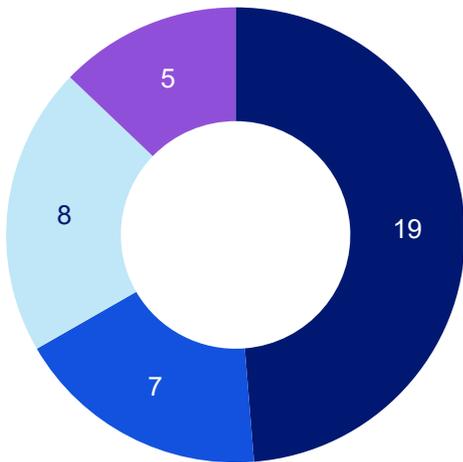
Core Federal Filings Against Foreign Companies

39

Foreign Issuers as % of Total

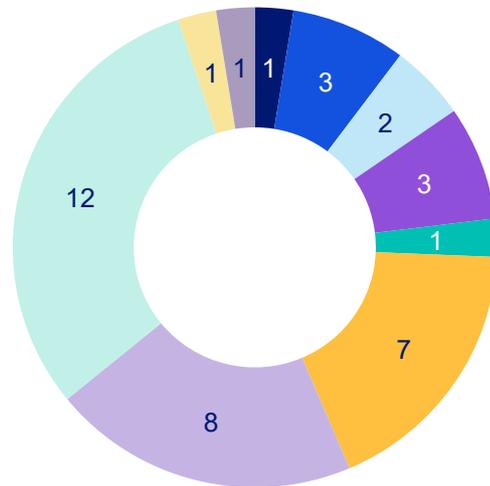
25.8%

Foreign Filings by Headquarter Location
FY 2021



■ Asia ■ Europe ■ Other ■ Canada

Foreign Filings by Sector
FY 2021



■ Capital Goods ■ Consumer
 ■ Energy ■ Financial
 ■ Food Processing ■ Healthcare
 ■ Services ■ Technology
 ■ Materials ■ Insurance

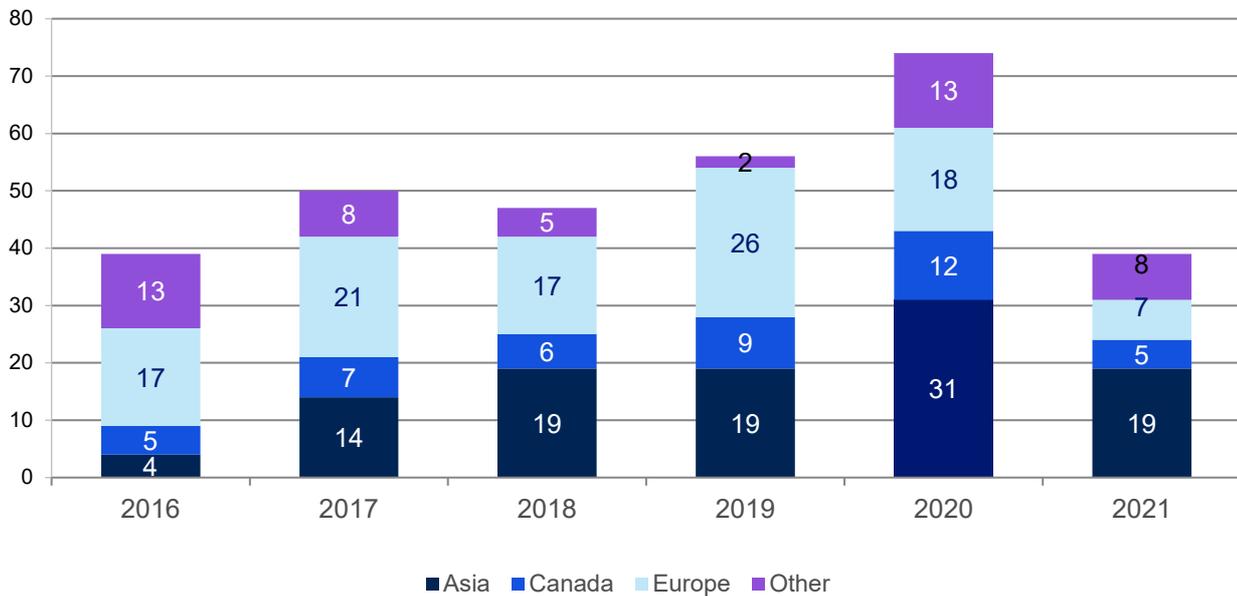
¹ Compiled using data from Stanford School of Law – [Securities Class Action Clearinghouse](#), a collaboration with Cornerstone Research and used with permission. [Core filings](#) are all federal securities class actions, excluding those defined as M&A filings, consolidated into one to prevent double counting.

