Trends in Canadian Securities Class Actions: 2015 Update
Are We in Bear Territory?
Number of Active Cases Falls for the First Time in 15 Years

By Bradley A. Heys and Mark L. Berenblut

» Includes a Summary of US Securities Class Actions and UK Regulatory Enforcement Trends
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5 February 2016

Introduction

Case resolutions far outpaced new filings of Canadian securities class actions in 2015, setting a new record for resolutions, while case filings plummeted to the lowest level since 2008. NERA’s database now includes a total of 129 Canadian securities class actions filed over the 19-year period from 1997 through 2015.

Just four new Canadian securities class actions were filed during 2015, well below the number of filings of new cases in each year since 2008. This is a surprising development given the volatility in the commodities and currency markets, and in the Canadian economy more generally, that was apparent as of the date of our 2014 report and continued through the end of 2015.

There are now a total of 52 unresolved Canadian securities class actions as of 31 December 2015, representing more than $55 billion in total claims, a decline from the peak of 61 active cases at the end of 2014. This change reflects the net impact of both a significantly lower number of new filings and a record number of resolutions in 2015. Six of these unresolved cases involve claims of at least $1 billion and together account for nearly 90% of the total value of the unresolved claims.
More than offsetting the four new filings in 2015 were resolutions (or tentative resolutions) in a record 13 cases, including settlements in seven cases and a record-high six dismissals. Of particular note in 2015 were several court rulings. These include the decisions of the Supreme Court of Canada (SCC) in cases involving IMAX, CIBC, and Celestica (with respect to issues relating to the applicable limitation period), a decision by the Ontario Court of Appeal in the Kinross Gold matter, and several lower court decisions relating to leave and certification. These decisions follow the December 2014 decision of the SCC in the case involving Theratechnologies mentioned in our 2014 report.

Case resolutions far outpaced new filings of Canadian securities class actions in 2015, setting a new record for resolutions, while case filings plummeted to the lowest levels since 2008.

Several potential factors may have contributed to the sharp decline in the pace of new filings in 2015. A number of the aforementioned court rulings (and specifically the SCC decision in the Theratechnologies case) are widely seen to have raised the evidentiary threshold for the leave requirement under the secondary market civil liability provisions of the provincial securities acts (i.e., for “Statutory Secondary Market cases,” referred to in prior editions of our report as “Bill 198 cases”). Other factors that may have contributed to fewer filings include greater potential litigation costs for class counsel, increasing opportunity costs for class counsel firms for bringing any given case, and the interplay of these factors with the statutory damage limits. We discuss these possible contributing factors further below.

Each of the four new filings in 2015 is a Statutory Secondary Market case, which compares to 11 such filings in 2014 and 10 in 2013. In total, there have now been 68 Statutory Secondary Market cases filed since the amendments to the provincial securities acts first started coming into force at the end of 2005. Of these, 33 cases (49%) remained unresolved at the end of 2015. To date, defendants in the Statutory Secondary Market cases have collectively agreed to pay a total of more than $463 million to resolve claims in 30 cases (including amounts paid in partial settlement of the class action involving Sino-Forest). Five cases (or 7% of all filed Statutory Secondary Market cases) have been dismissed and one has been discontinued.
Trends in Filings

The four new securities class actions filed in 2015 bring the total number of cases in our database to 129. Of these, two-thirds (86 cases) were filed in the period from 2008 to 2015, and more than half (65 cases) were filed within the last six years. See Figure 1.

Shareholder Class Actions

Each of the four new cases filed in 2015 is a class action brought on behalf of a class of shareholders of companies whose shares are listed on a public stock exchange (as has been the case for each new filing over the past four years). Not included among the four new filings for 2015, but notable because they involve financial markets, are the putative Canadian class actions involving allegations of foreign exchange manipulation and gold price manipulation.

