

# US Securities Class Actions

## International US-Listed Companies | YTD Q3 2018



Welcome to the first edition of AIG's US Securities Class Action Bulletin, which will be published on a quarterly basis. The newsletter analyses the latest data on US securities class action filings from Stanford School of Law, and identifies the trends behind the numbers. The aim is to inform stakeholders at a time when class action lawsuits have hit a record high, giving clients and brokers the most up-to-date information on what is driving the challenging claims environment and, in particular, actions against foreign filers.

### **Increasing number of claims against Foreign Filers**

The annual statistics show a trend that shows no signs of slowing down: the total number of federal securities class actions is rising year-on-year and the proportion of such lawsuits against foreign companies listed on US exchanges is also rising. Plaintiff lawyers are certainly not shying away from bringing foreign companies into US courts. Non-US companies account for approximately 16% of companies on US exchanges but represented 23% of all traditional securities class actions in 2017.

### **Rate of litigation up as number of listed companies has decreased**

While class action litigation is at an all-time high, the overall numbers of US-listed firms is diminishing. There are several reasons for this, including M&A activity, cost of compliance and the relative ease of sourcing funding privately. With a smaller pool of companies for plaintiff lawyers to target and focus on, listed companies have never been at a greater risk of being hit with a securities class action suit. Foreign filers are no exception to this rule. Rightly or wrongly, foreign filers are often viewed as less experienced than their domestic counterparts, with weaker SOX compliance and disclosures. Some plaintiffs' lawyers pursue these companies in the belief they are more fearful of litigation in US courts and will be more inclined to settle actions earlier, and for higher amounts, than a domestic US company might.

Another trend to note is the US Supreme Court decision in *Cyan, Inc v Beaver County Employees Retirement Fund*. This has paved the way for more claims under the Securities Act of 1933 to be brought within state court jurisdiction, in addition to federal courts. This is expected to drive up the cost of claims and increase the number of settlements as state courts may be less likely to dismiss cases early on.

### **Over-the Counter ADRs may be subject to US Securities laws as well**

Of particular concern for foreign companies is the prospect that US securities laws will apply to overseas firms not listed on US exchanges. A recent Ninth Circuit Court of Appeals decision allowed plaintiffs to bring a US securities class action lawsuit against Toshiba in the wake of the company's \$1.2 billion accounting scandal, despite the fact the claim was based on the purchase of Toshiba's unsponsored over-the-counter (OTC) American Depositary Receipts (ADRs). This should be a wake-up call to all companies with Level 1 ADRs. The case has significant implications for other unlisted foreign firms that had been somewhat shielded from securities class actions since the US Supreme court's *Morrison* ruling in 2010 as it opens the door for similar actions to be taken in the future.

The good news is that AIG has a range of products that covers companies and their directors against securities class action claims. These policies are responding to claims by covering legal costs and offering much-needed advice to defendants navigating the complex and often fraught US tort system, with the aim of achieving the best outcome.

**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 YTD Q3 2018 <sup>1</sup>

## Number of Class Action Filings in Q3 2018

Total Number of Class Actions (Inc US)

