

US Securities Class Actions

International US-Listed Companies | H1 2021



Filings in the First Half of 2021 Declined

The first half of 2021 saw a decline in the number of securities class actions against non-US based businesses against the same period in 2020. There were 14 core class actions filed against foreign private issuers, or 14.6% of the total of 96 federal suits filed. This was a 40% decline in filings from the same period in 2020 (35). This is one of the lowest half-yearly number since the 28 cases filed in 2013 and well below the trailing 10-year H1 average of 36 cases.

However, despite this decline, foreign filers domiciled outside the United States (“*non-US issuers*”) continue to be targets of securities class action lawsuits filed in the United States. The majority of the 14 core class actions in the review period related to breaches of open market regulations due to weak, inadequate, or insufficient internal and external controls, the remainder were to IPO liabilities (2), the COVID-19 pandemic (2). The remaining filing was a merger objection suit, which we consider to be non-core. This gives a total of 15 class actions out of 108, core and non-core.

Uncovering the Data

The trend data shows that 79% of non-US issuers named in a securities class action traded on a US exchange as an American Depositary Receipt (ADR) program rather than a full stock exchange listing. The majority of these listings were Level 3 ADRs (57%), followed by Level 2 (14%) and unsponsored Level 1 (7%); trading was on NASDAQ (64%), the New York Stock Exchange (29%) and OTC-BB (7%).

The trends in district courts were consistent with recent years with New York (11), New Jersey (2) and California (1).

In terms of geographic spread, the largest number of filings were against companies in China (9), followed by Canada (2), Switzerland (1), the United Kingdom (1), and Germany (1). This distribution is not surprising considering FY 2020 saw the largest number of filings against Chinese businesses since 2011. Regionally, Asia takes the lead (64%), followed by Europe (21.5%) and Canada (14.5%).

The industry sectors most prone to litigation have historically been technology, healthcare, and financial services, areas which consistently attract the most attention from the plaintiff bar due to the sheer scale and volatility in their stock trading. This trend continued during the first half of 2021. Technology represented the most litigated sector (43%), followed by healthcare (22%). Other industries represented were consumer products, financial services, aerospace, and education.

Lessons Learned

Despite what appears to be a temporary decline in numbers, the securities class action data reveals three important insights.

First, it is vital to keep in mind that any public statement issued by a public company which negatively affects the share price could lead to a securities class action. A prime example of this is the action filed in 2021 against Volkswagen, caused by what was intended as a prank. Volkswagen announced that the company would change its name to “*Voltswagen*”, to reflect its planned investment in electric vehicles. As the announcement was made, the price of their US ADRs

spiked. However, as soon as the company revealed it was merely an April Fool's Joke, the ADRs fell in value and the class action was commenced.

Secondly, almost all suits alleging misrepresentations arose out of inadequate or insufficient internal and external controls. These overwhelmingly related to accounting practices, revenue recognition, compliance policies, business prospects and operations. This trend alleging questionable governance and oversight was highlighted last year and continues as a material risk for boards of public companies.

Finally, we have seen an increasing number of class actions filed against Special Purpose Acquisition Companies (SPAC's). In 2021 we have seen 14 filings, but none against a non-US issuer. However, this is a space which will be watched closely. In 2021 there have so far been over 341 SPACs floated, compared to 248 during all of 2020. The likelihood of a securities class action against a SPAC has increased due to heightened regulatory and accounting oversight by the Securities and Exchange Commission (SEC). Therefore, both SPAC sponsors and target companies should ensure a comprehensive plan is in place to address the reporting, internal control requirements and responsibilities of a publicly traded company after the merger is complete.

US Securities litigation remains a growing risk for non-US issuers across a wide range of industry sectors and geographies. As such, it is imperative that directors and officers remain vigilant in monitoring filing trends and take proactive measures to mitigate risks.

AIG's claims team has significant experience assisting international clients in the defense and settlement of securities class actions, providing helpful insight and support when directors and officers need it most.