Over the last six years (2010 through 2015), a total of 46 class actions have been filed in Canada against TSX-listed companies, representing approximately 3% of the average number of companies listed over that period, or an average annual litigation risk of approximately 0.5% (unchanged from 2014). Over the same six-year period, claims have been brought against eight companies listed on the TSX Venture Exchange (TSX-V), representing 0.4% of the average number of TSX-V-listed companies (implying an average annual litigation risk of approximately 0.06%—similar to the 0.07% we reported last year).

Figure 1. Cases Filed by Year and Allegation Type, 1997–2015

Note: “Responsible Issuer Case” refers to a case brought by investors in securities (e.g., common shares) issued by a Responsible Issuer as that term is defined in the Securities Act (Ontario) and parallel legislation in other Canadian provinces. “Statutory Secondary Market” refers to a case brought under the continuous disclosure provisions of the provincial securities acts. We report a single filing where multiple causes of action have been commenced in respect of substantially similar facts.
Statutory Secondary Market Cases
There have now been a total of 68 cases filed with claims pursuant to the secondary market civil liability provisions of the provincial securities acts (i.e., Statutory Secondary Market cases). While each of the four new filings in 2015 is a Statutory Secondary Market case, this number of new filings is well below the number of Statutory Secondary Market cases brought in each year since 2008. See Figure 2.

Of note in 2015 is a series of recent court decisions, including the first guidance from the country’s highest court regarding the leave requirement under the secondary market civil liability provisions of the provincial securities acts. In particular, the decisions of the Ontario Court of Appeal in the matter involving Kinross Gold Corporation in December 2014,⁷ the Supreme Court of Canada in the Theratechnologies case in April 2015,⁸ and the Ontario Superior Court in the case involving Atlantic Power Corporation,⁹ are broadly viewed among the class action bar as confirming that the leave requirement is a merits-based test and not simply a “speedbump” for plaintiffs. These decisions may have increased the risks and expected costs to class counsel of bringing Statutory Secondary Market cases.

Another factor worthy of mention is competition among class counsel firms for carriage of these cases. One notable example in 2015 is the ongoing carriage dispute between alternative coalitions of plaintiffs’ firms in the case involving Barrick Gold. From an economic perspective, such carriage disputes can increase the expected costs to these firms of bringing these cases, and may lead to a reduced appetite for bringing new cases.

Figure 2. Filings of Statutory Secondary Market Cases, 2006–2015

![Filings of Statutory Secondary Market Cases, 2006–2015](chart)

Total: 68 Cases Filed

Number of Filings

Year of Filing
Filings by Province
As we have observed in prior reports, filings of securities class actions are concentrated in Ontario. In 2015, three of the four new cases were filed in Ontario. Of the three cases filed in Ontario, only the case relating to Valeant Pharmaceuticals also involves claims filed in other provinces—namely, in British Columbia and in Quebec. The fourth case filed in 2015 (involving Ithaca Energy Inc.) was filed only in Alberta.

Historically, approximately 78% of all new securities class actions involve a filing in Ontario and 25% involve a filing in Quebec. Only 12% of all cases do not involve a filing in at least Ontario or Quebec. Approximately 23% of all cases involve claims filed in more than one province. This distribution of filings across provinces has not changed significantly over time.

Cross-Border Cases
Two of the four new cases filed in 2015 also involve parallel class actions filed in the US—those involving Valeant Pharmaceuticals and MDC Partners. Each of these involves issuers with securities cross-listed on both the TSX and one of the major US exchanges (Valeant Pharmaceuticals is listed on the NYSE, and MDC Partners is listed on the NASDAQ).

Of the 68 Statutory Secondary Market cases brought to date, 29 (43%) have also involved parallel US class actions.

US Securities Class Actions Against Canadian Companies
In addition to the two new cross-border cases mentioned above, three other claims filed in the US during 2015 involved Canadian-domiciled companies. These include claims relating to the following Canadian companies:

- Silver Wheaton Corp.
- 6D Global Technologies, Inc., and
- Nobilis Health Corp.¹⁰

As we have noted in our prior reports, since 2006 approximately half of all US filings against Canadian companies have seen a corresponding parallel claim in Canada. See Figure 3.

