

Directors and Officers Liability

Introduction to ADRs



Categories of ADR

	Non Capital Raising		Capital Raising
Un-sponsored	Sponsored Level I	Sponsored Level II	Sponsored Level III
<ul style="list-style-type: none"> No involvement from company in setting up programme 	<ul style="list-style-type: none"> Company directly involved in setting up programme 	<ul style="list-style-type: none"> Company directly involved in setting up programme 	<ul style="list-style-type: none"> Company directly involved in setting up programme
<ul style="list-style-type: none"> No SEC registration requirements 	<ul style="list-style-type: none"> F6 registration statement 	<ul style="list-style-type: none"> F6 registration statement 	<ul style="list-style-type: none"> F6 registration statement
	<ul style="list-style-type: none"> Exempt under Rule 12g 3-2(b) from full reporting 	<ul style="list-style-type: none"> SEC Form 20-F annual reporting US GAAP 	<ul style="list-style-type: none"> SEC Form 20-F annual reporting Form F-1 US GAAP
	<ul style="list-style-type: none"> Over the Counter Market 	<ul style="list-style-type: none"> NYSE, AMEX, NASDAQ 	<ul style="list-style-type: none"> NYSE, AMEX, NASDAQ

Benefits & Disadvantages of ADR programme

Benefits	Disadvantages
Convenient way for investors to hold foreign shares. <ul style="list-style-type: none">• Simplified trading & settlement.	Cost of implementation & maintenance.
May be used for equity financing.	Registration requirements with SEC and ongoing reporting. <ul style="list-style-type: none">• For Levels 2 and 3 only.
Recognised securities for US bank & pension portfolios.	Increased exposure to US litigation.
Increased liquidity & visibility for issuer in overseas market	Potential impact on D&O premium & coverage.

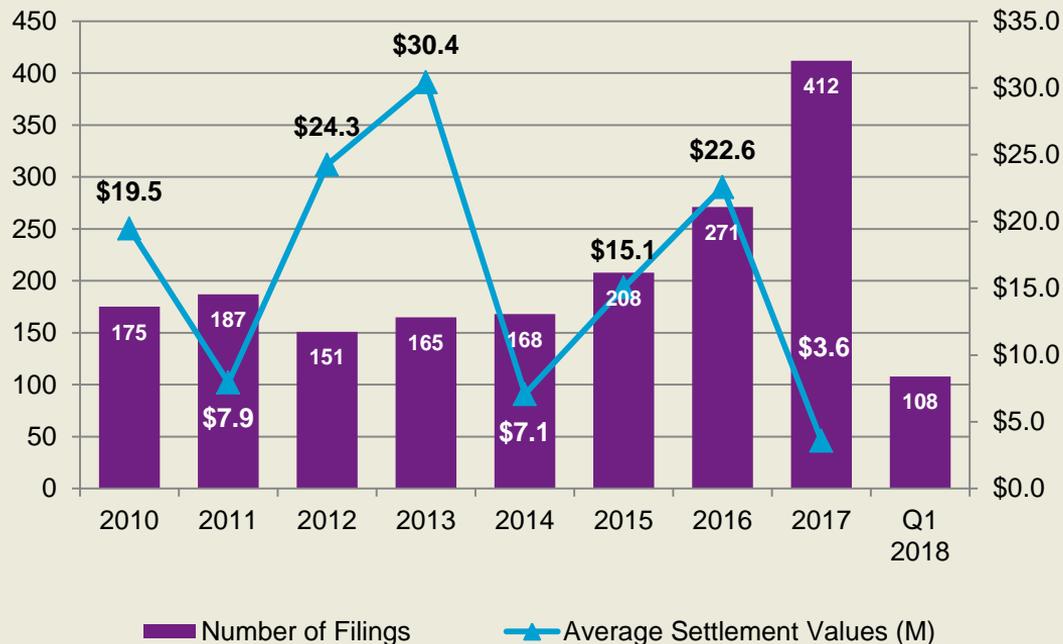
Directors and Officers Liability

2018 Securities Class Action Trends



Federal Securities Class Action Filings (at-a-glance)

Federal securities class action filings and average settlement



2017 Filings

- 197** number of merger objection SCA filed
- 216** number of misrepresentation (10b-5, section 11 or 12) suits filed
- 19** number of "other" SCA filed
- 25%** misrepresentation actions that are accounting-related allegations
- 75%** misrepresentation actions that are non-accounting-related allegations
- 20** number of filings in the 5th circuit

2017 Settlements

	Less than \$10mm	\$10-19.9mm	\$20-49.9mm	\$50-99.9mm	\$100mm or greater
2017	61%	11%	14%	7%	8%
2016	51%	13%	17%	5%	15%
2015	58%	13%	9%	7%	13%

Emerging Trends: How will they impact 2018?

