Trends in Canadian Securities Class Actions: 2017 Update
Trickle of New Cases Suggests a Slow Rate of Filings Is the New Norm

By Bradley A. Heys and Robert Patton

» Includes a Summary of US Securities Class Actions and UK Regulatory Enforcement Trends
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20 February 2018

Introduction

Only six new Canadian securities class actions were filed in 2017, while the same number of cases were resolved, leaving 51 active cases on the docket as of 31 December 2017.

The trickle of new cases in 2017 continues the slower rate of filing of securities class actions we noted in our last two annual reports. Nine new cases were filed in 2016, which might have been taken to suggest a return to the higher rate of filings that characterized the period from 2008 to 2014. However, taking the past three years together, the average rate of filings has now fallen to about half that of the preceding seven years.

In our reports for each of the last two years, we commented that it was unclear whether the slower rate of filings in Canada was merely a transient phenomenon. While the next economic downturn may well give rise to a higher rate of filings, it now appears safe to say that the current slower pace is the new norm, rather than merely a temporary lull.

The continued slower filing rate in Canada contrasts with a recent acceleration of filings in the US. While some of the growth in US filings stems from merger objection cases (a type of claim that has been largely absent in Canada), filings of US class actions alleging violations of Rule 10b-5, Section 11, and/or Section 12—and thus similar in nature to the types of cases filed in Canada—have increased in each of the last five years and are currently at their highest level since 2008. While the much larger number of annual filings in the US is partly a function of the larger number of listed companies, it is also the case that a company listed on one of the major US exchanges is approximately 10 times more likely to be targeted by a securities class action than is a company listed on the Toronto Stock Exchange (TSX). Indeed, if publicly listed companies in Canada were targeted by domestic class actions with the same frequency as are their US counterparts, we might expect more than 50 Canadian securities class action filings per year, as compared to the six filings actually observed in 2017.
Of the six Canadian securities class actions resolved during 2017, four were resolved by way of a settlement, twice the number that settled in 2016. One case was denied leave and one was discontinued.

NERA’s database now includes a total of 144 Canadian securities class actions filed over the 21-year period from 1997 to 2017, of which 93 (65%) have reached some resolution. The 51 active securities cases at the end of 2017 together represent more than $27 billion in stated claims.

Four of the six cases filed in 2017 involve secondary market civil liability claims filed under the provincial securities acts (i.e., “Statutory Secondary Market” cases). There have now been a total of 81 such cases filed since those provisions began coming into force 12 years ago. Of these 81 cases, 32 (40%) remained unresolved at the end of 2017. Ten such cases (12%) have been denied leave and/or certification and four have been discontinued. Including partial settlements in some of the still active cases, defendants have agreed to pay a total of more than $647 million to settle claims in 35 cases.

**Trends in Filings**

Six new Canadian securities class actions were filed during 2017—two-thirds the number filed during 2016, and two more than the four cases filed during 2015.

Notwithstanding the recent slowdown, the great majority of securities class actions in Canada have been filed within the past decade. Of the 144 cases in our database, more than two-thirds (101 cases) were filed in the decade from 2008 to 2017; 82 cases (57%) were filed in the seven-year period from 2008 to 2014 (see Figure 1).
Shareholder Class Actions

Four of the six new cases filed in 2017 are class actions brought on behalf of a class of shareholders of a company whose shares are listed on a public stock exchange (as opposed to other types of securities class actions, such as those involving investment funds or Ponzi scheme claims). One of the six new cases is a class action brought on behalf of a class of purchasers of debentures issued by a non-public company, and one involves investors in mutual funds.

The securities class action litigation risk for companies listed on Canadian securities exchanges is generally substantially lower than the risk of a federal securities class action for companies listed on the major US securities exchanges, as we have noted in prior reports. This risk has fallen further over the last three years.

Over the last three years (2015 through 2017), 14 TSX-listed companies were named as defendants in a securities class action filed in Canada, representing approximately 0.94% of the average number of companies listed over that period. This equates to an average annual litigation risk of approximately 0.3%. For comparison, from 2008 through 2014, there were 57 TSX-listed companies named as defendants in securities class actions filed in Canada, representing approximately 3.7% of the average number of companies listed, for an average annual litigation risk of approximately 0.5%.
The annual litigation risk faced by companies listed on the TSX Venture Exchange (TSX-V) has also declined in recent years, and has consistently been lower than the risk faced by companies listed on the main market. Over the three-year period from 2015 through 2017, claims were brought against two companies, representing 0.12% of the average number of TSX-V-listed companies over this period, or an average annual litigation risk of approximately 0.04%. Over the preceding seven-year period (2008 through 2014), there were 10 filings involving TSX-V-listed companies, implying an average annual litigation risk of 0.07%.³

Companies with shares listed on the TSX-V tend to be smaller and less established than companies that list on the TSX. As such, these TSX-V-listed companies might be expected to give rise to more potential claims; on the other hand, their smaller market capitalizations and the correspondingly lower liability limits for Statutory Secondary Market claims may imply lower incentives for plaintiffs to bring such claims.