Figure 3. US Filings Against Canadian-Domiciled Companies by Year of US Filing

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>8 US Filings with Parallel Canadian Actions (16%)</td>
<td>28 US Filings with Parallel Canadian Actions (51%)</td>
</tr>
<tr>
<td>41 US Filings without Parallel Canadian Actions (84%)</td>
<td>27 US Filings without Parallel Canadian Actions (49%)</td>
</tr>
</tbody>
</table>

Note: If multiple securities class actions with similar allegations are filed against a Canadian-domiciled company in US federal court we treat them as a single filing if in the same circuit, and as separate filings if in different circuits. As a result, some US filings share the same parallel Canadian action. If similar class actions are filed against a company in Canada, we treat them as single filing, whether they are in the same or different provinces.
**Industry Sectors**

Notably, cases involving companies in the financial sector (excluding claims against companies who provided financial services to reporting issuers) have declined in the last six years. From 2010 to 2015, approximately 15% of new filings involved an issuer in the finance industry, compared to 31% of new filings in the period from 1997 to 2009.

At the same time, the proportion of cases brought against companies in the minerals sectors (both energy and non-energy minerals) has increased significantly. Since 2010, approximately 43% of all cases have involved companies in these sectors, compared to approximately 23% of cases filed between 1997 and 2009. In 2015 alone, two of the four cases filed involve companies in the minerals sector—one in the oil and gas sector, and the other in the non-energy minerals sector.

Filings of Canadian securities class actions by industry sector for the period 1997–2015 are illustrated in Figure 4.

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**Figure 4. Filings by Industry Sector, 1997–2009 and 2010–2015**

