

US Securities Class Actions

International US-Listed Companies | FY 2018



US securities class action filings remained at elevated levels in 2018. This article reviews the full year trends for 2018 and looks ahead to what 2019 may hold. This information is pertinent to any US-listed foreign filer, whether their shares are directly listed in the US or whether their US listing is through American Depository Receipts (ADRs). Even companies with shares traded over the counter in the US are not safe.

No Sign of Slowing Down

Last year was the second highest year [on record](#) for securities class action filings, trailing only 2017 (excluding the IPO laddering claims in 2001). Due to the high number of merger objection cases against domestic filers, we have focused most of our analysis on core filings, which exclude M&A cases. Looking only at these core filings, 2018 was also the second highest on record, following only 2008 when the volatility caused by the global financial crisis pushed filings to record levels. Focussing solely on companies with their headquarters outside the US, filings also remain at elevated levels, with 47 traditional class actions against non-US companies last year, and over 50 when including merger objection claims. This is close to double the long-term ¹ average of 24. Importantly, there is no single cause of the spike over the last two years that can explain the elevated number of filings, as in 2011 when there was an increased number of claims against foreign filers that resulted from a high number of Chinese reverse mergers. The evidence suggests foreign filers should expect this heightened litigation environment to continue.

Many Industries Targeted

Claims against non-US companies were brought against a wide group of industries, with ten different sectors represented in this year's group of class actions. Leading the way was the Technology sector with nearly double the next highest contributing sectors, Services and Financial. The Healthcare, Consumer and Basic Materials sectors all had five or more suits. Two of the actions against companies in the financial sector involved companies who had undertaken an Initial Coin Offering, or ICO, a trend likely to continue as regulators and investors come to grips with this emerging industry.

All Listing Types Are At Risk

It is clear that all non-US companies with securities trading in the US could find themselves subject to a securities action. In 2018, class actions were taken against non-US companies who were directly listed on the NYSE or NASDAQ exchanges, as well as entities with ADRs traded on NYSE or NASDAQ. Significantly, four companies that were subject to a US class action had ADRs that were only traded Over-The-Counter. Whilst a foreign company with a direct listing may be more exposed, foreign companies without direct listings could still be dragged into a US court. Our insights paper [UK Public Companies and US Securities Class Actions – a Hidden Risk?](#) gives more detail on this significant and rapidly changing area.

Geographic Distribution of Filings Changing Year on Year

Just as no listing type is safe, there are no clear trends regarding the home country of the companies subject to securities class actions filings. The trends of 2017 were broadly replicated in 2018 with companies headquartered in Europe and Asia having the most filings. In 2017, Europe was in the lead with 21 filings versus Asia with 13, and in 2018 they flipped positions with Asia leading with 19 filings and Europe close behind with 17. However, both of these regions are experiencing filings well above their historic average, with Asia's 19 class actions double their historic average of 8 and Europe's 17 more than double their 20 year average of 7. An analysis of the core filings by geographic region since 2014 is on page 4.

¹ 1997 to 2017

What Does 2019 Hold?

The increased levels of core filings against international companies seem here to stay. The fact that this elevated filing environment has occurred in relatively good economic times, compared to previous spikes which occurred during an economic downturn, should be concerning for all directors and officers. The rise in filings has resulted in a corresponding increase in claims notified under D&O policies. The rise in class actions has also led to more substantial defence costs being paid out from D&O policies as cases move through the courts. Although it is still very early in these 2018 cases, the increased number of cases will likely also lead to increased settlement payments under D&O policies compared to prior periods. Significantly, the trends reveal there is no single sector, listing or geography that is targeted, so all public companies are potentially at risk.

This heightened claims environment has put pressure on the D&O market. Rates have hardened quickly outside the US, and insurers have limited the capacity deployed on US-exposed D&O. The good news is that AIG's 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.

