

10 TIPS FOR NAVIGATING A SECURITIES CLASS ACTION



1 ■ **Not Just for Issuers Anymore**

Plaintiffs' counsel have been trying to bring underwriters, bankers, auditors and other advisers into securities class actions as defendants, particularly where an issuer is unlikely to be able to satisfy a judgment. Plaintiffs often seek to add advisers after the action has been commenced. Monitoring new actions will give advisers advance notice of where they might be at risk of being added as defendants.

2 ■ **Start Early**

While securities class actions may result from sudden and unforeseen events, these are in the minority. The time to start thinking about defending a securities class action is when you first recognize that it may be necessary to disclose information that could be seen as "bad news" by the market.

3 ■ **Develop a Long-Range Plan**

The progress of statutory class actions through the courts is relatively slow given the leave and certification requirements, with the result that even a frivolous claim could impact your organization for years. Savvy defendants work with their counsel to develop a timeline for defence of the action, to understand when significant events will occur, when public attention will be greatest, and when organizational time and resources will be most affected.

4 ■ **Understand Your Insurance Coverage**

Insurance policies should be reviewed at the first indication that a securities class action could be initiated so that your organization understands when insurers need to be notified, what is covered, and what is not covered. Some policies may cover pre-claim expenses such as internal investigations and public relations advice.

5 **Retain National Counsel**

Defendants have little control over the province in which a securities class action is commenced against them. Interlisted issuers also face actions in the United States. Canadian defence counsel that can defend an action in multiple provinces and work collaboratively with U.S. defence counsel will provide a more effective defence on all fronts.

6 **Preserve the Evidence**

Taking early measures to preserve all potentially relevant documents and records ensures that your organization will have all of the evidence that it needs to tell its story. Ensure that any departing employees who have relevant knowledge understand their post-employment confidentiality obligations and, if possible, agree to assist with the defence of the action if needed.

7 **Consider Early Case Assessment**

While securities class actions move slowly, fully investigating and understanding the action at an early stage can make subsequent stages of the defence easier and less costly. Consider conducting interviews of key witnesses, reviewing key documents, and obtaining an estimate of damages exposure early on to know what barriers need to be overcome.

8 **Control the Dialogue**

The slow pace of securities class actions can delay the defendants' opportunity to tell their side of the story. Waiting for the appropriate time to frame the defence's position will avoid revealing the defence strategy too early and will reduce the risk of fuelling further allegations.

9 **Know Your Regulator**

Securities class actions are often accompanied by securities regulatory investigations of the same facts. Understanding securities regulatory exposure will allow formulation of a class action defence that will minimize risk on both the class action and regulatory fronts.

10 **Pick Your Battles**

Early case assessment will help your organization to gauge the level of investment that should be made in the defensive options that are available. There is temptation to fight at every opportunity, but fighting every battle can exhaust resources for little marginal benefit.

CONTACT

For further information, please contact a member of our [Securities Litigation](#) group.

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