

SAR SECURITIES EXCHANGE ACT CLASS ACTION LITIGATION EXPOSURE REPORT – 3Q 2019



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Securities Exchange Act Class Action Litigation Exposure of U.S. Public Corporations Decreased to \$68.4B in 3Q'19 from \$135.1B in 2Q'19ⁱ

Aggregate U.S. Securities Class Action (SCA) Litigation Exposure of Public Corporations to Claims That Allege Violations Rule 10b-5 under the Securities Exchange Act

43 U.S. corporations were sued for alleged violations of the federal securities laws under Section 10(b) and 20(a) of the Securities Exchange Act of 1934 during 3Q'19.ⁱⁱ SCA litigation exposure for directors and officers of U.S. corporations to claims that allege violations of Rule 10b-5 under the Exchange Act amounts to \$68.4 billion.ⁱⁱⁱ Approximately \$1.7 billion of market capitalization declines that have been claimed as investor losses

by a proposed class of common stock shareholders exhibit an absence of stock price impact. Prior to discounting the claimed market capitalization losses related to alleged stock drops that do not surpass thresholds of price impact, data and analyses indicate that alleged exposure to Exchange Act claims during 3Q'19 amounts to \$70.1 billion. Cumulative SCA Exchange Act litigation exposure in 2019 amounts to \$270 billion.

| Quarter | Rule 10b-5 Exchange Act Filings [1] | Corporate Exposure to Alleged Violations of Rule 10b-5 (000s) [2] | Aggregate Market Cap. of U.S. Corps (000s) [3] | Rule 10b-5 Exposure % of Large Caps [4] | Rule 10b-5 Litigation Rate [5] |
|--------------------|-------------------------------------|---|--|---|--------------------------------|
| 1Q'19 | 43 | \$66,638,137 | \$29,335,074,039 | 0.23% | 1.17% |
| 2Q'19 | 42 | \$135,139,282 | \$31,712,483,097 | 0.43% | 1.15% |
| 3Q'19 | 43 | \$68,368,425 | \$31,588,218,889 | 0.22% | 1.16% |
| 2019 Total: | 128 | \$270,145,844 | | | |

[1] First filed SCA complaints that allege violations of Rule 10b-5. Excludes non-U.S. based corporations that trade through ADRs.

[2] The market cap. losses of U.S. corporations listed as defendants in the sample of SCA complaints. The U.S. exposure presented here is adjusted to discount for market capitalization losses related with claimed stock price declines that exhibit an absence of price impact.

[3] The aggregate market cap. of U.S. corporations' common stock listed on the NYSE and NASDAQ.

[4] The ratio of market cap. losses to the aggregate market cap. of U.S. corporations' common stock listed on the NYSE and NASDAQ.

[4] = [2] / [3]

[5] = Number of defendant U.S. corporations divided by the total number of U.S.-domiciled corporations that are listed on U.S. Exchanges.

In 3Q'19, aggregate exposure to Exchange Act SCAs by U.S. corporations returned to the levels of exposure exhibited during 3Q'18, 4Q'18, and 1Q'19 – approximately one-quarter of the aggregate market capitalization of U.S. corporations listed on U.S. exchanges. U.S. SCA Exchange Act exposure exhibited during 3Q'19 amounts to 22 basis points of the aggregate market capitalization of U.S. corporations that are listed on U.S. Exchanges.^{iv}

Throughout 2019, the number of consolidated SCA Exchange Act claims remained steady. In 1Q, 2Q, and 3Q of 2019, there were 43, 42, and 43, respectively, individual U.S. corporations that were sued for alleged violations of the Exchange Act and Rule 10b-5. The number of alleged corrective disclosures claimed against directors and officers of U.S. corporations has also remained relatively steady throughout 2019. Shareholders have alleged that 74, 68, and 65 corrective disclosures during each of the preceding three quarters have caused damages to investors in common stock resulting from the corresponding stock price declines.

| Quarter | Rule 10b-5 Exchange Act Filings [1] | Alleged Corrective Disclosures [2] | Alleged Corrective Disclosures with Statistically Significant Stock Price Impact [3] | % of Corrective Disclosures that Exhibit an Absence of Price Impact [4] |
|--------------------|-------------------------------------|------------------------------------|--|---|
| 1Q'19 | 43 | 74 | 60 | 19% |
| 2Q'19 | 42 | 68 | 60 | 12% |
| 3Q'19 | 43 | 65 | 52 | 20% |
| 2019 Total: | 128 | 207 | 172 | |

[1] First filed SCA complaints that allege violations of Rule 10b-5. Excludes non-U.S. based corporations (ADRs).

[2] The total number of alleged corrective disclosures identified in the sample of SCA complaints.

[3] The total number of alleged corrective disclosures that exhibit a statistically significant residual stock price decline.