Securities lawsuit filings at historically high levels



- 412 securities class action lawsuit filings alone during 2017 represent the **highest annual number of securities suit filings since 2001**.
- **The rate of litigation**, that is the number of securities class action filings relative to the number of public companies **is at an all-time high**.

Event-driven securities lawsuits swell



- **Plaintiffs' lawyers** have shifted their focus away from companies' financials and **toward adverse developments** in companies' operations and events.

Examples:

Health, safety and environment:

Oil production co. sued following an explosion. Alleged – company didn't warn investors of safety concerns.

Climate change: Shareholders sued oil company for climate change disclosures.

#metoo: \$90 million to settle shareholder claims from a sexual harassment scandal.

Does less federal regulation mean less regulation?



- The decidedly **conservative cast** of the administration's nominees will have a significant impact on lower federal courts proceedings for years to come.
- More **defendant friendly** approach to business disputes and other commercial matters.
- **Beware of "Balkanization"** of enforcement as a single federal regulator is replaced by multiple state and local regulators looking to fill perceived gaps in regulation and enforcement – each with their own set of expectations and demands.

Directors and Officers Liability Class Actions in Latin America



Brazilian oil & gas company - 2014

After an alleged money-laundering and kick-back scheme was revealed, the price of the company securities declined sharply, and investors brought claims against the company and its officers and directors under both the Securities Act and the Exchange Act, alleging false and misleading statements regarding the company's value, management, and controls.

While common and preferred stock are listed on a Brazilian stock exchange and are thus exempt from registration under the U.S. securities laws, the companies' American Depositary Shares ("ADSs") trade on the New York Stock Exchange ("NYSE"), and its debt securities, like most corporate debt, trade in the over the counter ("OTC") market.

A key issue in the case was that the U.S. securities laws applied to OTC trades in the companies' debt and granted class certification to classes of investors who purchased such ADSs on the NYSE and who purchased its debt securities in "domestic transactions."

Brazilian mining company - 2015

A securities class action suit was filed against a Brazilian multinational metals and mining corporation following allegations that it made false and/or misleading statements and failed to disclose material adverse information about its business or operations.

The class action filing claims the defendants made false and/or misleading statements and failed to disclose certain facts about a dam operated by one of the companies' Joint Ventures.

The failure of a tailings dam had as a consequence that at least 11 people were killed and others were missing following the environmental catastrophe.

The lawsuit alleges that the Company did not inform investors that the bursting of the dam resulted in the spillage of toxic waste.

The class action complaint states that the Company's programs designed to mitigate environmental, health and safety occurrences were deficient.

Mexican aviation company - 2015

According to the complaint, all persons or entities, (the "Class"), who purchased American Depositary Shares ("ADSs") in and/or traceable to the Company's initial public offering were seeking to pursue remedies under the Securities Act of 1933.

The Company's ADSs were listed and began trading on New York Stock Exchange ("NYSE") so this class action relates to the ADSs listed on the NYSE that were sold in the IPO.

The Registration Statement issued in connection with the IPO was negligently prepared and, as a result, contained untrue statements of material fact and omitted to disclose material information required pursuant to the regulations governing the preparation of the Registration Statement.

However, on July 2016, the Court issued an Order dismissing this case with prejudice.

Mexican construction and real state company. - 2017

An investor rights law firm filed a class action seeking to recover investor's losses under the federal securities laws.

According to the lawsuit, the Company made false and/or misleading statements and/or failed to disclose that between 2010 and 2013, the company had overstated its revenue by 355% by reporting fictitious sales.

As a result, defendants' statements about the Company's business, operations and prospects were materially false and misleading and/or lacked a reasonable bases at all relevant times.

Therefore, when the true details entered the market, the lawsuit claims that investors suffered damages.

Mexican multimedia company- 2018

Several law firms announced that a class action lawsuit has been filed against the Company and certain of its officers.

The class action is on behalf of a class consisting of investors who acquired the Company's ADRs between April 11, 2013 and January 25, 2018.

