

CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Tech Company Securities Class Action Filings and Settlements

2015–Q1 2020 Review and Analysis

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Executive Summary

This report examines securities filings and settlements related to “tech companies” between 2015 and Q1 2020.¹

While the full impact of the COVID-19 pandemic on filing activity and future settlements remains to be seen, there is potential for increased securities class action filings, including those against tech companies, based on the economic slowdown and operational issues associated with the pandemic.

Filings

- Securities class action filings involving tech companies increased for the fourth consecutive year, in line with the trend in overall filings.
- Filings involving tech companies rose to a record number of 85 new cases in 2019, an increase of 55 percent from 2018.
- The number of Securities Act of 1933 (1933 Act) cases filed in state courts involving tech companies reached a peak in 2019, based on data through Q1 2020.²
- Filing activity in Q1 2020 slowed, with 12 filings involving tech companies. However, the longer-term impact of the COVID-19 pandemic on securities class actions involving tech companies remains unclear.
- Mega filings involving tech companies were concentrated in federal rather than state courts.

Settlements

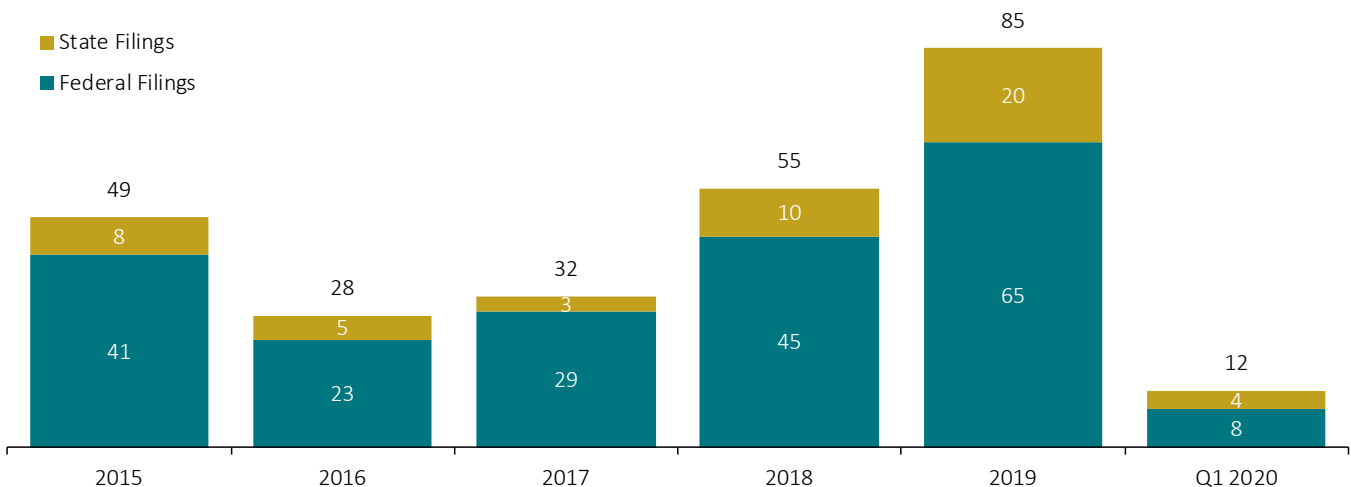
- Cases with higher settlement amounts tended to take longer to settle for both tech and non-tech companies. However, the dollar value of settlements involving tech companies was generally smaller.
- On average, cases involving tech companies settled more quickly in 2015–2019 compared to cases involving non-tech companies.
- During 2015–2018, the median settlement amount among tech company filings was lower than that among non-tech company filings. However, this trend reversed in 2019.

Federal and state court securities filings involving tech companies have boomed over the past four years.

Number of Federal and State Filings

- Total tech company filings have increased steadily, from 28 filings in 2016 to a record high 85 in 2019.³ Filings against tech companies accounted for 20 percent of total filings against both tech and non-tech companies over 2016–2019.
- Tech company filings in federal courts increased 44 percent from 2018 to 2019. The number of 1933 Act tech company filings in state courts doubled.
- The Internet and Software subsectors accounted for 66 percent of tech company filings in 2019.
- State filings involving tech companies increased as a proportion of total filings in both state and federal courts, from 9 percent in 2017 to 18 percent in 2018 and 33 percent in Q1 2020. This shift in filings from federal to state courts is likely a consequence of the U.S. Supreme Court’s 2018 ruling that confirmed state courts’ jurisdiction over 1933 Act claims.⁴
- Since 2018, securities lawsuits involving tech companies have been filed in a variety of state courts, including California, New York, Nevada, Massachusetts, Pennsylvania, Florida, Georgia, and Colorado.
- Tech company filing activity in Q1 2020 declined from 2019, likely due to slowdowns associated with the COVID-19 pandemic.
- The pandemic’s impact on the market value of tech companies may be less severe than its effect on the overall market. While the S&P 500 declined by 20 percent during Q1 2020, the Dow Jones U.S. Technology Index lost 12 percent of its market value and the NASDAQ-100 Technology Sector lost 16 percent of its market value.⁵
- While the full impact of the COVID-19 pandemic on filing activity remains to be seen, there is potential for increased securities class action filings, including those against tech companies, based on the economic slowdown and operational issues associated with the pandemic.