Class Actions FY 2018 ²

Number of Class Action Filings in 2018

Total Number of Class Actions (Inc. US)

221

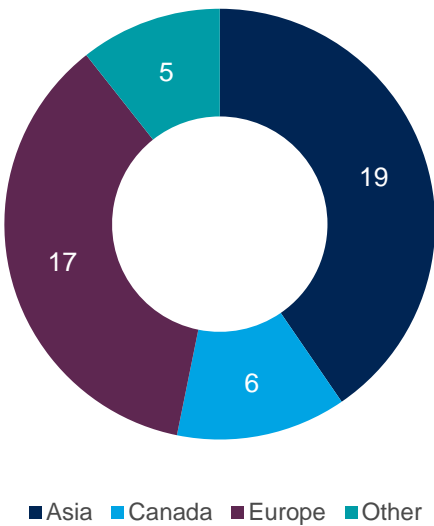
Class Actions Against Foreign Companies

47

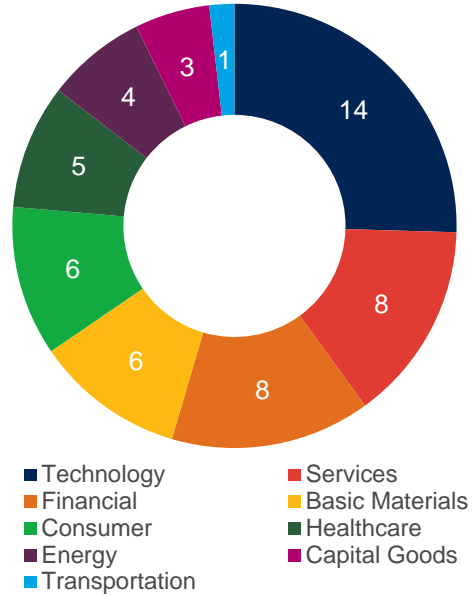
Foreign Issuers as % of Total

21.27

Foreign Filings by Headquarter Location FY 2018



Foreign Filings by Sector ³ FY 2018



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.

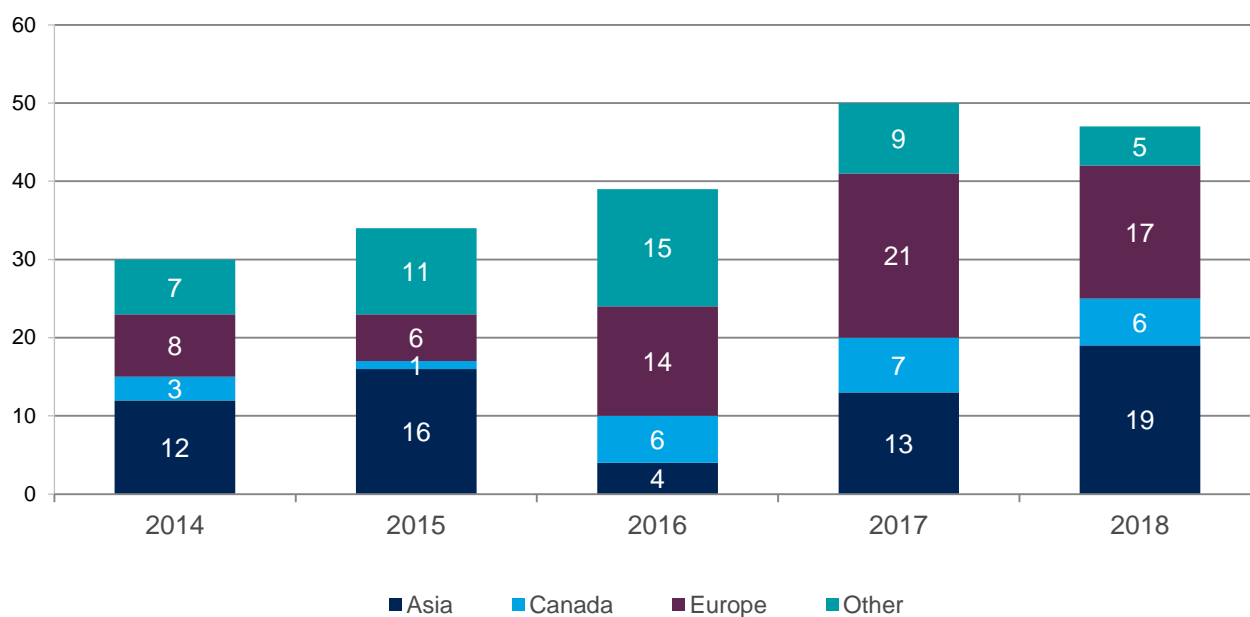
³ All filings, not just core.