[4] The ratio of the number of alleged corrective disclosures that exhibit an absence of indirect price impact to the total number of alleged corrective disclosures claimed in first filed SCA complaints.

[4] = ([3] / [2]) - 1

During 3Q'19, SAR accounted for 57 SCAs that allege violations of Rule 10b-5 via 93 claimed corrective disclosures.^v After consolidating the filed SCAs against individual corporations, SAR accounted for 43 filed claims. A total of 65 claimed corrective disclosures were alleged against 43 corporate defendants based on the first filed and identified SCA complaints.^{vi, vii} Of the 65 corrective disclosures alleged during 3Q'19, 13 exhibit an absence of price impact (*Halliburton II*) in the corresponding stock price declines and do not meet the thresholds related with heightened pleading standards of loss causation (*Dura*).^{viii} 20% of alleged stock price declines claimed in 43 SCAs against directors and officers exhibit an absence of price impact.^{ix} This is indicative of a decrease in the quality of the Exchange Act SCAs filed in 3Q'19. In 2Q'19, 12% of alleged corrective disclosures did not surpass thresholds of price impact. In 3Q'19, that figure has *increased to 20%*.

U.S. SCA Exposure of Large Cap Corporations^x

The SCA Exchange Act litigation exposure of large cap corporations was \$56.1 billion during 3Q'19. This is a material decrease of 55%, or \$69 billion relative to 2Q'19. 13 large cap corporations were sued for alleged violations of Rule 10b-5 during 3Q'19 - an increase of 4. The average aggregate market capitalization of U.S. large cap corporations, according to the market capitalization range of the S&P500 Index during 3Q'19, was \$29.5 trillion.^{xi} In 3Q'19, exposure to alleged violations of the Exchange Act by large cap corporations decreased to 19

basis points of the aggregate market capitalization of all publicly traded large cap corporations.

Large Cap Analysis: 3Q'19 shows an increase in the number of large cap corporations that have been sued, but a decrease in the claimed shareholder losses relative to 2Q'19. The Rule 10b-5 litigation rate of large cap corps increased by more than 40% during 3Q'19.

Exposure of U.S. Large Cap Corporations to Alleged Violations of the Exchange Act

| Quarter | No. of Defendant Corporations | Defendants' 10b-5 Exposure (000s) | Aggregate Market Cap. of Large Caps (000s) | Rule 10b-5 Exposure % of Large Caps | Rule 10b-5 Litigation Rate |
|---------|-------------------------------|-----------------------------------|--|-------------------------------------|----------------------------|
| 1Q'19 | 17 | \$57,424,639 | \$27,146,931,803 | 0.21% | 2.08% |
| 2Q'19 | 9 | \$125,410,639 | \$29,531,839,268 | 0.42% | 1.01% |
| 3Q'19 | 13 | \$56,074,874 | \$29,497,110,880 | 0.19% | 1.43% |

U.S. SCA Exposure of Mid Cap Corporations^{xii}

The SCA Exchange Act litigation exposure of mid cap corporations was \$6.9 billion during 3Q'19. This is an increase of 18.6%, or \$1.1 billion relative to 2Q'19. 13 mid cap corporations were sued for alleged violations of Rule 10b-5 during 3Q'19. The average aggregate market capitalization of U.S. mid cap corporations, according to the market capitalization range of the S&P MidCap 400 Market Index during 3Q'19, was \$1.38 trillion.^{xiii} In 3Q'19, exposure to alleged violations of the Exchange Act by mid cap corporations increased to 50 basis

points of the aggregate market capitalization of all U.S. mid cap corporations listed on U.S. Exchanges. This is an increase of 10 basis points relative to 2Q'19.

Mid Cap Analysis: 3Q'19 is the second consecutive quarter that a greater number of U.S. mid cap corporations have been targeted for alleged violations of the Exchange Act. The Rule 10b-5 litigation rate of mid cap corporations increased by 20% in 3Q'19.

Exposure of U.S. Mid Cap Corporations to Alleged Violations of the Exchange Act

| Quarter | No. of Defendant Corporations | Defendants' 10b-5 Exposure (000s) | Aggregate Market Cap. of Mid Caps (000s) | Rule 10b-5 Exposure % of Large Caps | Rule 10b-5 Litigation Rate |
|---------|-------------------------------|-----------------------------------|--|-------------------------------------|----------------------------|
| 1Q'19 | 8 | \$6,156,614 | \$1,453,996,413 | 0.42% | 1.21% |
| 2Q'19 | 11 | \$5,829,053 | \$1,450,236,718 | 0.40% | 1.69% |
| 3Q'19 | 13 | \$6,913,547 | \$1,381,486,227 | 0.50% | 2.02% |

U.S. SCA Exposure of Small Cap Corporations^{xiv}

The SCA Exchange Act litigation exposure of small cap corporations increased to \$5.4 billion in 3Q'19 from \$3.9 billion in 2Q'19. That is a notable increase of 38%, or close to a billion and half relative to 2Q'19. The average aggregate market capitalization of U.S. small cap corporations, according to the market capitalization range of the S&P SmallCap 600 Market Index during 3Q'19, was \$710 billion.^{xv} In 3Q'19, exposure to alleged violations of the Exchange Act by U.S. small cap corporations listed on U.S. Exchanges was 76 basis points of

the aggregate market capitalization of all publicly traded small cap corporations. This is an increase of 22 basis points relative to 2Q'19 and 34 basis points relative to 1Q'19.