Figure 1: Number of Tech Company Securities Class Action Filings 2015–Q1 2020



Source: Bloomberg BICS Manual; Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse

Note: Dataset includes state and federal core filings from 2015 through Q1 2020. Tech companies are defined as those in the Computers, Internet, Semiconductors, Software, and Telecommunications subsectors according to the Bloomberg Industry Classification Systems (BICS).

Market Capitalization Losses for Federal and State Filings

With the rising number of filings over the past four years, historically large amounts of market capitalization losses, as measured by Disclosure Dollar Loss (DDL) and Maximum Dollar Loss (MDL), are the subject of litigation.

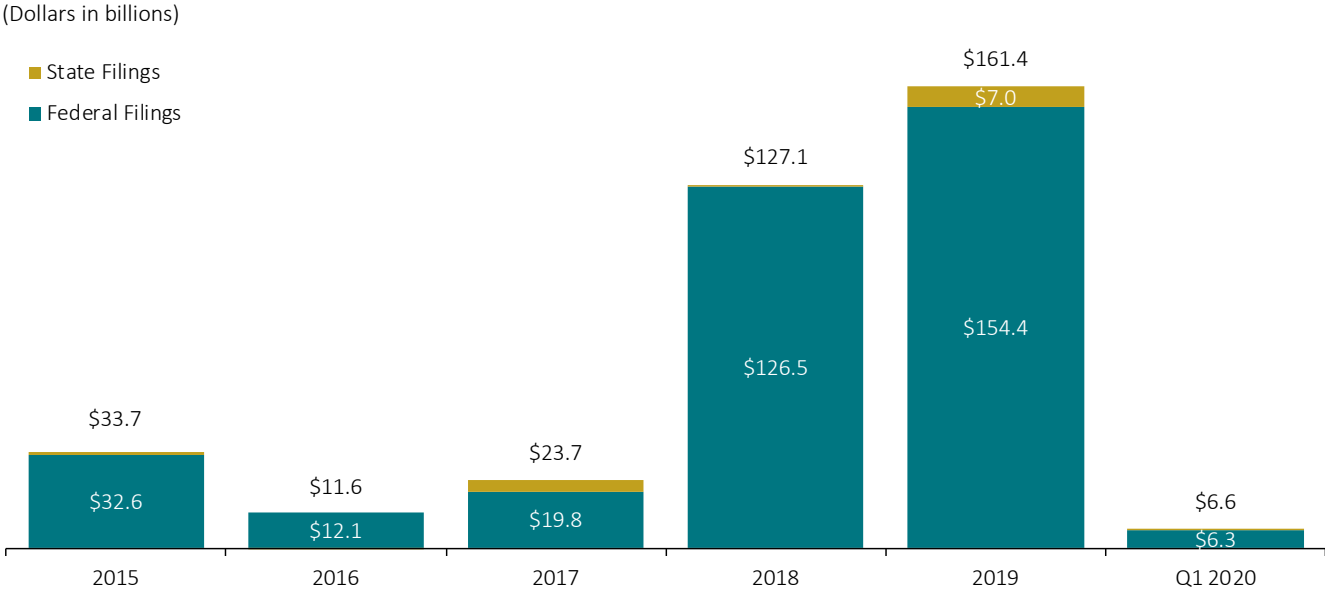
Disclosure Dollar Loss Index® (DDL Index®)⁶

DDL is the dollar value change in the defendant firm’s market capitalization between the trading day immediately preceding the end of the class period and the trading day immediately following the end of the class period.

- The DDL Index of tech company filings rose to \$161 billion in 2019 from \$127 billion in 2018—a 27 percent increase.
- The median DDL of tech company filings rose to \$337 million in 2019 from \$199 million in 2018—a 69 percent increase.
- Tech company cases filed in state courts were generally smaller in terms of market capitalization losses. In 2019, state court cases constituted only 4 percent of the DDL Index of tech company filings, while making up 24 percent of the number of filings.
- Cases filed in Q1 2020 have had relatively small market capitalization losses. The DDL Index of tech company filings was less than \$7 billion.

The DDL Index of tech company filings increased significantly after 2017.

Figure 2: Disclosure Dollar Loss Index® (DDL Index®) of Tech Company Filings 2015–Q1 2020



Source: Bloomberg BICS Manual; Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse
 Note: Dataset includes state and federal core filings from 2015 through Q1 2020. Tech companies are defined as those in the Computers, Internet, Semiconductors, Software, and Telecommunications subsectors according to the Bloomberg Industry Classification Systems (BICS).