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<table>
<thead>
<tr>
<th>Industry Sector</th>
<th>1997–2009</th>
<th>2010–Present</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Energy Minerals</td>
<td>10 (15.6%)</td>
<td>20 (30.8%)</td>
</tr>
<tr>
<td>Energy Minerals</td>
<td>5 (7.8%)</td>
<td>8 (12.3%)</td>
</tr>
<tr>
<td>Finance</td>
<td>10 (15.4%)</td>
<td>20 (31.3%)</td>
</tr>
<tr>
<td>Consumer Non-Durables</td>
<td>3 (4.6%)</td>
<td>5 (7.8%)</td>
</tr>
<tr>
<td>Industrial Services</td>
<td>1 (1.6%)</td>
<td>3 (4.6%)</td>
</tr>
<tr>
<td>Producer Manufacturing</td>
<td>3 (4.6%)</td>
<td>4 (6.3%)</td>
</tr>
<tr>
<td>Electronic Technology</td>
<td>3 (4.6%)</td>
<td>3 (4.7%)</td>
</tr>
<tr>
<td>Health Technology</td>
<td>3 (4.6%)</td>
<td>2 (3.1%)</td>
</tr>
<tr>
<td>Commercial Services</td>
<td>3 (4.6%)</td>
<td>1 (1.6%)</td>
</tr>
<tr>
<td>Other</td>
<td>9 (13.8%)</td>
<td>13 (20.3%)</td>
</tr>
</tbody>
</table>
```

Note: Cases are coded based on the industry sector for the issuer of the securities that is the subject of the litigation. Industry classification from FactSet.
Time to Filing
Each of the four cases filed during 2015 was filed within four months after the end of its proposed class period, consistent with the median time to filing for cases filed in the last eight years (since 2007). See Figure 5.

Figure 5. Median Time to Filing from the End of the Proposed Class Period

Note: Based on 103 cases filed from 2003 through 2015 for which we know both the filing date and the end date of the proposed class period.
Trends in Resolutions
Settlements
In 2015, seven Canadian securities class actions were settled, or tentatively settled—one more than the six settlements reached in each of the previous two years. Defendants in these seven settling cases agreed to pay a total of approximately $107 million, for an average of $15.3 million. The median of these settlements is $11 million. Each of these seven settled cases was a Statutory Secondary Market case.

The number of settlements by year is illustrated in Figure 6 below.

Our database now includes settlement amounts for 57 of the 60 settlements in Canadian securities class actions (excluding partial settlements) from 1997 through 2015. Across these 57 settlements, the median settlement is $11.4 million. The average settlement across these cases is $71.9 million—a figure heavily skewed by two exceptionally large settlements, both relating to Nortel Networks Corp., as we have noted in our prior reports.

Figure 6. Settlements by Year, 2001–2015

Note: A settlement in 1997 is not shown in the figure above.
Settlements of Statutory Secondary Market Cases

There have now been 29 settlements of Statutory Secondary Market cases. The average (median) settlement in these 29 cases is $10.7 million ($9.0 million). The average (median) settlement as a percentage of claimed compensatory damages in these cases is 13.1% (8.0%). As we have noted previously, average and median settlements as a percentage of claimed damages are interesting as a measure of the outcome of a case relative to the initial claim, but may not fairly reflect the level of recovery of any actual potentially compensable losses incurred by plaintiffs. Estimates of aggregate damages to the class (which are often prepared by experts in these cases subsequent to the filing of a claim, but generally not made public) may differ significantly from the claimed damage amounts set out in a statement of claim.

Almost all settlements in Statutory Secondary Market cases to date appear to have been less than the damage limit for issuers set out in the provincial securities acts (i.e., 5% of the market capitalization of the issuer). This is notwithstanding the fact that many of these cases involve claims in addition to the statutory claims to which the damage limit applies, such as prospectus claims, common law claims and claims in other jurisdictions such as the US. See Figure 7.

Figure 7. Settlement Amount as Percentage of Defendant Issuer Market Capitalization on the First Day of the Proposed Class Period

Note: Settlements may be greater than 5% of the market capitalization of a defendant issuer for reasons that include, among other things, claims in addition to the secondary market disclosure claims (e.g., claims in relation to a prospectus or offering memorandum), claims in other jurisdictions (such as the US), or claims against defendants other than the issuer. Figure shows data for 27 out of 29 settled Statutory Secondary Market cases where settlement amounts and market capitalization data are available. Market capitalization data from Factset.
In addition, settlements in cases involving smaller companies (i.e., companies with a lower market capitalization) have tended to be closer to the statutory damage limit than have settlements involving larger companies. This relationship is easier to observe once one excludes the small number of cases that settled for more than 5% of the issuer’s market capitalization, as illustrated in Figure 8.