The probability of a firm listed on one of the major US securities exchanges facing a US securities class action suit is much higher than the probability of a firm listed on a Canadian exchange facing a securities class action suit in Canada. Considering only US cases filed under Rule 10b-5, Section 11, and/or Section 12 (i.e., “standard” securities class actions), the probability of a firm facing a US securities class action suit averaged 3.7% annually over the period from 2015 through 2017.⁸ This is more than 10 times the rate of filings against Canadian companies listed on the TSX over the same period. Thus, as stated above, if publicly listed companies in Canada were targeted by domestic class actions with the same frequency as are their US counterparts, we might expect more than 50 Canadian securities class action filings per year, as compared to the six filings actually observed in 2017.

In short, while the much larger number of annual filings in the US is partly a function of the larger number of listed companies, it is also due to the substantially greater probability of a company being sued in the US.
Statutory Secondary Market Cases

Four of the six new cases filed in 2017 were Statutory Secondary Market cases, bringing the total number of such cases filed to 81 as of the end of 2017. The number of such cases filed in 2017 is fewer than the seven filed in 2016 and, indeed, is the smallest number of such cases filed in any year since 2007 (the second full year following the introduction of the new legislation in Ontario). Over the last three years, there has been an average of five new Statutory Secondary Market cases filed per year—lower than the average of approximately nine new filings per year over the seven-year period from 2008 through 2014 (see Figure 2).

Figure 2. Filings of Statutory Secondary Market Cases
2006–2017
The four Statutory Secondary Market cases filed in 2017 involve issuers with market capitalizations ranging from $15 million to more than $18 billion (as measured immediately prior to the beginning of the proposed class period). Three cases involve companies with market capitalizations greater than $1 billion.

In addition to conveying a sense of the size of the case and the scale of the potential recovery, the market capitalization immediately prior to the proposed class period is relevant to the calculation of the issuer liability limit, the maximum amount of damages payable by the issuer under a statutory claim. Of the 78 Statutory Secondary Market cases for which data are available, issuer market capitalization exceeded $1 billion in 35 cases (45%), and exceeded $5 billion in 17 cases (22%) (see Figure 3).

Figure 3. **Number of Statutory Secondary Market Cases by Defendant Issuer’s Market Capitalization**
As of the Last Trading Day Prior to the Beginning of the Proposed Class Period

Market Capitalization of Defendant Issuer on the Last Trading Day Prior to the Proposed Class Period (CAD Millions)

Note: Figure shows data for the 78 of 81 Statutory Secondary Market cases for which market capitalization data is available. Market capitalization data were obtained from FactSet and company filings.
Filings by Province

All six new cases filed in 2017 were filed only in Ontario.

Historically, approximately 78% of all securities class actions from 1997 have involved a filing in Ontario and 27% have involved a filing in Quebec. Only 12% of all cases have not involved a filing in either Ontario or Quebec (a majority of these were filed in Alberta). Approximately 26% of all cases involve claims filed in more than one province. This distribution of filings across provinces has not changed substantially over time (see Figure 4).

Figure 4. Distribution of Filings Across Provinces
**Canadian Cases with a Parallel US Filing**

Only one of the six new Canadian cases filed in 2017 involves a parallel class action filed in the US (a case relating to Endo International plc, a UK company with shares listed on both the TSX and the NASDAQ during the proposed class period).\(^{10}\)

Of the 81 Statutory Secondary Market cases brought to date, 36 cases (44%) have also involved parallel US class actions. Notwithstanding the low proportion in 2017, the percentage of Statutory Secondary Market cases with a parallel US class action has, in general, risen over time. For the five-year period from 2006 through 2010, 37% of these cases had a parallel US filing; for the subsequent seven-year period from 2011 through 2017, 48% of cases had a parallel US filing (see Figure 5).