Small Cap Analysis: 3Q'19 affirms the trend of increasing SCA Exchange Act litigation exposure of small cap corporations. Between 1Q'19 and 3Q'19 exposure has increased by \$2.3 billion and amounts to three quarters of a percent of aggregate small cap market cap.

Exposure of U.S. Small Cap Corporations to Alleged Violations of the Exchange Act

| Quarter | No. of Defendant Corporations | Defendants' 10b-5 Exposure (000s) | Aggregate Market Cap. of Mid Caps (000s) | | Rule 10b-5 Exposure % of Large Caps | Rule 10b-5 Litigation Rate |
|---------|-------------------------------|-----------------------------------|--|---|-------------------------------------|----------------------------|
| 1Q'19 | 18 | \$3,056,884 | \$734,145,823 | → | 0.42% | 0.82% |
| 2Q'19 | 22 | \$3,899,590 | \$730,407,111 | → | 0.53% | 1.04% |
| 3Q'19 | 17 | \$5,380,004 | \$709,621,783 | → | 0.76% | 0.79% |

U.S. SCA Exposure by Industry Segment

Out of the 43 SCA Exchange Act claims filed in 3Q'19, 17 (or 40%) were filed against Pharma/Biotech and Software companies. The three sectors that suffered the greatest exposure to SCA Exchange Act litigation based on alleged market capitalization losses, are Software, Industrials, and Health Care. The 3Q'19 exposure in these three sectors to SCA Exchange Act litigation amounts to \$51 billion after discounting claimed stock price declines that do not surpass price impact thresholds.

Exchange Act SCA claims filed against Financial Institutions, Hardware / Semiconductor, Material, and Media indicate that all of the claimed shareholder losses in 3Q'19 surpass thresholds of stock price impact. SCA Exchange Act litigation exposure in these sectors amounts to \$8 billion, or 11%, or aggregate exposure.

Exchange Act SCA claims filed in Pharma / Biotech and Industrials have the highest amount of alleged shareholders losses that do not surpass thresholds of price impact. Exposure in these two sectors amounts to \$25.3 billion, of which \$1.4 billion (6%) do not surpass thresholds of price impact.

| U.S. SCA Exchange Act Class Action Litigation Exposure by Industry Segment | | | | |
|--|--|------------------------------------|--|---|
| Industry Sector [1] | Corporate Exposure to Alleged Violations of Rule 10b-5 [2] | Rul 10b 5 exchange act filings [3] | Market Cap. Losses that Exhibit an Absence of Stock Price Impact [4] | % of Market Cap. Losses that Exhibit an Absence of Stock Price Impact [5] |
| Energy | \$382,267 | 3 | \$0 | 0% |
| Financial | 1,321,332 | 3 | 0 | 0% |
| Hardware and Semiconductor | 3,320,789 | 2 | 0 | 0% |
| Health Care | 11,191,069 | 5 | 12,392 | 0% |
| Industrial | 19,669,284 | 3 | 1,124,032 | 6% |
| Materials | 2,706,730 | 2 | 0 | 0% |
| Media | 578,487 | 2 | 0 | 0% |
| Pharma/Biotech | 5,676,817 | 10 | 313,245 | 6% |
| Real Estate | 135,752 | 1 | 23,832 | 18% |
| Retail and Consumer Products | 3,911,591 | 5 | 186,078 | 5% |
| Software | 21,188,090 | 7 | 54,204 | 0% |
| Telecom | 0 | 0 | 0 | 0% |
| 3Q 2019 Total: | \$70,082,209 | 43 | \$1,713,784 | 2.4% |

[1] Industry sector is based on the defendant corporation's GICS code.

[2] Unadjusted market cap. losses of U.S. corporations listed as defendants in the sample of SCAs.

[3] First filed SCA complaints that allege violations of Rule 10b-5. Excludes non-U.S. based corporations (ADRs).

[4] Market cap. losses that correspond with alleged corrective disclosures that exhibit an absence of stock price impact.

[5] = [4] / [2]

Any reprint of the information or figures presented in this quarterly report should reference SAR. Please direct any inquiries to Stephen Sigrist, SAR at 202.891.3652 or stephen@sarlit.com. SAR is a software and data analytics company that actively tracks, monitors, and analyzes private securities fraud actions that allege violations of the Exchange Act of 1934.

