

The Securities And Antitrust Class Action Litigation Industry Continues Its Record Pace

By Kevin Doyle, Global Head of Marketing, Battea Class Action Services, LLC



Billions of dollars are available to eligible investors, but the extensive class periods, vast array of instruments, and complex loss calculations pose a challenge to individuals filing claims on their own.

There has been incredible growth in securities and antitrust class action litigations and settlements, particularly as they have unfolded in 2016 and the first three quarters of 2017. The number of new cases and new settlements from across traditional securities litigation to antitrust rate rigging, spread inflation and other forms of collusion are at an all-time high and shows no signs of slowing down.

- In the first half of 2017, 226 new federal securities class action cases were filed.
- This surge in U.S. securities class action

filings is more than 130% higher than the 120 first half filings in 2016.

- Of the new cases filed in 2017, 135 cited violations of SEC Rule 10b-5 or of Section 11 or 12 of the Securities Exchange Act of 1934 and the 1933 Securities Act, respectively.
- The 2017 first half filings are the highest in history, and should this pace continue, total annual filings would represent a 67% increase from 2016.

As new cases are introduced or settle, the claim and loss analysis, litigation research, and rigorous data auditing and monitoring required for these filings have become increasingly complex. In addition to the size and complexities of many derivatives and FX trading cases and settlements, the sheer volume of more traditional securities cases is exploding in the US and abroad.

International versus domestic claims filing and complex securities

| | LEGAL FRAMEWORK | INVESTOR ACTION REQUIRED | LEGAL AND COURT EXPENSES | RECOVERY ACTIVITIES |
|---------------|--|---|--|---|
| US | "Class action litigation": A U.S./Canadian legal framework exists so damaged investors can pursue litigation as part of a "class". | All members of the class are automatically included, unless they opt-out of the class. | Law firms bear legal expenses in anticipation of obtaining a percentage of the overall settlement or in the case of a trial verdict, a percentage of damages awarded. | Settlement recovery activities take place post-litigation. If a settlement is reached, claims are filed and awards collected on behalf of the client. Investors must file confidential claims to collect their portion of the settlement. |
| International | "Collective actions": No legal framework equivalent to a U.S. "class". Damaged investors must collectively pursue legal action for potential reimbursement of damages. | Depending on jurisdiction, an investor is not included in any potential awards or settlement unless they "opt-in" or proactively join the action. | In International litigation forums, "loser pays" generally means the losing party must pay the prevailing party's legal and court costs. If there is an unsuccessful verdict, litigation funders provide insurance-like mechanisms to protect investors, in exchange for a portion of any potential settlements. | Investors must take early action to be eligible to participate and in some jurisdictions, investors are required to file public claims. |

Antitrust litigations

While most antitrust cases are not specifically securities class actions, these two legal subsets may overlap, and the result is antitrust securities class action litigation. Examples include the Credit Default Swaps Antitrust Litigation (which settled for \$1.86 billion in 2015), the Private Equity settlement for \$590 million, the Libor, Euribor and Tibor scandals, and the recent FX-rigging case for more than \$2.31 billion.

Although settlement funds are established primarily to benefit damaged institutional investors, many products transact over-the-counter (OTC) and accordingly are not easily identifiable with traditional securities identifiers. Special diligence is required in the filing of these types of claims or investors risk leaving vast sums of money on the table.

With many mega multi-billion dollar litigations related to Libor, Euribor and Tibor rates and spreads manipulation across a vast set of financial instruments and major multi-billion litigations in foreign exchange related trading,

the hedge fund community is first in line to cash in from these and other regular events.

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With nearly \$4 billion available to eligible claimants across a variety of cases, ensuring your eligibility by properly filing your claim is an absolute necessity. Here are a few updates on some of the larger available settlement funds.

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FX instruments litigation settlement

In quarter 2 and quarter 3 2017, six new defendants agreed to contribute more than \$300 million to the litigation settlement fund, pushing the preliminarily approved settlement fund to \$2.31 billion regarding the manipulation of benchmark rates, price spreads at which currencies were bought and sold, and exchanging confidential customer information in an effort to trigger client stop-loss and limit orders. However, with one defendant still yet to settle, we anticipate this settlement fund to increase.

Euroyen (Tibor) litigation settlement

In quarter 3 2017, two new defendants agreed to contribute \$148 million to the litigation settlement fund surrounding the manipulation of the Yen Libor and Euroyen Tibor benchmark interest rates. The preliminarily approved settlement fund now stands at \$206 million.

US dollar (Libor) litigation settlement

The current settlements in this case, Barclays Bank for \$120 million and Citibank for \$130 million, are considered “ice-breakers”. In addition to the monetary contribution, the settlement requires cooperation with the Plaintiffs in their on-going litigation against the Non-Settling Defendants. This is expected to increase the leverage the Plaintiffs have in the settlement negotiations.

The list of Non-Settling Defendants is lengthy and includes 16 major banks. It is most likely that additional Banks will fall in line and settle; and with each settlement the Settling Bank will be required to cooperate with the Plaintiffs in their on-going litigation against the remaining Non-Settling Defendants. With each settlement, the Settlement



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Fund will continue to grow. It is expected that the total Settlement Fund will be in excess of \$1 billion.

The time to act is now

As there are such significant sums available to damaged investors, it is crucial that to take action to establish a claim. For the US and Canada FX litigations, eligible investors are automatically included in the class, but must file claims to collect their portion of the settlement dollars. International filings require an unparalleled understanding of the filing process, the specifics of each case and the various recovery options available.

To maximize recovery potential, it is highly recommended to seek an expert firm who specializes in this area and who can provide the transparency required to validate their performance. Without having that trust there is a risk of leaving large sums of money behind without knowing it.

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