The class action is seeking to recover damages caused by Defendants' violations of the federal securities laws and to pursue remedies under the Securities Exchange Act of 1934.

The Complaint alleges that throughout the Class Period, Defendants made materially false and misleading statements regarding the Company's business, operational and compliance policies, including an unlawful bribery scheme.

Furthermore, the Complaint also alleges that the Company lacked effective internal controls over financial reporting and that as a result of the foregoing, the Company's ADR traded at artificially inflated prices during the Class Period, and class members suffered significant losses and damages.

Mexican building materials company- 2018

Several law firms announced that a class action lawsuit has been filed against this Company and certain of its officers alleging the defendants made materially false and misleading statements regarding the Company's business, operational and compliance policies including an unlawful bribery scheme.

The Class Period is (August 14, 2014 and March 13, 2018).

The class action, seeks to recover compensable damages caused by Defendants' violations of the federal securities laws and to pursue remedies under the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder for those investors who acquired the Company's ADRs during the Class Period.

The U.S. Department of Justice is investigating the Company to determine whether any violations of federal bribery laws occurred.

Directors and Officers Liability

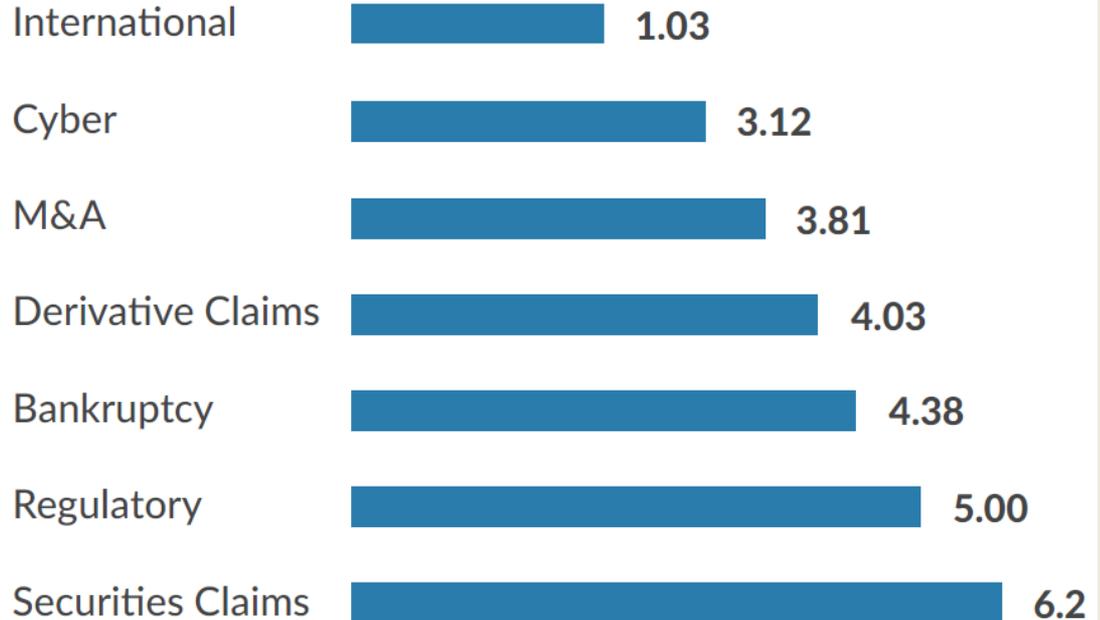
Impact of Class Actions on D&O Policies



ASKING THE UNDERWRITERS

ASK THE UNDERWRITERS

We asked D&O underwriters to rank, on a scale from 1-7, what type of claims concern them the most, with 7 being most concerned. It's no surprise that securities claims are the most concerning type of claims, but regulatory and bankruptcy are still a significant concern.



ASKING THE UNDERWRITERS

ASK THE UNDERWRITERS

AHT created a proprietary heat map score (scale of 1-100) based upon underwriter feedback about various industries:

	2016	2017	2018
Bitcoin/Blockchain/Cryptocurrency	N/A	N/A	100
Biotechnology & Pharmaceutical	96	95	96
Cannabis Related Organizations	N/A	N/A	94
Other Healthcare/Medical Device	86	92	77
FI-Banks	68	78	71
Educational	78	79	71
Technology	67	76	66
FI-All other	72	74	62
Energy/Utilities	72	56	42
Retail/Consumer Products	32	42	39
Business Services	29	29	27