ⁱ Figures of Securities Class Action (SCA) Exchange Act litigation exposure are based on the first filed complaint for each claim filed during the corresponding quarter. Exposure may increase or decrease throughout the life cycle of each securities class action.

ⁱⁱ This tally accounts for U.S. publicly traded corporations listed as defendants in first filed securities class action complaints identified during 2019. The tally excludes securities class action complaints against U.S. corporations that were sued for alleged violations of the federal securities laws in previous quarters. A U.S. corporation that was sued a second or third time during the current quarter is not accounted for in the current quarter's tally. This tally also excludes cases that have been filed against international corporations that are listed on U.S. exchanges through American Depositary Receipts (ADRs). All federal securities class action complaints are read and screened for allegations that specifically include alleged violations of Rule 10b-5 and define a specific alleged inflationary period (the Class Period) of the corresponding company's price of common stock. Only the claimed stock price declines presented in the first filed complaint against each defendant company are accounted for to estimate aggregate SCA Exchange Act litigation exposure. SCA Exchange Act litigation exposure changes for each claim as the case progresses through the class action process.

ⁱⁱⁱ A public corporation's exposure to alleged violations of Rule 10b-5 is estimated by tracking the cumulative decline in market capitalization during open market trading sessions that correspond with the timing of the claimed alleged corrective disclosures that surpass thresholds of price impact and are presented in a first filed SCA complaint. Aggregate measures of exposure exclude market capitalization declines of international companies that have been sued for violations of the U.S. federal securities laws and trade on U.S. exchanges through American Depositary Receipts (ADRs).

^{iv} Third quarter aggregate market capitalization is defined as the average of total market capitalization on July 1st, 2019 and September 30th, 2019 for all U.S.-domiciled equities that trade on the NYSE or Nasdaq.

^v SAR relies on Docket Alert and Court Wire notifications attained from Thomson Reuters. SAR professionals actively monitor and track case dockets to attain newly filed and amended claims.

^{vi} SAR accounted for a total 93 corrective disclosures alleged in 57 filed claims for alleged violations of Rule 10b-5 against U.S. corporations during 3Q'19.

^{vii} This tally of corrective disclosures includes only those from first filed SCA complaints identified during 2019 against U.S.-based companies that have publicly traded shares of common stock in the NYSE or NASDAQ. The tally excludes securities class action complaints against companies for which there are first filed complaints in prior quarters.

^{viii} See *Dura Pharmaceuticals, Inc. v. Broudo*, No. 03-932, 2005 WL 885109 (2005), and *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398 (2014).

^{ix} A single-firm multivariate regression analysis with a minimum of 100 observations (if a full 252 observations is unattainable) for a Control Period is applied to evaluate the statistical significance of the logarithmic residual stock price decline on the trading day(s) affected by an alleged corrective disclosure(s) (or the alleged adverse event). Statistical significance is measured by computing the t-statistic of the residual stock price decline during the trading session that is affected by the alleged corrective information. (If the t-statistic is greater than plus or minus 1.96, the likelihood that the daily residual return of the defendant company's common stock could have been caused by random volatility is less than 5%.) The Control Period ends one trading day prior to the start of the Class Period presented in the corresponding securities class action complaint.

^x Large cap corporations are the sub-set of defendant corporations that have market capitalizations within the range of the greatest and least market capitalization value of the constituent members of the S&P 500 Market Index at the time when the first filed complaint was identified.

^{xii} This is the average total market capitalization of U.S. corporations that are listed on the NYSE or Nasdaq exchanges with market capitalizations greater than \$3.7 billion between July 1st, 2019 and September 30th, 2019.

^{xii} Mid cap corporations are the sub-set of defendant corporations that have market capitalizations within the range of the greatest and least market capitalization value of the constituent members of the S&P MidCap 400 Market Index at the time when the first filed complaint was identified.

^{xiii} This is the average total market capitalization of U.S. corporations that are listed on the NYSE or Nasdaq exchanges with market capitalizations between \$1.26 and \$3.7 billion between July 1st, 2019 and September 30th, 2019.

^{xiv} Small cap corporations are the sub-set of defendant corporations that have market capitalizations within the range of the greatest and least market capitalization value of the constituent members of the S&P SmallCap 600 Market Index at the time when the first filed complaint was identified.

^{xv} This is the average total market capitalization of U.S. corporations that are listed on the NYSE or Nasdaq exchanges with market capitalizations less than \$1.26 billion between April 1st, 2019 and June 30th, 2019.

Sources: S&P Global Market Intelligence, S&P Dow Jones Indices, Thomson Reuters, SAR Claims Database as of October 1, 2019.