**285**

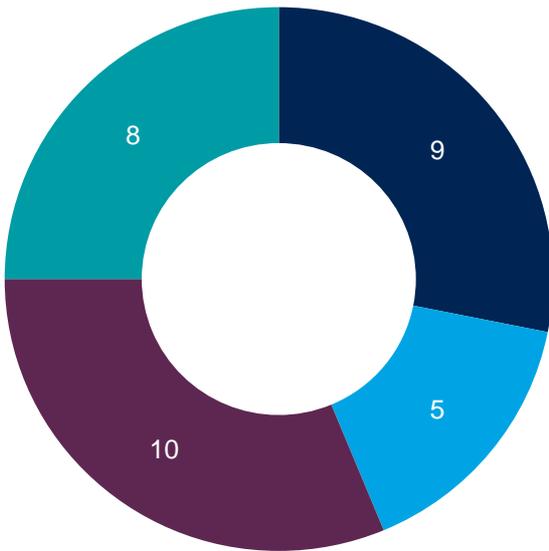
Class Actions Against Foreign Companies

**32**

Foreign Issuers as % of Total

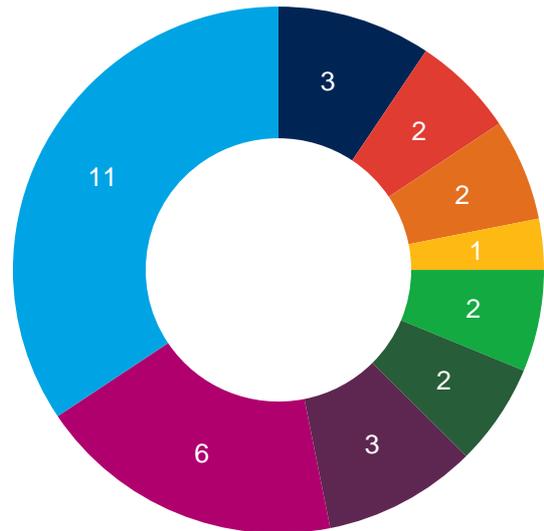
**11.23**

## Foreign Filings by Headquarter Location <sup>2</sup> Q3 2018



■ Asia ■ Canada ■ Europe ■ Other

## Foreign Filings by Sector Q3 2018



■ Basic Materials ■ Capital Goods ■ Consumer  
 ■ Crypto-currency ■ Energy ■ Financial  
 ■ Healthcare ■ Services ■ Technology

<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.

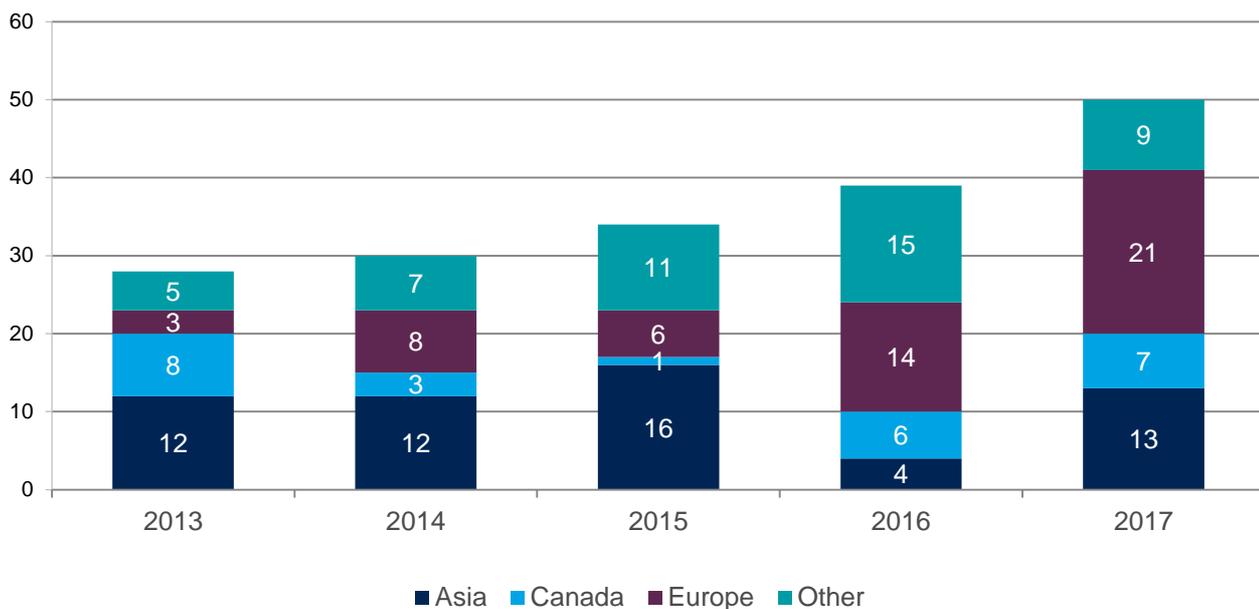
<sup>2</sup> Bermuda (1), Brazil (1), Canada (5), China (7), Germany (1), Greece (1), Ireland (1), Israel (3), Mexico (2), Netherlands (1), Singapore (2), South Africa (1) Sweden (1), Switzerland (1) United Kingdom (4)

## Annual Statistics 2013 – 2017 <sup>3</sup>

### Number of Class Actions Filings – Core Filings

	Total Number of Class Actions	Class Actions Against US Issuers	Class Actions Against Foreign Issuers	Foreign Issuers as % of Total
<b>2017</b>	214	164	50	23.36
<b>2016</b>	186	147	39	20.96
<b>2015</b>	173	139	34	19.65
<b>2014</b>	155	125	30	19.35
<b>2013</b>	152	124	28	18.42