**Figure 5. Filings of Statutory Secondary Market Cases With and Without Parallel Filings in the US**

![Figure 5](image_url)

**US Securities Class Actions Against Canadian Companies**

Seven other Canadian-domiciled issuers were named in cases filed only in the US during 2017. So far, none of these involve parallel filings in Canada. These companies are:

- Asanko Gold Inc.
- Barrick Gold Corporation\(^{11}\)
- BioAmber Inc.
- Intellipharmaceutics International Inc.
- Katanga Mining Ltd.
- Northern Dynasty Minerals Ltd.
- Toronto-Dominion Bank

Canadian class action plaintiff firms have disclosed that at least two of these companies were being “investigated,” but we are not aware of any corresponding filings in Canada as of 31 December 2017.
The lack of any parallel Canadian filings in 2017 contrasts with the recent trend. Prior to this year, the proportion of US filings against Canadian issuers with a parallel Canadian filing was increasing. For example, in the four-year period from 2013 to 2016, 59% of all US claims against Canadian companies have also involved a parallel Canadian filing; in the period from 2006 to 2012, 49% of all such cases had a parallel Canadian filing; and from 1997 to 2005, only 16% had a parallel Canadian filing (see Figure 6).

Figure 6. **US Filings Against Canadian-Domiciled Companies by Year of US Filing**

<table>
<thead>
<tr>
<th>Year Period</th>
<th>Filings with Parallel Canadian Actions</th>
<th>Filings Without Parallel Canadian Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997–2005</td>
<td>8 (16%)</td>
<td>41 (84%)</td>
</tr>
<tr>
<td>2006–2012</td>
<td>17 (49%)</td>
<td>18 (51%)</td>
</tr>
<tr>
<td>2013–2016</td>
<td>16 (59%)</td>
<td>11 (41%)</td>
</tr>
<tr>
<td>2017</td>
<td>8 (100%)</td>
<td></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**

The six new cases filed in 2017 involve companies in several industries, including Health Technology, Technology Services, Finance, and Non-Energy Minerals. Two of the six new cases filed in 2017 involve companies in the Non-Energy Minerals (mining) sector, and two involve companies in the Finance sector.

From 2012 to 2017, approximately 45% of all cases have involved companies in the Energy and Non-Energy Minerals sectors, compared to approximately 31% of cases filed in the period from 2008 to 2011, and 21% of cases filed between 1997 and 2007. The proportion of new cases involving companies in the Finance sector (excluding claims against companies that provide financial services to reporting issuers) has declined in the last six years; approximately 11% of new filings between 2012 and 2017 involved an issuer in the financial services industry, compared to 29% of new filings in the period from 2008 to 2011, and 28% in the period from 1997 to 2007.

Filings of Canadian securities class actions by industry sector for the periods 1997 to 2007, 2008 to 2011, and 2012 to 2017 are illustrated in Figure 7.

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**Figure 7. Filings by Industry Sector**


<table>
<thead>
<tr>
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<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy and Non-Energy Minerals</td>
<td>20.9% (9)</td>
<td>31.3% (15)</td>
<td>45.3% (24)</td>
</tr>
<tr>
<td>Finance</td>
<td>11.3% (6)</td>
<td>29.2% (14)</td>
<td>27.9% (12)</td>
</tr>
<tr>
<td>Commercial and Industrial Services</td>
<td>2.1% (1)</td>
<td>13.2% (7)</td>
<td></td>
</tr>
<tr>
<td>Health Technology and Services</td>
<td>2.1% (1)</td>
<td>9.4% (5)</td>
<td></td>
</tr>
<tr>
<td>Consumer Durables and Non-Durables</td>
<td></td>
<td>5.7% (3)</td>
<td></td>
</tr>
<tr>
<td>Electronic Technology and Technology Services</td>
<td></td>
<td>8.3% (4)</td>
<td></td>
</tr>
<tr>
<td>Communications</td>
<td>1.9% (1)</td>
<td>4.2% (2)</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td>7.5% (4)</td>
<td></td>
</tr>
</tbody>
</table>

Proportion of Filings

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**

Three of the six cases filed during 2017 were filed within six months of the end of the proposed class period; one was filed in just less than a year following the end of the proposed class period; one was filed approximately 1.5 years after the end of the proposed class period; and one was filed nearly three years after the end of the proposed class period. Partly as a consequence of this outlier, the median time to filing for cases filed in 2017 is the longest in any year since 2003: 8.7 months. This is more than twice as long as the median of 3.8 months for cases filed in the period from 2011 to 2016 (see Figure 8).