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](#).

Core Class Actions H1 2021 ¹

Number of Class Action Filings

Total Number of Federal Filings (Inc US)

96

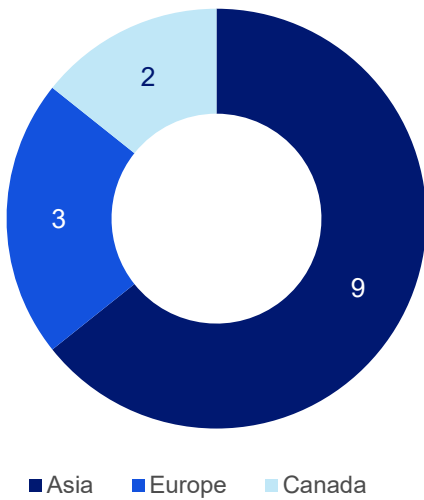
Federal Filings Against Foreign Companies

14

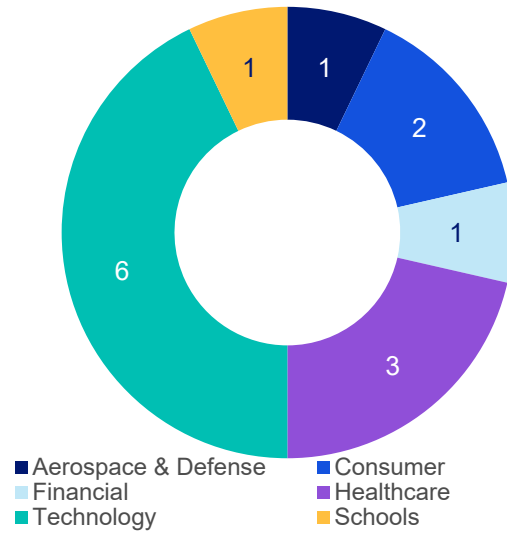
Foreign Issuers as % of Total

14.6%

Foreign Filings by Domicile H1 2021



Foreign Filings by Sector H1 2021



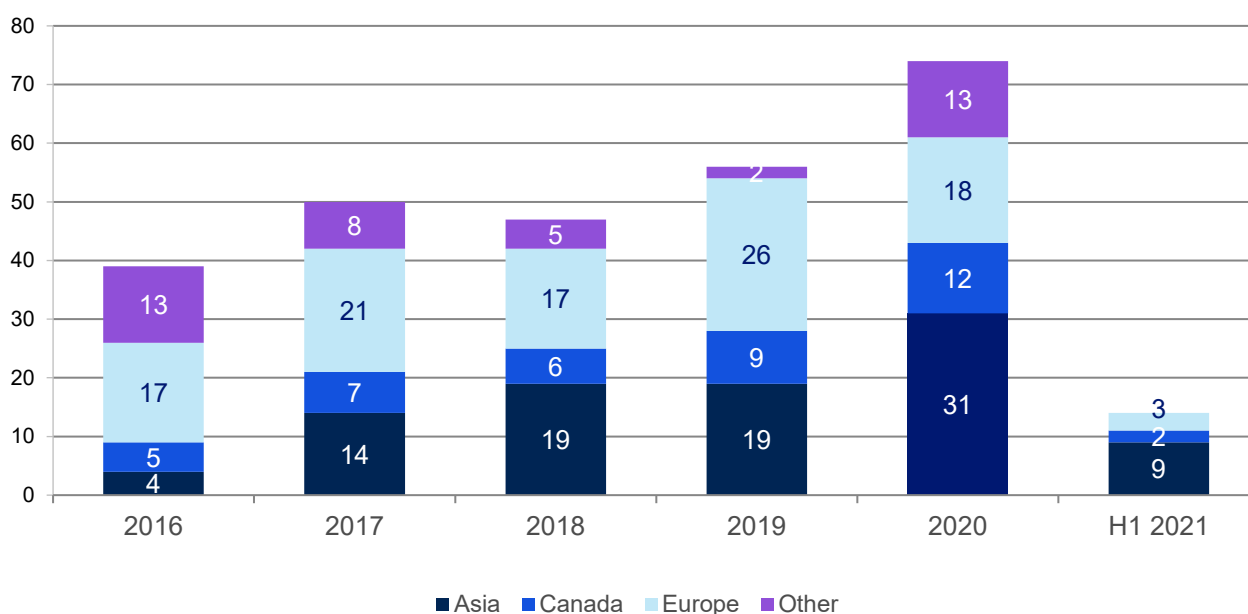
¹ Compiled using data from Stanford School of Law – [Securities Class Action Clearinghouse](#), a collaboration with Cornerstone Research and used with permission. [Core filings](#) are all federal securities class actions, excluding those defined as M&A filings, consolidated into one to prevent double counting.