Annual Statistics 2014 – 2018 ⁴

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
2018	221	174	47	21.27
2017	214	164	50	23.36
2016	186	147	39	20.96
2015	173	139	34	19.65
2014	155	125	30	19.35

Foreign Filings by Headquarter Location – Core Filings



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US Securities Class Actions | Foreign Filers – All – FY 2018 ⁵

Filing Name ⁶	Filing Date	District Court	Exchange	Ticker	HQ	Sector
Alkermes Public Limited Company	12/27/18	E.D. New York	NASDAQ	ALKS	Ireland	Healthcare
Allergan plc	12/21/18	S.D. New York	New York SE	AGN	Ireland	Healthcare
JA Solar Holdings Co. Ltd: American Depositary Shares	12/20/18	S.D. New York	NASDAQ	JASO	China	Technology
Tenaris S.A.	12/12/18	E.D. New York	New York SE	TS	Luxembourg	Energy
BRF S.A.	12/03/18	S.D. New York	New York SE	BRFS	Brazil	Consumer Non-Cyclical
Cheetah Mobile Inc.: American Depositary Shares	11/30/18	S.D. New York	New York SE	CMCM	China	Technology
Ternium S.A.	11/29/18	E.D. New York	New York SE	TX	Luxembourg	Basic Materials
PPDAI Group Inc.: American Depositary Shares	11/26/18	E.D. New York	New York SE	PPDF	China	Financial
Kulick and Sofa Industries, Inc.	11/05/18	C.D. California	NASDAQ	KLIC	Singapore	Technology
China Zenix Auto International Limited	10/31/18	D. New Jersey	OTC-BB	ZXAIY	China	Consumer Cyclical
Jianpu Technology Inc.	10/25/18	S.D. New York	New York SE	JT	China	Technology
Nissan Motor Co., Ltd: American Depositary Shares	10/12/18	M.D. Tennessee	OTC-BB	NSANY	Japan	Consumer Cyclical
NQ Mobile	10/02/18	E.D. Texas	New York SE	NQ	China	Technology
SodaStream International Ltd.	09/13/18	E.D. New York	NASDAQ	SODA	Israel	Consumer Cyclical
Aspen Insurance Holdings Limited	09/11/18	S.D. New York	New York SE	AHL	Bermuda	Financial
Nevsun Resources Ltd.	09/11/18	S.D. New York	New York SE	NSU	Canada	Basic Materials
Glencore PLC	09/07/18	D. New Jersey	OTC-BB	GLCNF	Switzerland	Basic Materials
Pinduoduo Inc.: American Depositary Shares	08/21/18	S.D. New York	NASDAQ	PDD	China	Services
Huazhu Group Ltd.	08/10/18	C.D. California	NASDAQ	HTHT	China	Services
Nielsen Holdings PLC	08/08/18	S.D. New York	New York SE	NLSN	United Kingdom	Services
Flex Ltd.	08/05/18	N.D. California	NASDAQ	FLEX	Singapore	Technology
magicJack VocalTec Ltd.	08/03/18	S.D. Florida	NASDAQ	CALL	Israel	Services
Fanhua, Inc.: American Depositary Shares	07/09/18	S.D. New York	NASDAQ	FANH	China	Financial
Pretium Resources, Inc.	07/09/18	S.D. New York	New York SE	PVG	Canada	Basic Materials
Deutsche Bank Aktiengesellschaft	07/06/18	S.D. New York	New York SE	DB	Germany	Financial
BitConnect: Initial Coin Offering	07/02/18	M.D. Florida	ICO		United Kingdom	Financial