**Figure 8. Median Time to Filing From the End of the Proposed Class Period 2003–2017**

Note: Based on 113 cases filed from 2003 through 2017 for which we know both the filing date and the last day of the proposed class period (and where the end of the proposed class period has not been amended to a time after the initial filing date).
Trends in Resolutions

Settlements
Four Canadian securities class actions were settled (or tentatively settled pending court approval) during 2017. This is double the number of settlements in 2016 but fewer than in 2013, 2014, or 2015.

The number of settlements by year is illustrated in Figure 9 below.

Figure 9. Settlements by Year 2001–2017
All four cases that settled in 2017 involved Statutory Secondary Market claims. The median settlement in 2017 was $17.8 million—less than the $27.1 million observed in 2016, but greater than in any year from 2012 to 2015. Defendants in these cases agreed to pay the following amounts to resolve these claims:

- Manulife Financial Corporation: $69 million.
- Home Capital Group: $29.5 million (including $11 million of a total of $12 million paid by the defendants to resolve allegations brought by the Ontario Securities Commission).
- Detour Gold Corporation: $6 million.
- Barkerville Gold Mines Ltd.: $250,000.

Our database now includes settlement amounts for 63 of 66 settlements in Canadian securities class actions (excluding partial settlements) from 1997 through 2017 (information regarding settlement amounts in three cases is not publicly available). The average settlement across these 63 cases is $79.0 million—a figure heavily skewed by two exceptionally large settlements, both relating to Nortel Networks Corp., as we have noted in our prior reports.

The median settlement from 1997 to 2017 is $13.0 million. For more recent cases, from 2007 through 2017, the median settlement is $13.4 million. In US dollar terms (converted at the exchange rate at the time of each settlement), the median settlement from 2007 to 2017 is, US$12.9 million, about 40% higher than the median settlement of US$9.1 million for US securities class actions over the same period. Median settlements for each year from 2001 to 2017 are shown in Figure 10.
There have now been 35 settlements of Statutory Secondary Market cases. The average settlement in these 35 cases is $14.0 million, and the median is $9.6 million. The average settlement as a percentage of claimed compensatory damages in these cases is 11.7%, and the median is 7.8%. As we have noted previously, average and median settlements as a percentage of claimed damages are potentially 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.
Cross-Border Settlements
In 2017, the only settlement that involved a parallel filing in the US was the case involving Manulife Financial Corporation; however, the US action against Manulife was dismissed in 2012. Historically, of the 35 settlements of Statutory Secondary Market cases, 23 were of domestic-only cases and 12 were cross-border cases (in all cases with claims filed in the US as well as Canada). The 23 domestic-only cases settled for an average value of $7.3 million, representing 11.2% of claimed compensatory damages. The median of these 23 settlements is $4.1 million, or 7.5% of claimed damages.

As we have noted in our prior reports, cross-border Statutory Secondary Market cases tend to settle for higher amounts than their domestic-only counterparts. On average, these 12 cases settled for $26.9 million (the median is $16.9 million), including the US component of the settlement—more than four times the median settlement amount for domestic-only cases. These settlements average 12.8% of the amount of compensatory damages claimed in the Canadian filing (the median is 10.6%).

Settlements Before and After Leave and Certification
One of the four cases that settled in 2017 was certified as a class action and granted leave prior to settlement; three were certified for the purposes of settlement (two of which after motions for leave had been filed).

Of the 35 settlements of Statutory Secondary Market cases, nine (26%) were certified and granted leave prior to settlement. Defendants in those nine cases agreed to pay an average of $16.1 million (which, on average, is 7.4% of the amount claimed) and the median settlement across these cases is $11.3 million. This compares to an average settlement of $14.1 million (on average, 10.6% of the amount claimed) and a median of $7.6 million across the 22 cases that were settled prior to certification (i.e., certified for the purposes of settlement).

