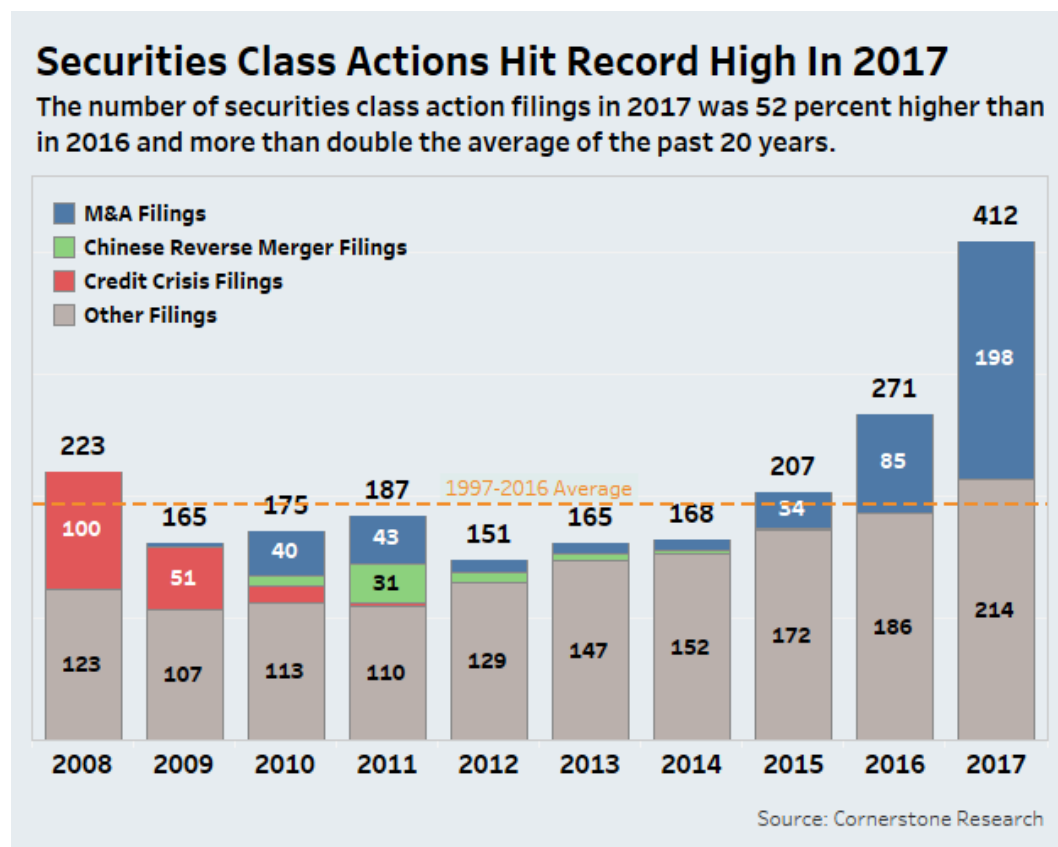


2017 M&A Suits Push Securities Class Actions To Record High

By Dunstan Prial

Law360, New York (January 30, 2018, 10:42 PM EST) -- A surge in federal class action suits targeting companies involved in mergers and acquisitions in 2017 led to a second straight record year for the overall number of federal securities class actions, according to a report released Tuesday, a trend legal experts say could be attributed to a migration of M&A suits out of the Delaware Court of Chancery and into federal jurisdictions where the potential for success is seen as greater.

There were 198 federal filings related to M&A transactions in 2017, according to the report released by Cornerstone Research and the Stanford Law School Securities Class Action Clearinghouse, accounting for nearly half of the record high total of 412 federal securities class action filings in all of 2017 and more than doubling the 85 M&A suits filed in 2016.



“The increase in federal securities class actions as reflected in the Cornerstone Report is largely due to a significant jump in M&A filings, and that jump is likely driven by the elimination of so-called disclosure-only settlements in Delaware,” said Jonathan M. Sperling, a partner at Covington Burling LLP.

Before the 2016 ruling in *In re Trulia Inc. Stockholder Litigation*, virtually all M&A related suits in Delaware involved “disclosure-only” settlements in which shareholders who had sued over an alleged lack of information about a potential merger settled for additional disclosures about the deal. But Trulia “essentially spelled the end” of those settlements, Sperling said.

According to the Cornerstone data, the 412 total federal filing for 2017 represented a more than 50 percent increase from the previous record of 271 filings in 2016, more than double the historical average over the previous 20 years, and the highest level since the enactment of the Private Securities Litigation Reform Act of 1995, or PSLRA, which was drawn up by Congress to curb what was viewed at the time as a glut of shareholder suits.

“What we have seen is Delaware filings are down and federal M&A filings are up,” said Sasha Aganin, a vice president at Cornerstone Research and one of the authors of the report.

The number of filings described in the report as core filings, or filings that typically focus on stock price drops, was also up, Aganin noted, rising to 214 in 2017 from 186 a year earlier. That’s surprising because typically core suits are filed for company-specific reasons — namely, the stock price drops, shareholders are unhappy and they sue, Aganin said.

Market volatility tends to rise when the overall market is falling, and individual companies can experience large drops in their stock price, which has been the case in the last 10 or 15 years, according to Aganin.

“When you think about the market these days, market commentators tell you it’s an unusually calm and rising market in 2017,” said Aganin. “Company by company, there were obviously drops for idiosyncratic reasons, but the overall trend in the market was up and calm. So it’s surprising that the number of core suits rose.”

Plaintiffs attorney Daniel S. Sommers, a partner at Cohen Milstein and co-chair of its securities litigation and investor protection practice group, said it's not an anomaly that securities cases, in particular M&A cases, are on the rise despite a record-setting rise in stock markets in the past year. That’s because rising financial markets have fueled a booming M&A market, he said.

“What I think will be of greatest interest is to see over time whether these additional cases are successful at the same rate as in prior years,” said Sommers. “That will be a way to measure whether we’ve seen an increase in quantity without a drop in the quality of cases, or simply an increase in the quantity of cases.”

According to the report, the outcomes of overall securities class action filings in 2017 showed higher dismissal rates than in previous years, and filings in core suits are on pace to have the record-highest rate of dismissal within the first year of filing.

The report also found that M&A cases filed from 2009 to 2016 have been dismissed at a much higher rate than other federal filings.

“The recent surge in lawsuits that are likely to be dismissed is troubling from a public policy perspective,” said professor Joseph Grundfest, director of the Stanford Law School Securities Class Action Clearinghouse. “The PSLRA was designed to deter plaintiffs from filing low-quality complaints, but this surge in complaints that are dismissed with greater frequency suggests that the law is no longer having its intended quality-enhancing effect.

“Policymakers should, I think, study these data carefully and ask whether the time is nigh for further reform,” he added.

--Editing by Pamela Wilkinson and Jill Coffey.