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⁶ ADRs = American Depositary Shares

Filing Name ⁶	Filing Date	District Court	Exchange	Ticker	HQ	Sector
Sibanye Gold Limited: American Depositary Shares	06/27/18	E.D. New York	New York SE	SBGL	South Africa	Basic Materials
Mitel Networks Corporation	06/20/18	S.D. New York	NASDAQ	MITL	Canada	Technology
Cloud With Me Ltd: Initial Coin Offering	06/19/18	W.D. Pennsylvania	ICO		Ireland	Financial
TAL Education Group	06/18/18	S.D. New York	New York SE	TAL	China	Services
Ryanair Holdings plc	06/11/18	S.D. New York	NASDAQ	RYAAY	Ireland	Transportation
Namaste Technologies Inc.	06/10/18	C.D. California	OTC-BB	NXTTF	Canada	Services
Micro Focus International plc	05/23/18	N.D. California	New York SE	MFGP	United Kingdom	Technology
Prothena Corporation plc	05/15/18	N.D. California	NASDAQ	PRTA	Ireland	Healthcare
Aphria Inc.	05/12/18	S.D. New York	New York SE	APHA	Canada	Healthcare
Loma Negra Compania Industrial Argentina Sociedad Anonima American Depositary Shares	05/12/18	S.D. New York	New York SE	LOMA	Argentina	Capital Goods
Aegean Marine Petroleum Network Inc.	05/06/18	S.D. New York	New York SE	ANW	Greece	Energy
China Auto Logistics Inc.	05/06/18	D. New Jersey	NASDAQ	CALI	China	Consumer Cyclical
Telefonaktiebolaget LM Ericsson: American Depositary Shares	05/04/18	S.D. New York	NASDAQ	ERIC	Sweden	Technology
Banro Corporation	05/03/18	S.D. New York	New York SE	BAA	Canada	Basic Materials
Grupo Televisa, S.A.B: American Depositary Shares	05/03/18	S.D. New York	New York SE	TV	Mexico	Services
Gridsum Holding Inc.	04/25/18	S.D. New York	NASDAQ	GSUM	China	Technology
Adient PLC	04/10/18	S.D. New York	New York SE	ADNT	Ireland	Consumer Cyclical
Cronos Group, Inc.	04/09/18	S.D. New York	NASDAQ	CRON	Canada	Healthcare
Orbotech Ltd.	04/06/18	D. Delaware	NASDAQ	ORBK	Israel	Technology
Validus Holdings, Ltd.	03/20/18	D. New Jersey	New York SE	VR	Bermuda	Financial
Shanda Games Limited American Depositary Shares	03/19/18	S.D. New York	NASDAQ	GAME	China	Services
Cemex, S.A.B. de C.V: American Depositary Shares	03/16/18	S.D. New York	New York SE	CX	Mexico	Capital Goods
Credit Suisse Group AG: Velocity Shares Daily Inverse VIX Short Term exchange traded notes	03/14/18	S.D. New York	NASDAQ	XIV	Switzerland	Financial
GDS Holdings Limited	02/08/18	S.D. New York	NASDAQ	GDS	China	Technology
Interoil Corporation	02/01/18	N.D. Texas	New York SE	IOC	Singapore	Energy
Chicago Bridge & Iron Company N.V.	01/29/18	S.D. Texas	New York SE	CBI	Netherlands	Capital Goods
Ballard Power Systems Inc.	01/27/18	C.D. California	NASDAQ	BLDP	Canada	Energy
Vodafone Group Public Limited Company: American Depositary Shares	01/18/18	S.D. New York	NASDAQ	VOD	United Kingdom	Technology

Filing Name ⁶	Filing Date	District Court	Exchange	Ticker	HQ	Sector
Xunlei Limited: American Depositary Shares	01/18/18	S.D. New York	NASDAQ	XNET	China	Technology

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