Maximum Dollar Loss Index® (MDL Index®)⁷

MDL is the dollar value change in the defendant firm’s market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period.

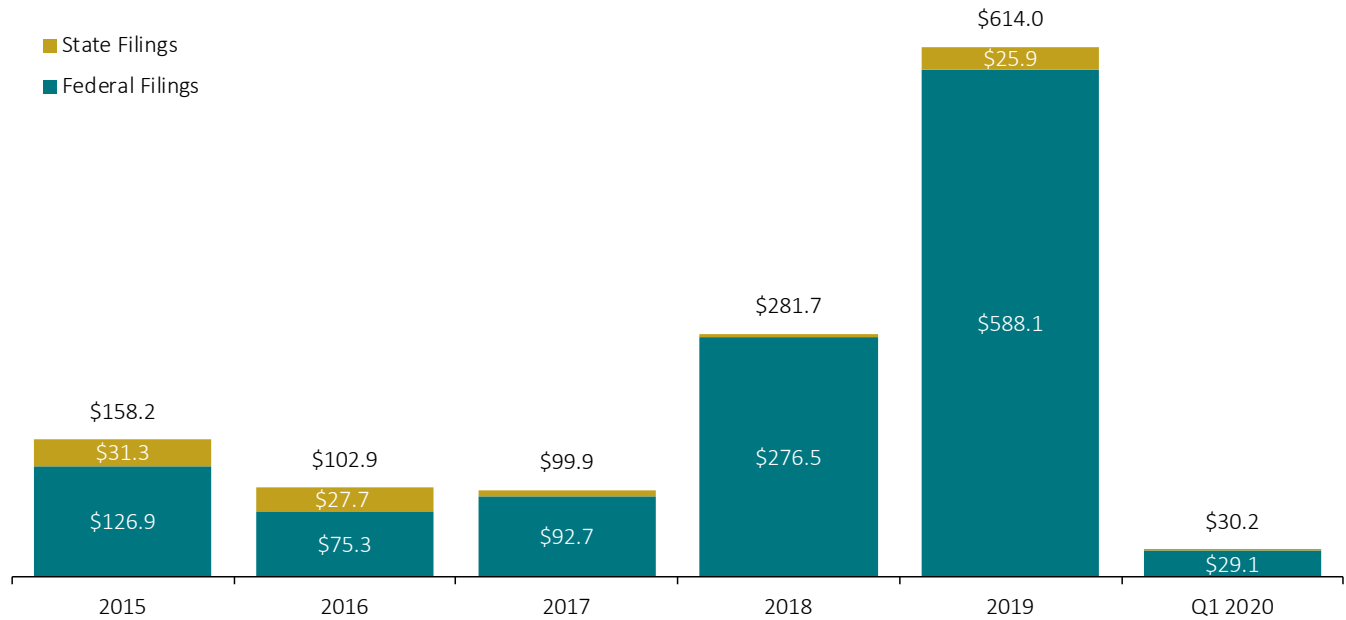
- The MDL Index of tech company filings more than doubled in 2019 to \$614 billion from \$282 billion in 2018.
- The median MDL of tech company filings also rose in 2019 to \$1.4 billion—nearly three times the 2018 figure of \$0.5 billion.

- As with DDL, state court cases involving tech companies are also generally smaller in terms of MDL. In 2019, state court cases constituted 4 percent of the MDL Index of tech company filings, while making up 24 percent of the number of filings.
- In Q1 2020, the MDL Index of tech company filings was \$30 billion.
- More than half of the MDL Index of tech company filings in Q1 2020 stems from a single case in the Computers subsector: *Electrical Workers Pension Fund, Local 103, I.B.E.W. et al. v. HP Inc. et al.*

The MDL Index of tech company filings soared after 2017, more than doubling in 2018 and again in 2019.

Figure 3: Maximum Dollar Loss Index® (MDL Index®) of Tech Company Filings 2015–Q1 2020

(Dollars in billions)



Source: Bloomberg BICS Manual; Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse

Note: Dataset includes state and federal core filings from 2015 through Q1 2020. Tech companies are defined as those in the Computers, Internet, Semiconductors, Software, and Telecommunications subsectors according to the Bloomberg Industry Classification Systems (BICS).