Core Class Action Statistics 2016 – H1 2021 ²

Number of Filings

	Total Number of Class Actions	Class Actions Against US Issuers	Class Actions Against Foreign Issuers	Foreign Issuers as % of Total
H1 2021	96	82	14	14.6
2020	224	150	74	33.0
2019	245	187	56	22.9
2018	220	173	47	21.4
2017	213	163	50	23.5
2016	187	147	40	21.4

Filings by Domicile



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US Class Actions – Non-US Issuers

A list of all – core and non-core - class actions against foreign filers in 2021.

Filing Name ³	Filing Date	District Court	Exchange	Ticker	HQ	Sector
Tarena International, Inc. : ADRs	06/22/2021	E.D. New York	NASDAQ	TEDU	China	Schools
RLX Technology Inc: ADRs	06/09/2021	S.D. New York	New York SE	RLX	China	Consumer
GW Pharmaceuticals, PLC: ADRs	05/27/2021	S.D. California	NASDAQ	GWPH	United Kingdom	Healthcare
Volkswagen AG	04/30/2021	C.D. California	OTC-BB	VWAGY	Germany	Consumer
Credit Suisse Group AG: ADRs	04/16/2021	S.D. New York	New York SE	CS	Switzerland	Financial
Canaan Inc: ADRs	04/15/2021	S.D. New York	NASDAQ	CAN	China	Technology
Ebang International Holdings Inc.	04/08/2021	S.D. New York	NASDAQ	EBON	China	Technology
SOS Limited: ADRs	03/30/2021	D. New Jersey	New York SE	SOS	China	Technology
BELLUS Health Inc.	03/16/2021	S.D. New York	NASDAQ	BLU	Canada	Healthcare
Neptune Wellness Solutions Inc.	03/16/2021	E.D. New York	NASDAQ	NEPT	Canada	Healthcare
EHang Holdings Limited: ADRs	02/17/2021	S.D. New York	NASDAQ	EH	China	Aerospace & Defense
Jianpu Technology Inc: ADRs	02/17/2021	S.D. New York	New York SE	JT	China	Technology
Astrazeneca PLC: ADRs	01/26/2021	S.D. New York	NASDAQ	AZN	United Kingdom	Healthcare
9F Inc: ADRs	01/20/2021	D. New Jersey	NASDAQ	JFU	China	Technology
Lizhi Inc: ADRs	01/20/2021	E.D. New York	NASDAQ	LIZI	China	Technology

³ ADRs = [American Depositary Receipts](#)



www.aig.com

Brian Botkin

Deputy Chief Underwriting
Officer, International Financial
Lines & Global Head of
Multinational, Financial Lines,
AIG

Tel: +44 207 063 5500

brian.botkin@aig.com

Jason Kelly

Head of International Financial
Lines, AIG

Tel: +1 (715) 303-0006

jason.kelly@aig.com

Christopher Magee

Head of Commercial D&O,
AIG UK

Tel: +44 203 217 1844

christopher.magee@aig.com

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