The interplay between this limit on damages in Statutory Secondary Market cases and the increase in the expected litigation costs for class counsel and plaintiffs’ arguably greater expected burden of proof at the leave stage may create stronger incentives for cases to be brought against larger, rather than smaller, companies. See Box 1.

Figure 8. Settlement Amount as Percentage of Defendant Issuer Market Capitalization on the First Day of the Proposed Class Period (Excluding Settlements of More than 5% of the Market Capitalization on the First Day of the Proposed Class Period)

Note: Figure shows data for 21 out of 29 settled Statutory Secondary Market cases where settlement amounts and market capitalization data are available, and where settlement as a percentage of market capitalization is less than 5%. Market capitalization data from FactSet.
Box 1. **Statutory Damage Limits Create Incentives to Bring Cases Against Large Companies**

Consider the two hypothetical cases set out below. Both cases have potential damages of $200 million, but the hypothetical facts suggest there may be a stronger case to be made against Small Cap Enterprises. Notwithstanding these assumed facts, the effect of the liability limit is such that there is a stronger incentive to bring a case against Big Corp. than against Small Cap Enterprises.

<table>
<thead>
<tr>
<th></th>
<th>Small Cap Enterprises</th>
<th>Big Corp.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pre-“misrepresentation”:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Share Price</td>
<td>$10</td>
<td>$100</td>
</tr>
<tr>
<td>Shares Outstanding</td>
<td>50 million</td>
<td>50 million</td>
</tr>
<tr>
<td>Market Capitalization</td>
<td>$500 Million</td>
<td>$5,000 million</td>
</tr>
<tr>
<td><strong>“Corrective” Disclosure</strong></td>
<td>Booking phony sales/massive and fraudulent overstatement of revenue and profits</td>
<td>Project delays coupled with goodwill write-down</td>
</tr>
<tr>
<td><strong>Share Price Reaction to Disclosure:</strong></td>
<td>Drop of 40% from $10 to $6</td>
<td>Drop of 4% from $100 to $96</td>
</tr>
<tr>
<td><strong>Gross Damages</strong></td>
<td>$200 million</td>
<td>$200 million</td>
</tr>
<tr>
<td><strong>Liability Limit</strong></td>
<td>$25 million</td>
<td>$250 million</td>
</tr>
</tbody>
</table>
In contrast, a large proportion of the Statutory Secondary Market cases filed to date have involved relatively small companies. See Figure 9. An increase in expected costs to plaintiffs’ counsel—including the arguably greater burden of proof at the leave stage, the possibility of a carriage dispute, and possible opportunity costs of selecting from among alternative potential cases, as discussed further below—may reduce the economic desirability of bringing cases against smaller companies. It will be interesting to see whether, going forward, these factors produce a trend of fewer total filings, and a greater concentration of filings involving larger companies.

Figure 9. **Number of Statutory Secondary Market Cases by Defendant Issuer Market Capitalization on the First Day of the Proposed Class Period**

Note: Figure shows data for 66 out of 68 Statutory Secondary Market cases where market capitalization data is available. Market capitalization data from FactSet.
Cross-Border Settlements

Of the 29 settlements in Statutory Secondary Market cases to date, 19 were domestic-only cases and 10 were cross-border cases. The 19 domestic-only cases settled for an average value of $6.5 million, representing 12.7% of claimed compensatory damages. The median of these 19 settlements is $4.0 million, or 7.6% of claimed damages.

The 10 settled cross-border Statutory Secondary Market cases settled for an average of $18.8 million (the median is $14.8 million)—almost three times the amount of the typical settlement in domestic-only cases. Across these 10 cross-border Statutory Secondary Market cases, settlements average 14.0% of claimed compensatory damages (the median is 10.6%).

Of the 25 settlements of Statutory Secondary Market cases where the information is available to us, only seven (28%) were certified and granted leave prior to settlement.

Dismissals

In 2015, six Canadian securities class actions were dismissed—more than in any prior year. These include the cases mentioned above involving Theratechnologies and Atlantic Power Corp., as well as the cases involving Birch Mountain Resources Ltd. (currently under appeal), Silvercorp Metals Inc., BioSyntech Inc., and Fonds de Solidarité.

As discussed above, these dismissals may have been a factor contributing to the lower number of filings in 2015.

Of the 129 securities class actions filed since 1997, 14 (10.9%) have been dismissed as of the end of 2015. Of the 68 Statutory Secondary Market cases, five (7.4%) have been dismissed so far.

There are now a total of 52 unresolved Canadian securities class actions as of 31 December 2015, representing more than $55 billion in total claims, a decline from the peak of 61 active cases at the end of 2014.
Pending Cases

Number of Pending Cases

At the end of 2015, 52 Canadian securities class actions remained unresolved—down from the peak of 61 cases at the end of 2014, but more than double the number of such cases seven years ago. See Figure 10.