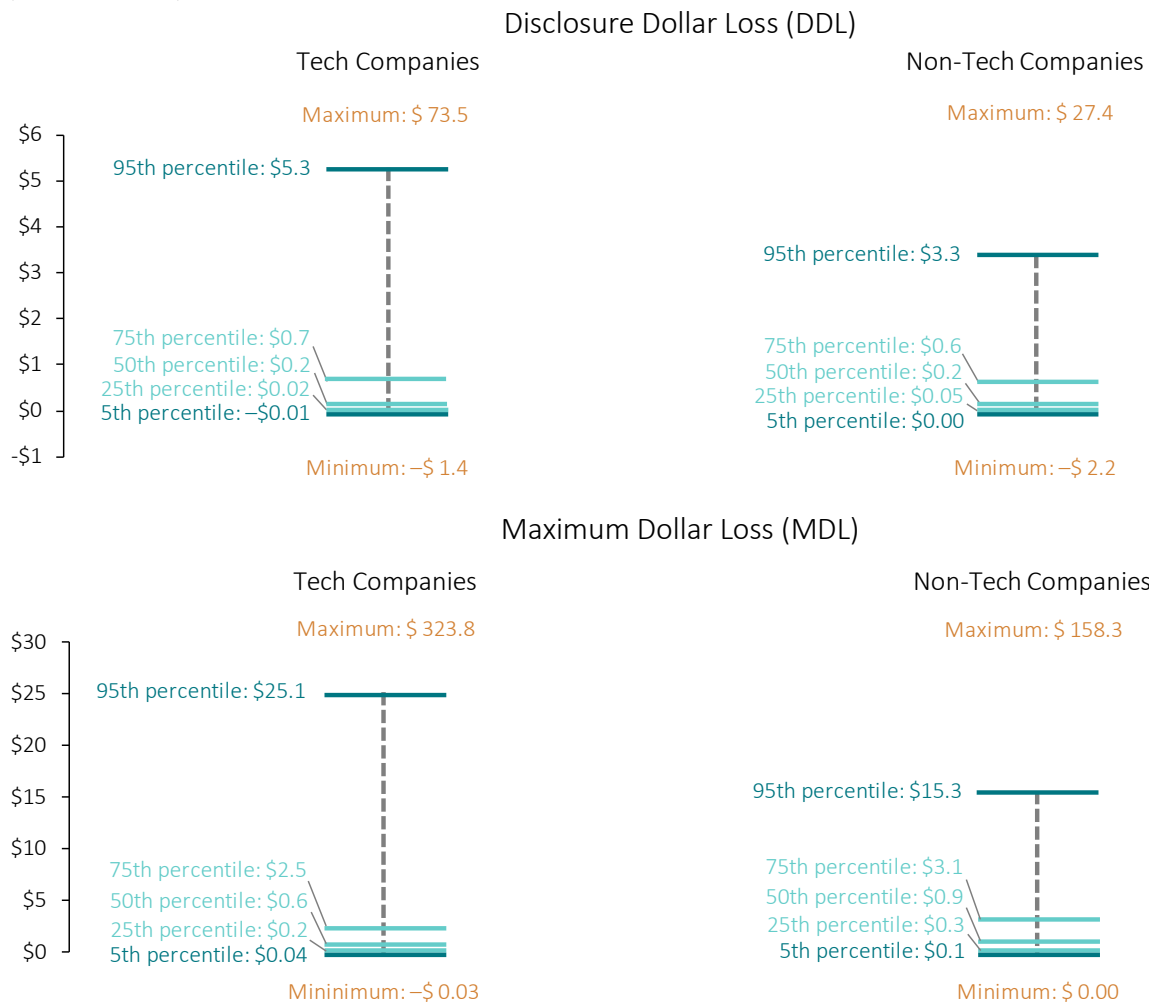
- The size distributions of filings (measured by both DDL and MDL) involving tech and non-tech companies are similar, except at the upper end. While both distributions are concentrated within a similar range, tech companies have larger outliers.

Tech company filings represent a disproportionately high percentage of big-dollar cases.

- The biggest filings against tech companies are much larger than the biggest filings against non-tech companies.
 - The largest market capitalization loss (measured by DDL) for a tech company filing is nearly three times that of the largest non-tech company filing (\$74 billion vs. \$27 billion).
 - The highest MDL is \$324 billion for a tech company filing, approximately double that of the largest non-tech company filing (\$158 billion).
 - The 95th percentile MDL for tech company filings is 64 percent higher than that of non-tech company filings.

Figure 4: Distribution of Disclosure Dollar Loss (DDL) and Maximum Dollar Loss (MDL)—Tech vs. Non-Tech Company Filings 2015–Q1 2020

(Dollars in billions)



Source: Bloomberg BICS Manual; Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse

Note: Dataset includes state and federal core filings from 2015 through Q1 2020. Tech companies are defined as those in the Computers, Internet, Semiconductors, Software, and Telecommunications subsectors according to the Bloomberg Industry Classification Systems (BICS).

Mega Filings

Mega DDL filings have a DDL of at least \$5 billion. Mega MDL filings have an MDL of at least \$10 billion. For both DDL and MDL measures, the number of tech company mega filings was higher in 2018–2019 than in 2015–2017.

- There were four mega DDL filings involving tech companies in 2019—a 33 percent decrease from 2018.
- There were eight mega MDL filings involving tech companies in 2019, up from six the previous year.
- Mega filings involving tech companies have been concentrated in federal courts rather than state courts. For the past five years, all mega DDL filings involving tech companies were in federal courts. This filing concentration in federal courts began as early as 2002 according to the data.
- Since 2017, all mega MDL filings involving tech companies have been federal filings.