Annual Statistics 2016 – 2021 ²

Number of Class Action Filings ³

	Total Number of Class Actions	Class Actions Against US Issuers	Class Actions Against Foreign Issuers	Foreign Issuers as % of Total
2021	190	151	39	25.8
2020	193	128	65	33.7
2019	242	186	56	23.1
2018	220	173	47	21.4
2017	213	163	50	23.5
2016	187	147	40	21.4

Foreign Filings by Headquarter Location



² 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.

³ 2016 – 2019 figures from Stanford. AIG calculations from 2020 onwards.

US Class Actions – International Listed Companies ⁴

A list of all the class actions against foreign filers in 2021 and Q1 2022.

Filing Name ⁵	Filing Date	District Court	Exchange	Ticker	HQ	Sector
Grab Holdings Limited	03/16/2022	S.D. New York	NASDAQ	GRAB	Singapore	Financial
Telefonaktiebolaget LM Ericsson:	03/03/2022	E.D. New York	NASDAQ	ERIC	Sweden	Technology
Fennec Pharmaceuticals, Inc.	2/9/2022	M.D. North	NASDAQ	FENC	Canada	Healthcare
New Oriental Education &	02/04/2022	S.D. New York	New York SE	EDU	China	Services
TAL Education Group: ADRs	02/04/2022	S.D. New York	New York SE	TAL	China	Services
Standard Lithium Ltd.	01/27/2022	E.D. New York	New York SE	SLI	Canada	Basic Materials
Clarivate Plc	01/24/2022	E.D. New York	New York SE	CLVT	United	Technology
Volkswagen AG: ADRs	01/14/2022	E.D. Virginia	OTC-BB	VWAGY	Germany	Consumer
Credit Suisse AG: DGAZ	01/06/2022	S.D. New York	OTC-BB	DGAZ	Switzerland	Financial
Meta Materials Inc.	01/03/2022	E.D. New York	NASDAQ	MMAT	Canada	Technology
KE Holdings Inc: ADRs	12/30/2021	S.D. New York	New York SE	BEKE	China	Services
Arrival SA	12/22/2021	S.D. New York	NASDAQ	ARVL	United	Consumer
Cloopen Group Holding Limited:	12/10/2021	S.D. New York	New York SE	RAAS	China	Technology
Paysafe Limited	12/10/2021	S.D. New York	New York SE	PSFE	Bermuda	Services
Playtika Holding Corp.	11/23/2021	E.D. New York	NASDAQ	PLTK	Israel	Services
StoneCo Ltd.	11/19/2021	S.D. New York	NASDAQ	STNE	Cayman	Technology
Tenet Fintech Group Inc.	11/19/2021	E.D. New York	OTC-BB	PKKFF	Canada	Services
Zhangmen Education Inc: ADRs	11/19/2021	S.D. New York	New York SE	ZME	China	Services
Lightspeed Commerce Inc.	11/16/2021	E.D. New York	New York SE	LSPD	Canada	Technology
TMC the metals company Inc.	10/28/2021	E.D. New York	NASDAQ	TMC	Canada	Basic Materials
Hoegh LNG Partners LP	10/27/2021	D. New Jersey	New York SE	HMLP	Bermuda	Energy
Reconnaissance Energy Africa	10/25/2021	E.D. New York	OTC-BB	RECAF	Canada	Energy
Amarin Corporation plc	10/21/2021	D. New Jersey	NASDAQ	AMRN	Ireland	Healthcare
D-MARKET Electronic Services	10/21/2021	S.D. New York	NASDAQ	HEPS	Turkey	Services
Nano-X Imaging Ltd.	10/05/2021	E.D. New York	NASDAQ	NNOX	Israel	Healthcare
Champignon Brands Inc.	10/04/2021	Central District	OTC	SHRMF	Canada	Food Processing
Waterdrop Inc: ADRs	09/14/2021	S.D. New York	New York SE	WDH	China	Financial
Koninklijke Philips N.V.	08/16/2021	E.D. New York	New York SE	PHG	Netherlands	Healthcare
Yalla Group Limited: ADRs	08/13/2021	S.D. New York	New York SE	YALA	Other	Technology
Iterum Therapeutics plc	08/05/2021	N.D. Illinois	NASDAQ	ITRM	Ireland	Healthcare
Oatly Group AB: ADRs	07/26/2021	S.D. New York	NASDAQ	OTLY	Sweden	Consumer
BlueCity Holdings Limited: ADRs	07/19/2021	E.D. New York	NASDAQ	BLCT	China	Services
360 DigiTech, Inc.	07/13/2021	S.D. New York	NASDAQ	QFIN	China	Financial

⁴ 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.