This large number of active cases may be another factor contributing to the relatively low number of new filings in 2015. With many active cases, it may be that there is an increasing opportunity cost to class counsel of bringing new claims which may lead some firms to be more selective in choosing which potential claims to pursue. If this is the case, one might expect this lull in filings to be a transient phenomenon and that the rate of filings of new cases may increase as more of the currently active cases are resolved.

Figure 10. Cases Pending as of 31 December 2015

Note: Cases that are initially dismissed but subsequently overturned on appeal are shown as pending at each year-end since the date of initial filing. Cases that have been dismissed are not included among the pending cases from the year of the initial dismissal decision, even if they may be still subject to appeal.
The 52 unresolved cases pending at the end of 2015 represent more than $55 billion in claims, including both compensatory and punitive damages. As noted above, six of these cases account for nearly 90% of the total amount of claims. All but five of these 52 cases were filed in 2007 or later. See Figure 11.

Pending Statutory Secondary Market Cases
Of the 52 unresolved cases, 33 (63%) are Statutory Secondary Market cases, representing more than $51 billion in claimed damages, or about 94% of the total outstanding claims.

Of these 33 unresolved Statutory Secondary Market cases, 22 had not yet reached at least one of the leave or class certification stages at the end of 2015. Of the 11 unresolved Statutory Secondary Market cases that have reached the leave or certification stages, seven have been granted leave and certification, two have been granted leave but have not yet been certified as class actions, one has been denied leave (but involves other claims that have not been dismissed), and a ruling on leave is still under advisement in another.

Figure 11. Status of Cases at Year-End by Year of Filing, 1997–2015
Pending US Cases Against Canadian Companies

As of 31 December 2015, there were also 16 pending US cases against Canadian-domiciled companies. See Figure 12.

Figure 12. Status of US Filings Against Canadian-Domiciled Companies, as of 31 December 2015
Looking Forward
Is the relatively low number of filings in 2015 the new norm or a temporary lull? The answer depends in part on what factors led to the slowdown in the pace of filings this year and whether they will persist. The clarification from the recent court rulings on the threshold for leave for Statutory Secondary Market cases and on potentially increased expected costs (including opportunity costs) of bringing a securities class action, combined with the incentives created by the statutory damage limits, in isolation might reduce the number of new cases, with a potential increase in the proportion of cases brought against larger companies. A trend toward fewer filings against larger companies would also likely impact other observable trends, such as the average size of settlements (which might increase) and time to resolution (which may also increase if cases are more complex and have more at stake).

On the other hand, increased market volatility may counter some of these factors. Class action filings in the US have tended to increase following dramatic economic upheavals, such as the bursting of the dot-com bubble in the early 2000s and the global financial crisis of 2007–2008. Generally speaking, we would expect the same to be true for securities class actions in Canada. Although not resulting in more filings in Canada during 2015, the volatility in commodities and currency markets, and in the Canadian economy more generally, has continued through 2015 and into early 2016. It is possible that, in 2016 and beyond, such market volatility will lead to a higher number of filings in 2016 and/or 2017.
Global Trends: Summary of other NERA Studies

Summary of Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review

In 2015, 234 securities class actions were filed in federal courts, more than in any year since the height of the financial crisis in 2008, according to Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review. This figure represents an 8% increase over the 216 class action cases filed in 2014, and is roughly 6% higher than the average rate of the preceding five years. According to the Trends authors, Svetlana Starykh and Stefan Boettrich, filing growth in 2015 was dominated by 182 filings alleging violations of Rule 10b-5, Section 11, or Section 12.

New findings discussed in this year’s report include changes in the time from the alleged fraud to the filing of the case, and in class period durations. The 2015 report also includes an overview of NERA’s predicted settlement model, which is based on our updated statistical analyses of hundreds of securities class action settlements.

Additional Key Trends

• Firms in the Electronic Technology and Technology Services sector saw the greatest number of class action cases filed against them, which totaled 52. This represented 22% of all filings, and was a 90% increase over the 2014 total.