### Foreign Filings by Headquarter Location – Core Filings



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## US Securities Class Actions – Foreign Filers – YTD Q3 2018<sup>4</sup>

Filing Name <sup>5</sup>	Filing Date	District Court	Exchange	Ticker	HQ	Sector
SodaStream International Ltd.	09/13/2018	E.D. New York	NASDAQ	SODA	Israel	Consumer Cyclical
Cronos Group, Inc.	09/04/2018	S.D. New York	NASDAQ	CRON	Canada	Healthcare
Pinduoduo Inc. : American Depositary Shares	08/21/2018	S.D. New York	NASDAQ	PDD	China	Services
Nielsen Holdings PLC	08/08/2018	S.D. New York	New York SE	NLSN	United Kingdom	Services
GDS Holdings Limited	08/02/2018	S.D. New York	NASDAQ	GDS	China	Technology
Glencore PLC	07/09/2018	D. New Jersey	OTC-BB	GLCNF	Switzerland	Basic Materials
Sibanye Gold Limited : American Depositary Shares	06/27/2018	E.D. New York	New York SE	SBGL	South Africa	Basic Materials
Mitel Networks Corporation	06/20/2018	S.D. New York	NASDAQ	MITL	Canada	Technology
TAL Education Group	06/18/2018	S.D. New York	New York SE	TAL	China	Services
Deutsche Bank Aktiengesellschaft	06/07/2018	S.D. New York	New York SE	DB	Germany	Financial
Valeant Pharmaceuticals International, Inc. Call Options & Put Options	06/06/2018	D. New Jersey	New York SE	VRX	Canada	Healthcare
Aegean Marine Petroleum Network Inc.	06/05/2018	S.D. New York	New York SE	ANW	Greece	Energy
Orbotech Ltd.	06/04/2018	D. Delaware	NASDAQ	ORBK	Israel	Technology
Micro Focus International plc	05/23/2018	N.D. California	New York SE	MFGP	United Kingdom	Technology
Prothena Corporation plc	05/15/2018	N.D. California	NASDAQ	PRTA	Ireland	Healthcare
Kulick and Sofa Industries, Inc.	05/11/2018	C.D. California	NASDAQ	KLIC	Singapore	Technology
Flex Ltd.	05/08/2018	N.D. California	NASDAQ	FLEX	Singapore	Technology
Gridsum Holding Inc.	04/25/2018	S.D. New York	NASDAQ	GSUM	China	Technology
Telefonaktiebolaget LM Ericsson : American Depositary Shares	04/05/2018	S.D. New York	NASDAQ	ERIC	Sweden	Technology
Validus Holdings, Ltd.	03/20/2018	D. New Jersey	New York SE	VR	Bermuda	Financial
Shanda Games Limited : American Depositary Shares	03/19/2018	S.D. New York	NASDAQ	GAME	China	Services
Cemex, S.A.B. de C.V. : American Depositary Shares	03/16/2018	S.D. New York	New York SE	CX	Mexico	Capital Goods
BRF S.A.	03/12/2018	S.D. New York	New York SE	BRFS	Brazil	Consumer Non-Cyclical

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<sup>5</sup> ADRs = American Depositary Shares

Filing Name <sup>5</sup>	Filing Date	District Court	Exchange	Ticker	HQ	Sector
magicJack VocalTec Ltd.	03/08/2018	S.D. Florida	NASDAQ	CALL	Israel	Services
Banro Corporation	03/05/2018	S.D. New York	New York SE	BAA	Canada	Basic Materials
Grupo Televisa, S.A.B. ADRs	03/05/2018	S.D. New York	New York SE	TV	Mexico	Services
NQ Mobile	02/10/2018	E.D. Texas	New York SE	NQ	China	Technology
BitConnect : Initial Coin Offering	02/07/2018	M.D. Florida	M.D. Florida	M.D. Florida	UK	Cryptocurrency
Chicago Bridge & Iron Company N.V.	01/29/2018	S.D. Texas	New York SE	CBI	Netherlands	Capital Goods
Ballard Power Systems Inc.	01/27/2018	C.D. California	NASDAQ	BLDP	Canada	Energy
Vodafone Group Public Limited Company :ADRs	01/18/2018	S.D. New York	NASDAQ	VOD	UK	Technology
Xunlei Limited : ADRs	01/18/2018	S.D. New York	NASDAQ	XNET	China	Technology

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