Mega DDL and MDL filings for tech companies have been heavily concentrated in federal courts.

- There were no mega filings involving tech companies in Q1 2020 as measured by DDL.
- In Q1 2020, there was only one tech company MDL mega filing: *Electrical Workers Pension Fund, Local 103, I.B.E.W. et al. v. HP Inc. et al.*

Figure 5: Number of Tech Company Mega Disclosure Dollar Loss (DDL) and Mega Maximum Dollar Loss (MDL) Filings

| | 2015 | 2016 | 2017 | 2018 | 2019 | Q1 2020 |
|-----------------------------------|----------|----------|----------|----------|----------|----------|
| Mega Disclosure Dollar Loss (DDL) | | | | | | |
| Federal Filings | 2 | 1 | 1 | 6 | 4 | - |
| State Filings | - | - | - | - | - | - |
| Total | 2 | 1 | 1 | 6 | 4 | - |
| Mega Maximum Dollar Loss (MDL) | | | | | | |
| Federal Filings | 3 | 3 | 1 | 6 | 8 | 1 |
| State Filings | 1 | 1 | - | - | - | - |
| Total | 4 | 4 | 1 | 6 | 8 | 1 |

Source: Bloomberg BICS Manual; Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse

Note: Dataset includes state and federal core filings from 2015 through Q1 2020. Tech companies are defined as those in the Computers, Internet, Semiconductors, Software, and Telecommunications subsectors according to the Bloomberg Industry Classification Systems (BICS).

Spotlight: Mega Filings Allegations

- There were 26 mega filings against tech companies in federal and state courts between 2015 and Q1 2020, as measured by either MDL or DDL. Overall, allegations have typically related to (1) misrepresentations of business prospects, and (2) direct or indirect issues arising from an earlier merger or acquisition.
- Out of the 25 mega filings against tech companies from 2015 to 2019, more than a third had allegations related to misrepresentations of business prospects.
- The only tech company mega filing in Q1 2020, *Electrical Workers Pension Fund, Local 103, I.B.E.W. v. HP Inc. et al.*, had allegations related to projections of the company's business prospects.
- There were two tech company mega filings in state courts between 2015 and Q1 2020, *Buelow v. Alibaba Group Holding Limited et al.* and *Hosey and Shilliar v. Twitter Inc. et al.* Both were filed in California under the 1933 Act, with allegations related to misstatements in the Registration Statement and Prospectus for an IPO.
- The boom in tech company mega filings in 2018–2019 was driven by allegations about issues subsequent to an earlier merger or acquisition. This is not unusually surprising in light of the earlier M&A wave in 2015–2017.⁸
- Of the 15 tech company mega filings in 2018–2019, five had allegations directly or indirectly arising from an earlier merger or acquisition, while none of the ten mega filings in 2015–2017 had such allegations.

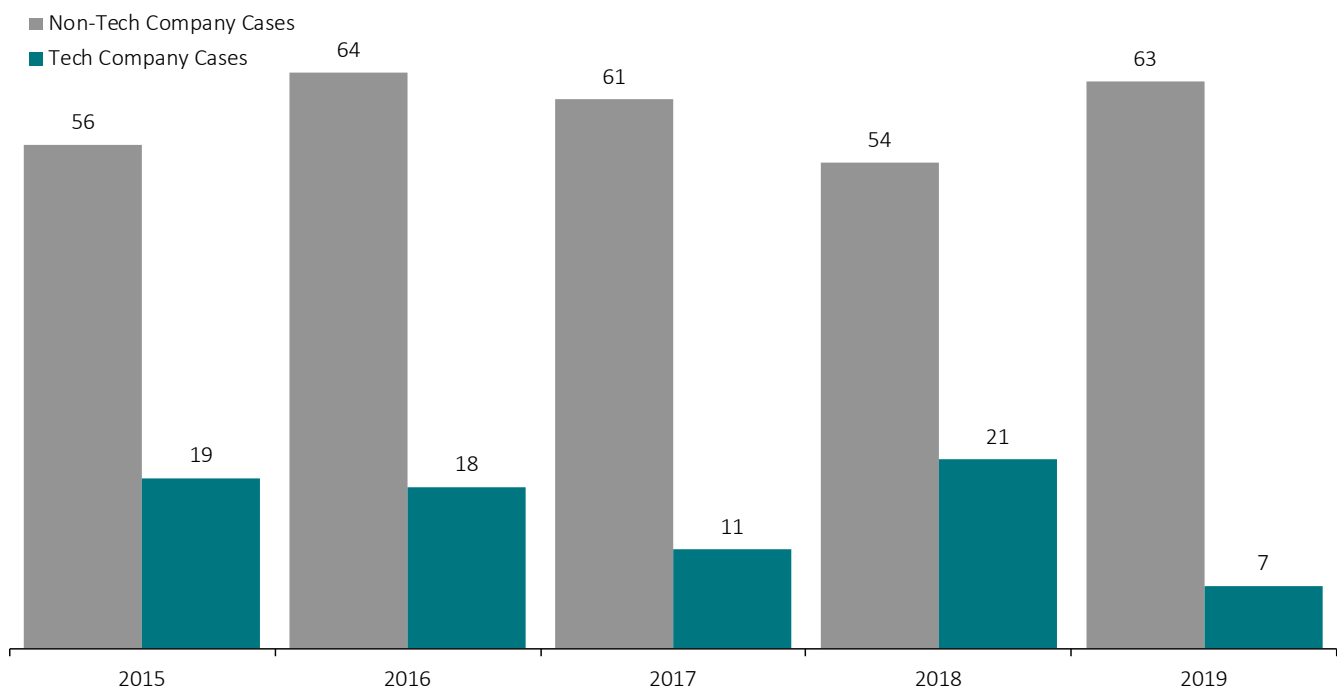
Tech company mega filings have primarily related to allegations of business prospect misrepresentations or the fallout from mergers and acquisitions.