• 19% of securities class actions filed had a defendant in the Financial sector, down sharply from 29% in 2014.
• Class periods were the shortest on record—the median falling to 310 days—although cases filed were not necessarily smaller in size.
• Six out of the 10 largest settlements involved Financial sector defendants and stemmed from litigation related to the financial crisis.
• Filings continue to be concentrated in the Second and Ninth Circuits, where more cases were filed than all other circuits combined.
• The number of securities class action cases pending reached 622 in 2015, a 16% increase since the 2011 low and the highest amount since 2006.
• Aggregate plaintiffs’ attorney fees and expenses were $1.095 billion in 2015, an increase of nearly 63% over 2014.

Summary of Trends in Regulatory Enforcement in UK Financial Markets 2015/16 Mid-Year Report

In the first six months of the current financial year, the UK Financial Conduct Authority (FCA) imposed £794 million in fines and penalties, according to NERA’s report, Trends in Regulatory Enforcement in UK Financial Markets. Authored by Robert Patton and Marcin Pruski, the report analyzes trends based on NERA’s database of fines and other enforcement activity by the FCA and its predecessor, the Financial Services Authority (FSA).

Among the report’s findings is that, during the period covered, the FCA continued to levy what its former CEO once called “big-stick fines” against firms. The Authority imposed an unprecedented £1.4 billion in fines and penalties in the 2014/15 financial year, and imposed fines at a similar pace in the first half of 2015/16. The 2014/15 fines alone exceeded cumulative fines levied by the FCA and the FSA in all previous years combined.

In addition, excluding fines for interbank manipulation and FX, the aggregate amount of fines against firms has still risen, albeit to less stratospheric levels. The average fine against firms, excluding those for FX and interbank rate manipulation, has risen from £5.0 million in 2012/13 to £40.3 million in 2015/16 to date. The median fine against firms in the first half of 2015/16 has reached £20.7 million, approximately 50% more than the median in 2014/2015 and about three and a half times the median in 2012/13.

Looking ahead, as FX and interbank fines wane, there is no obvious source of comparable-sized fines to replace them. In the future, however, other types of benchmark fines could follow. Seven additional UK-based financial benchmarks have now been brought within the scope of FCA regulation. These include the WM/Reuters London 4pm Closing Spot Rate, ISDAFIX, London Gold Fixing and the LBMA Silver Price, and the ICE Brent Index. Moreover, enforcement against individuals—which has flagged in recent years despite the FCA’s stated commitment to holding senior managers to account and vigorously pursuing market abuse cases—may step up as the FCA re-focuses its attention and resources away from large-scale investigations of interbank and FX manipulation.
Notes

Bradley Heys is a Vice President and Mark Berenblut is an Affiliated Consultant with NERA Economic Consulting. We thank Luis Sarabia, Chantelle Spagnola, and Robert Patton for helpful comments on earlier drafts. We also thank Jielei Mao, David Ogilvie, and Mattia Dolci for valuable research assistance with this paper. We appreciate the contributions of Svetlana Starykh to this and previous editions of this study. These individuals receive credit for improving this paper. All errors and omissions are ours.

All dollar amounts in this paper are expressed in Canadian dollars unless otherwise stated.

Some of these dismissed cases may still be subject to further appeal.

Subsequent to the publication of our 2014 Report, we became aware of two additional cases filed during 2014, one involving HSBC Holdings plc and the other involving Partners REIT. These filings increase the number of new cases in 2014 to 13 from the 11 cases previously reported.

Number of TSX-listed and TSX-V-listed companies obtained from the December issues of The MiG Report, published by TSX Inc., for 2010 to 2015.

Ibid.


A parallel class action involving Nobilis Health Corp. was filed in Canada in January 2016.

The newly added 2014 HSBC Holdings plc and Partners REIT increased the median time to file for cases filed in 2014 from that reported in report last year.

For cross-border cases, our settlement data reflects total amounts paid in both Canada and the US.

Subsequent to the publication of our 2014 Report, we became aware of a case involving GLG Life Tech Corp. that was discontinued in 2014. A case involving North American Palladium was discontinued in January 2016.

It is possible that some of the cases filed in earlier years have now been abandoned.

As stated in the note to Figure 3, our US database records multiple filings where actions are filed against the same defendant in more than one federal court circuit (unless they are subsequently consolidated).
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