Of the cases in which a settlement was reached prior to certification, 42% settled for 10% or more of the amount claimed. By comparison, only 27% of cases that settled after being certified and granted leave were settled for 10% or more of the amount claimed. On the one hand, this may seem counter-intuitive since certification and leave might be expected to provide plaintiffs with greater leverage; on the other hand, the relatively greater settlements prior to certification and leave may reflect a tendency for cases with relatively stronger claims to settle earlier in the litigation process. The distribution of settlement amounts as a percentage of claimed damages, both for cases that were certified and granted leave prior to settlement and for those that were certified for the purposes of settlement, is set out in Figure 11 below.
Cases in Which Leave and/or Certification was Denied

A case involving HSBC Holdings plc was the only Canadian securities class action to be denied leave during 2017. In that case, leave was denied on the basis that HSBC Holdings plc was not a “responsible issuer” under the Ontario Securities Act and that the alleged misconduct occurred outside Canada. One other case involving Strad Energy Services Ltd. was discontinued during 2017.\(^\text{16}\)

Of the 144 securities class actions filed since 1997, 25 (17.4\%) had been either denied leave and/or certification or discontinued as of the end of 2017.\(^\text{17}\) Of the 81 Statutory Secondary Market cases, 14 (17.3\%) have been denied leave and/or certification or discontinued so far.\(^\text{18}\) In the US, the proportion of dismissed\(^\text{19}\) cases has been substantially higher: about a third of cases filed from 2000 to 2002, 42\% to 46\% of cases filed between 2003 and 2007, and about half of cases filed between 2008 and 2011 (the most recent years with a substantial resolution rate).\(^\text{20}\)
Pending Cases

Number of Pending Cases
At the end of 2017, 51 Canadian securities class actions remained unresolved—unchanged from the end of 2016, and well below the annual peak of 60 cases at the end of 2014. These 51 active cases are still more than twice the number of active cases at the end of 2008 (see Figure 12).

Figure 12. Cases Pending at Year End

Note: Cases that are initially denied leave and/or certification but are subsequently overturned on appeal are shown as pending at each year-end since the date of initial filing. Cases that have been denied leave and/or certification are not included among the pending cases from the year of the initial denial decision, even if they may still be subject to appeal.
The 51 unresolved cases pending at the end of 2017 represent more than $27 billion in total stated claims, including both compensatory and punitive damages. Nine of these cases alone account for over 90% of the total amount claimed. All but five of these 51 cases were filed in 2007 or later.21

Among cases filed in the period from 1997 to 2005, 82% of resolved cases were settled. Among the cases filed in the period from 2006 to 2017 and that had been resolved as at the end of 2017, only 66% settled, although this statistic may change as more of the currently active cases are resolved. If all of the currently active cases were to be settled, the proportion of cases settling would remain constant over time; but if some of the currently active cases are denied leave and/or certification or are abandoned, then the proportion settling will fall. The status of the cases filed in each year from 1997 through 2017 is indicated in Figure 13 below.

Figure 13. Status of Cases at 2017 Year-End by Filing Year
1997–2017

Note: The two judgments are the cases involving Danier Leather Inc. (filed in 1998) and Royal Crown Gold Reserve Inc. (filed in 2010).
Pending Statutory Secondary Market Cases
Of the 51 unresolved cases, 32 (63%) are Statutory Secondary Market cases, representing more than $25 billion in claimed damages, or about 90% of the total outstanding claims. Of the 32 unresolved Statutory Secondary Market cases, eight have been granted leave of the court in at least one jurisdiction, and six of these eight have also been certified as class actions. Motions for leave and class certification have been filed, but not yet decided, in eight other cases.

Pending US Cases Against Canadian Companies
As at 31 December 2017, there were 22 US securities class actions pending against Canadian-domiciled companies. All but three of these were filed within the past five years. Among the cases filed in the period from 1997 to 2005 that have been resolved, 74% settled. Among the cases filed in the period from 2006 to 2017 that have been resolved, only 34% settled. Even if all of the currently active cases were to settle (rather than be dismissed), that would result in only 53% of cases filed during the period from 2006 to 2017 being resolved by way of settlement. The status of these US cases by year of filing is illustrated in Figure 14 below.

Figure 14. Status of US Filings Against Canadian-Domiciled Companies
As of 31 December 2017

[Bar chart showing the status of US filings against Canadian-domiciled companies by year of filing.]

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Looking Forward

In 2017, only a handful of Canadian securities class actions were filed, and the total number of pending cases remained unchanged. This development provides additional evidence that a slower rate of filings can be considered the new norm. This is in contrast with the experience in the US, where the pace of securities class actions has increased substantially, even focusing only on claims comparable to those typically filed in Canada.