Settlements

- In 2019, the number of tech company settlements declined by 67 percent from the previous year, while non-tech company settlements increased by 17 percent.
- The highest number of tech company settlements in the past five years was in 2018.

The trend in the number of tech company settlements has been volatile in recent years, declining to its lowest level in 2019 after peaking in 2018.

Figure 6: Number of Settlements—Tech Company vs. Non-Tech Company 2015–2019



Source: Bloomberg BICS Manual; Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; Cornerstone Research Settlements Database

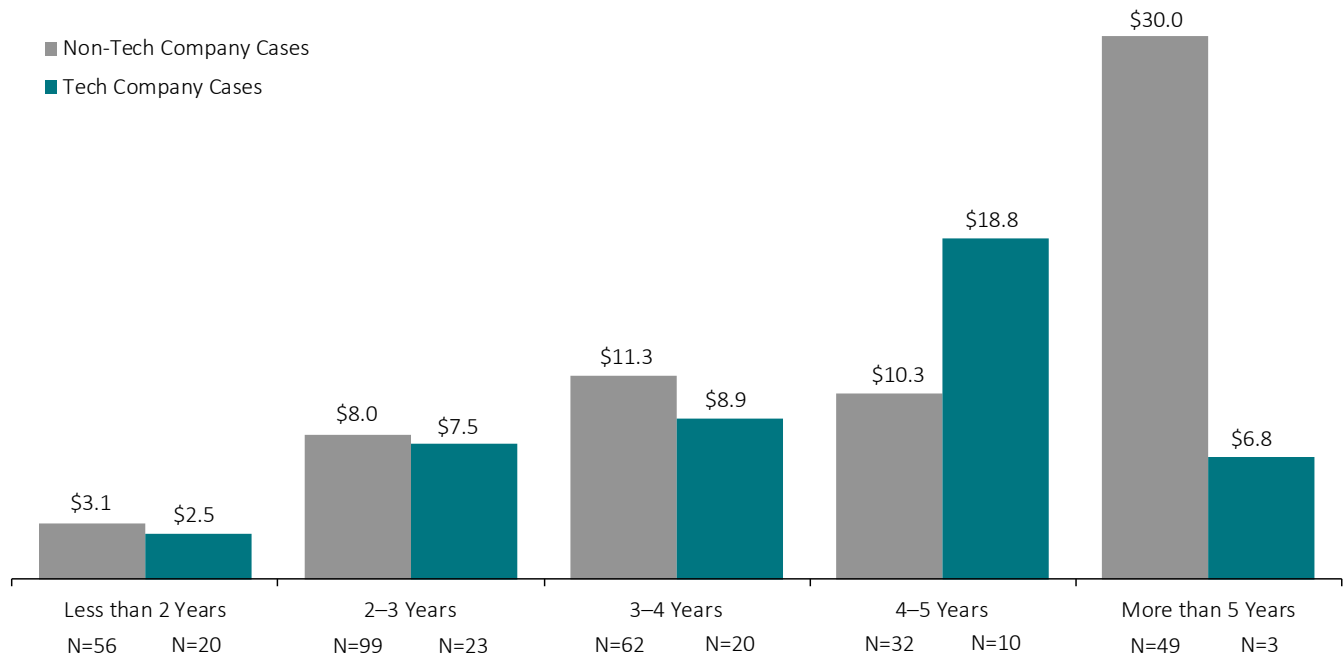
Note: Tech companies are defined as those in the Computers, Internet, Semiconductors, Software, and Telecommunications subsectors according to the Bloomberg Industry Classification Systems (BICS).

- Cases with larger settlement amounts tend to take longer to settle. This holds true for both tech and non-tech companies.
- The settlement amount of cases involving tech companies is generally smaller than those of non-tech companies.
- On average, in 2015–2019, tech company cases settled more quickly: only 4 percent of tech company cases took more than five years to settle, compared to 16 percent of non-tech company cases.

Tech company settlements have generally been smaller and quicker than those for non-tech companies.

