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ISSUES AND TRENDS IN EVENT-DRIVEN SECURITIES CLASS ACTIONS

In this article, the authors discuss typical events and types of statements made by companies that can become the subject of event-driven litigation. They then turn to class certification issues, focusing on the Basic presumption of reliance and the emergence of the “price maintenance” theory of liability.

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Federal securities class action filings — in which stockholders sue companies and their executives after a stock price drop caused by alleged misstatements or omissions — have recently spiked. From 2012 through 2016, plaintiffs filed an annual average of 235 securities class actions in federal court.¹ But in 2017, there were 434 filed, and, in 2018, that number climbed to 441.² The potential value of each case is increasing as well. In 2017, shareholder class actions in federal court alleged a total of \$334 billion in investor losses.³ In 2018, despite a relatively steady total number of cases filed, shareholders claimed a total of \$939 billion in losses.⁴ With the potential for such large exposure, companies

must account for the risks associated with facing such a lawsuit.⁵

This article focuses on the recent trend of investors bringing “event-driven” securities class actions, *i.e.*, a lawsuit brought after the price of a company’s stock or other securities declines as a result of a specific event. These types of cases differ from the more traditional securities class action, in which a plaintiff accuses a company of issuing misleading past financial statements or future guidance information. First, this article provides an overview of event-driven securities litigation by discussing the kinds of events that can lead to such litigation. Second, this article discusses the types of statements made by companies that plaintiffs have

¹ *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review*, NERA Economic Consulting, at 2, https://www.nera.com/content/dam/nera/publications/2019/PUB_Year_End_Trends_012819_Final.pdf.

² *Id.*

³ *Id.* at 12.

⁴ *Id.* Part of this increase in losses may be due to the stock market’s relatively poor performance in 2018, after a stronger performance in 2017.

⁵ Securities class actions are also likely to rise in state court. The Supreme Court’s 2018 decision in *Cyan, Inc. v. Beaver County Employees* held that class actions brought under only the Securities Act of 1933 can be brought separately in state and federal courts, and held that defendants cannot remove such actions to federal court. 138 S. Ct. 1061, 1078 (2018). Given some of the perceived advantages plaintiffs have when litigating in state court, it is likely plaintiffs will be more likely to bring claims in order to make use of those advantages.

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