When the provisions for civil liability for secondary market misrepresentations were first introduced into the provincial securities acts, some commentators expressed concern about a potential flood of new securities class actions and US-style litigation. After more than a decade since these amendments came into force, this concern does not seem to have been borne out. While there was a small uptick in the number of securities class actions in 2017, the number remained modest and the pace of new filings over the last three years is now only slightly higher than it was prior to the amendments coming into force. This is the case despite some notable decisions of US courts, which might have been expected to lead to Canada becoming a preferred venue for plaintiffs to bring securities class actions. The pace of filings in Canada is also in stark contrast with the US, which has witnessed a significant increase in the pace of securities class actions in recent years.
Global Trends:
Round Up

Summary of Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review
In the 25th anniversary edition of NERA’s annual study, *Recent Trends in Securities Class Action Litigation*, Senior Consultants Stefan Boetttrich and Svetlana Starykh examine trends in securities class action filings and resolutions in 2017. New findings discussed in this year’s report include an increase in filings, again led by a doubling of merger-objection filings.

Highlights of the 2017 report include: A record 432 federal securities class actions filed in 2017, the third straight year of growth, and a 44% increase over 2016. Federal merger-objection filings more than doubled for the second consecutive year to 197 in 2017. A total of 353 securities class actions were resolved in 2017—a post-PSLRA high. Of those, 148 cases settled, coming close to the 2007 record of 150. The average settlement in 2017 fell to less than $25 million, a drop of roughly two-thirds compared to 2016. Aggregate NERA-defined Investor Losses were $334 billion in 2017, a 50% increase over the five-year average. Aggregate plaintiffs’ attorneys’ fees and expenses were $467 million, a drop of roughly 65% to a level not seen since 2004.

Summary of Trends in Regulatory Enforcement in UK Financial Markets
2017/18 Mid-Year Report
In our 2017/18 mid-year report on *Trends in Regulatory Enforcement in UK Financial Markets*, NERA Associate Director Erin B. McHugh uses our proprietary database of enforcement activity to analyze trends in enforcement and litigation in order to look behind the headline numbers.

Fine activity from the Financial Conduct Authority (FCA) remained at a low level over the 12 months ending 30 September. However, the regulator has indicated that we should not view this as a return to “light touch” regulation. While the number of FCA investigations has substantially increased compared to prior years, we expect proportionately fewer of those investigations to result in an enforcement outcome, consistent with the FCA’s “evolving approach” to investigations.
Notes

1 Bradley A. Heys is a Director and Robert Patton is an Associate Director with NERA Economic Consulting. We thank Andrea Laing and Dr. Jordan Milev for helpful comments on early 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 our own.

2 In the US, cases filed under Rule 10b-5 typically relate to claims with respect to transactions in securities in the secondary market, whereas Section 11 and Section 12 claims relate to transactions in an offering or otherwise pursuant to a prospectus.


4 All dollar amounts are in CAD unless otherwise stated.

5 The class actions involving allegations of manipulation of the market prices for foreign exchange, gold, and silver, which are securities-industry related, are not included in our database of securities class actions because they do not involve claims brought by a class of investors in securities.

6 The number of TSX-listed and TSX-V-listed companies was obtained from the December issues of The MiG Report, published by TSX Inc., for each year from 2008 through 2017.

7 Ibid.


9 More precisely, the issuer liability limit is assessed as 5% of the average market capitalization measured over the 10 days preceding the alleged misrepresentation or $1 million, whichever is greater.

10 Endo International plc’s shares were delisted from the TSX subsequent to the end of the proposed class period.

11 Barrick Gold Corporation was also previously named as a defendant in apparently unrelated parallel class actions in Canada and the US.

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

13 Two other cases settled before leave was granted, but after having been certified as class actions. The average of these two settlements was $9.9 million.

14 This is the average for 21 cases for which information regarding the amount of the claim is available.

15 In two other cases, we do not have sufficient information to ascertain whether the class was certified for purposes of settlement or prior to settlement.


17 For the purposes of our database, cases in which leave and/or certification was denied are no longer considered active cases (even if there has not yet been a court order dismissing the case). Where such a leave and/or certification decision is overturned on appeal, the status of the case in our database is returned to “active.”

18 Two other cases were denied leave but were subsequently settled.

19 For the purposes of our database of US cases, dismissals include both cases that have been dismissed by a court and cases that have been voluntarily discontinued.

20 NERA papers on US securities class action trends describe as “dismissed” both cases that are dismissed by the court and those that are discontinued.

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

22 As stated in the Figure 6 note, 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).
About NERA

NERA Economic Consulting (www.nera.com) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For half a century, NERA’s economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world’s leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA’s clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world’s largest economic consultancies. NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

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