Figure 7: Median Settlement Amounts by Time Elapsed from Filing Date to Settlement Hearing Date—Tech Company vs. Non-Tech Company 2015–2019

(Dollars in millions)



Source: Bloomberg BICS Manual; Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; Cornerstone Research Settlements Database

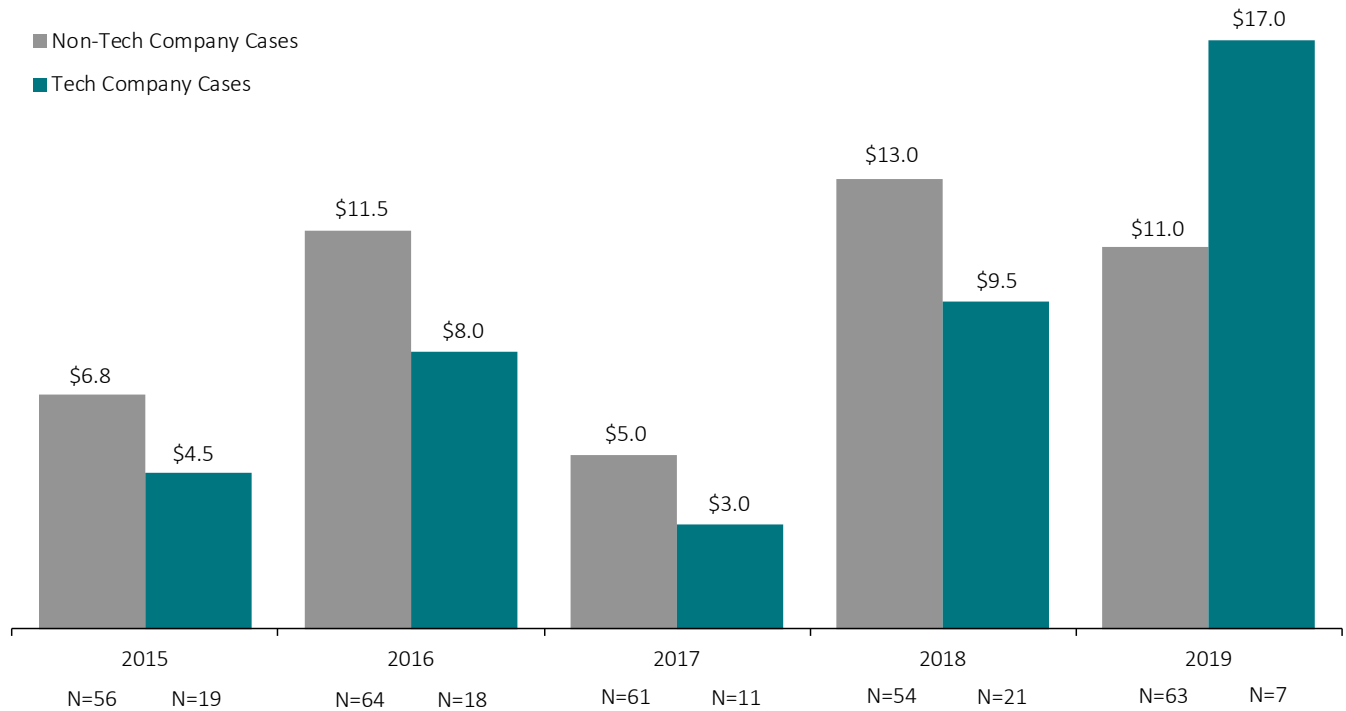
Note: Tech companies are defined as those in the Computers, Internet, Semiconductors, Software, and Telecommunications subsectors according to the Bloomberg Industry Classification Systems (BICS).

- From 2015 to 2018, the median settlement amount for tech company cases was lower than that for non-tech company cases. However, in 2019, the median settlement amount for tech company cases exceeded that for non-tech company cases.
- There were seven settlements involving tech companies in 2019, the lowest number in the last five years.

In 2019, the median tech company settlement amount exceeded the median non-tech company settlement amount, reversing the trend from 2015 to 2018.

Figure 8: Median Settlement Amounts—Tech Company vs. Non-Tech Company 2015–2019

(Dollars in millions)



Source: Bloomberg BICS Manual; Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; Cornerstone Research Settlements Database

Note: Tech companies are defined as those in the Computers, Internet, Semiconductors, Software, and Telecommunications subsectors according to the Bloomberg Industry Classification Systems (BICS).

Data Sources and Research Sample

Two pillars of the research sample in this report, described in detail below, are Cornerstone Research’s (1) securities filings dataset, and (2) settlements dataset. The research sample used in this report is core filings and settlements that are traceable to their respective filings related to tech companies between 2015 and Q1 2020.