⁵ ADRs = [American Depositary Receipts](#)

Filing Name ⁵	Filing Date	District Court	Exchange	Ticker	HQ	Sector
Full Truck Alliance Co. Ltd:	07/12/2021	E.D. New York	New York SE	YMM	China	Technology
Kanzhun Limited: ADRs	07/12/2021	D. New Jersey	NASDAQ	BZ	China	Services
Orphazyme A/S: ADRs	07/09/2021	N.D. Illinois	NASDAQ	ORPH	Other	Healthcare
Didi Global Inc: ADRs	07/06/2021	S.D. New York	New York SE	DIDI	China	Technology
Tarena International, Inc: ADRs	06/22/2021	E.D. New York	NASDAQ	TEDU	China	Services
RLX Technology Inc: ADRs	06/09/2021	S.D. New York	New York SE	RLX	China	Consumer
GW Pharmaceuticals, PLC:	05/27/2021	S.D. California	NASDAQ	GWPH	United	Healthcare
Volkswagen AG	04/30/2021	C.D. California	OTC-BB	VWAGY	Germany	Consumer
Credit Suisse Group AG: ADRs	04/16/2021	S.D. New York	New York SE	CS	Switzerland	Financial
Canaan Inc: ADRs	04/15/2021	S.D. New York	NASDAQ	CAN	China	Technology
Ebang International Holdings Inc.	04/08/2021	S.D. New York	NASDAQ	EBON	China	Technology
SOS Limited: ADRs	03/30/2021	D. New Jersey	New York SE	SOS	China	Technology
BELLUS Health Inc.	03/16/2021	S.D. New York	NASDAQ	BLU	Canada	Healthcare
Neptune Wellness Solutions Inc.	03/16/2021	E.D. New York	NASDAQ	NEPT	Canada	Healthcare
EHang Holdings Limited: ADRs	02/17/2021	S.D. New York	NASDAQ	EH	China	Capital Goods
Jianpu Technology Inc: ADRs	02/17/2021	S.D. New York	New York SE	JT	China	Technology
Astrazeneca PLC: ADRs	01/26/2021	S.D. New York	NASDAQ	AZN	United	Healthcare
9F Inc: ADRs	01/20/2021	D. New Jersey	NASDAQ	JFU	China	Technology
Lizhi Inc: ADRs	01/20/2021	E.D. New York	NASDAQ	LIZI	China	Technology



www.aig.com

Brian Botkin

Deputy Chief Underwriting
Officer, International Financial
Lines & Global Head of
Multinational, Financial Lines,
AIG

Tel: +44 207 063 5500

brian.botkin@aig.com

Jason Kelly

Head of International Financial
Lines, AIG

Tel: +1 (715) 303-0006

jason.kelly@aig.com

Christopher Magee

Head of UK Commercial D&O,
AIG

Tel: +44 203 217 1844

christopher.magee@aig.com

The purpose of this document is to provide information only and you should not take any action in reliance on the information contained in this document. AIG does not accept any liability if this document is used for an alternative purpose from which it is intended.

American International Group, Inc. (AIG) is a leading global insurance organization. AIG member companies provide a wide range of property casualty insurance, life insurance, retirement solutions, and other financial services to customers in more than 80 countries and jurisdictions. These diverse offerings include products and services that help businesses and individuals protect their assets, manage risks and provide for retirement security. AIG common stock is listed on the New York Stock Exchange.

Additional information about AIG can be found at www.aig.com | YouTube: www.youtube.com/aig | Twitter: [@AIGemea](https://twitter.com/AIGemea) | www.twitter.com/AIGemea | LinkedIn: www.linkedin.com/company/aig. These references with additional information about AIG have been provided as a convenience, and the information contained on such websites is not incorporated by reference herein.

AIG is the marketing name for the worldwide property-casualty, life and retirement, and general insurance operations of American International Group, Inc. For additional information, please visit our website at www.aig.com. All products and services are written or provided by subsidiaries or affiliates of American International Group, Inc. Products or services may not be available in all countries and jurisdictions, and coverage is subject to underwriting requirements and actual policy language. Non-insurance products and services may be provided by independent third parties.

American International Group UK Limited is registered in England: company number 10737370. Registered address: The AIG Building, 58 Fenchurch Street, London EC3M 4AB. American International Group UK is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and Prudential Regulation Authority (FRN number 781109). This information can be checked by visiting the FS Register (www.fca.org.uk/register).

AIG Europe S.A. is an insurance undertaking with R.C.S. Luxembourg number B 218806. AIG Europe S.A. has its head office at 35D Avenue John F. Kennedy, L-1855, Luxembourg. AIG Europe S.A. is authorised by the Luxembourg Ministère des Finances and supervised by the Commissariat aux Assurances 7, boulevard Joseph II, L-1840 Luxembourg, GD de Luxembourg, Tel.: (+352) 22 69 11 - 1, caa@caa.lu, www.caa.lu/

©2022 American International Group, Inc. All rights reserved