Filings

- The Stanford Law School Securities Class Action Clearinghouse, in collaboration with Cornerstone Research, has identified federal securities class action filings since January 1, 1996 (securities.stanford.edu). The analysis in this report is based on data identified as of May 6, 2020.
- The federal filings sample used in this report includes federal core filings that allege violations of Section 11 of the Securities Act of 1933 and Section 10(b) and Section 12(a) of the Securities Exchange Act of 1934 (registration requirements).
- Multiple filings related to the same allegations against the same defendant(s) are consolidated in the database through a unique record indexed to the first identified complaint.
- In addition to federal filings, class actions filed in state courts since January 1, 2010, alleging violations of the Securities Act of 1933 are also separately tracked by Cornerstone Research.
- Parallel filings—cases where a lawsuit is filed in both state and federal court for the same issue—are considered as separate filings in this report.
- The filings analysis in this report is based on a combined sample of the federal and state core filings as identified above, and subset to tech companies as defined by five subsectors under the BICS classification: (1) Computers, (2) Internet, (3) Semiconductors, (4) Software, and (5) Telecommunications.

Settlements

- The settlements are identified by Cornerstone Research based on a review of case activity collected by Securities Class Action Services LLC (SCAS). The sample includes securities class actions filed after the passage of the Private Securities Litigation Reform Act (1995) and settled since 1996.
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.⁹ Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.¹⁰
- In addition to SCAS, data sources for the settlement dataset include Dow Jones Factiva, Bloomberg, the Center for Research in Security Prices (CRSP) at University of Chicago Booth School of Business, Standard & Poor’s Compustat, Refinitiv Eikon, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, Securities Class Action Clearinghouse (SCAC), and public press.

Endnotes

- ¹ “Tech companies” as used in this report refer to five subsectors under the Bloomberg Industry Classification Systems (BICS): (1) Computers, (2) Internet, (3) Semiconductors, (4) Software, and (5) Telecommunications. While the filings data extend from 2015 to Q1 2020, the settlements data only cover 2015–2019 at the time of publication. The datasets used in this report are updated as of May 6, 2020.
- ² A state 1933 Act filing is a class action filed in a state court that asserts claims under Section 11 and/or Section 12 of the Securities Act of 1933. These filings may also have Section 15 claims, but do not have Rule 10b-5 claims.
- ³ Only core filings, which are all federal and state 1933 Act securities class actions excluding those defined as M&A filings, are considered in this report.
- ⁴ The U.S. Supreme Court ruled on March 20, 2018, in *Cyan Inc. v. Beaver County Employees Retirement Fund* that cases with 1933 Act claims may be brought to state venues and are not removable to federal court. See *Cyan Inc. v. Beaver County Employees Retirement Fund*, No. 15-1439, 583 U.S. ____ (2018), https://www.supremecourt.gov/opinions/17pdf/15-1439_8njq.pdf.
- ⁵ See “S&P 500 Index – Historical Quotes,” MarketWatch, <https://www.marketwatch.com/investing/index/spx/historical>; “Dow Jones U.S. Technology Index – Historical Quotes,” MarketWatch, <https://www.marketwatch.com/investing/index/djustc/historical?countrycode=xx>; “NASDAQ-100 Technology Sector Index,” Nasdaq, <https://www.nasdaq.com/market-activity/index/ndxt/historical>.
- ⁶ Disclosure Dollar Loss Index® (DDL Index®) measures the aggregate DDL for all federal and state filings over a period of time. DDL is the dollar value change in the defendant firm’s market capitalization between the trading day immediately preceding the end of the class period and the trading day immediately following the end of the class period. DDL should not be considered an indicator of liability or measure of potential damages. Instead, it estimates the impact of all information revealed at the end of the class period, including information unrelated to the litigation. In this report, the DDL Index of tech company filings only measures the aggregate DDL for core federal and state filings involving tech companies.
- ⁷ Maximum Dollar Loss Index® (MDL Index®) measures the aggregate MDL for all federal and state filings over a period of time. MDL is the dollar value change in the defendant firm’s market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period. MDL should not be considered an indicator of liability or measure of potential damages. Instead, it estimates the impact of all information revealed during or at the end of the class period, including information unrelated to the litigation. In this report, the MDL Index of tech company filings only measures the aggregate MDL for core federal and state filings involving tech companies.
- ⁸ There was an increasing number of mergers and acquisitions happening over the period 2015–2017. See “M&A in the United States,” Institute for Mergers, Acquisitions and Alliances (IMAA), <https://imaa-institute.org/m-and-a-us-united-states/>). All tech company mega filings in 2018–2019 have ties to some merger or acquisition happening in 2015–2017. See *Caliendo v. CenturyLink Inc. et al.*, *Camp v. Qualcomm Incorporated et al.*, *Costanzo v. DXC Technology Company et al.*, *Felix v. Symantec Corporation et al.*, and *Gross v. AT&T Inc. et al.*
- ⁹ Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports by Cornerstone Research.
- ¹⁰ This categorization is based on the timing of the settlement approval. If a new partial settlement equals or exceeds 50 percent of the then-current settlement fund amount, the entirety of the settlement amount is recategorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50 percent of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

About the Authors

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