

Alerts & Publications

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Securities Litigation Note for Israel-Based US-Listed Companies and Their Backers

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Federal courts in the United States saw more securities class actions filed in 2016 than in any year since the 1995 passage of the Private Securities Litigation Reform Act (PSLRA).¹ Although the number of federal securities class actions has risen for several consecutive years, the 41% increase from 2015 to 2016 was unusually sharp, especially amid superior market performance.² Among many other factors contributing to this trend, claims against foreign issuers listed on US exchanges have become increasingly frequent.³ Israeli companies have proven an especially popular target, accounting for nearly 20% of all such lawsuits against foreign issuers in 2016. Younger and mid-cap issuers based outside the US are sometimes uniquely vulnerable to federal securities lawsuits for a variety of reasons, including: the complex US regulatory and disclosure regime for publicly listed companies; market confusion about how to reconcile domestic filings in the issuer's home country and US regulatory filings; and sophisticated attacks from short-sellers looking to drive down a company's stock price for profit.

Learn More: Webinar
Israeli Companies Targets of US Securities Litigation

June 13 at 8:30 am PST / 18:30 Israel Time

Presented by: Seth Aronson, Matt Close, Edward Moss, and Einat Meisel

Related Practices

Securities Litigation

We invite both our US and Israeli colleagues to join us for an upcoming webinar that will provide an overview of core issues and common themes in federal securities class actions, give you an idea of what to expect if your company is named in a securities class action, and present strategies for proactively reducing exposure. RSVP to Rachael Arrott at rarrott@omm.com.

Broadly speaking, US securities laws prohibit issuers from knowingly making materially misleading statements (and, where the law imposes a duty to disclose, omissions) in their public statements and filings. Purchasers who are adversely affected by misleading statements or actionable omissions can bring suits to recover their damages against the issuer and its principals, and these cases are typically pursued as class actions—almost always on the heels of announcements that lead to a decline in stock price. To recover, a suing purchaser, generally, must prove (1) that the defendant made a material misrepresentation, (2) with scienter (*i.e.*, intent to deceive), (3) in connection with the sale or purchase of a security, (4) that the plaintiff justifiably relied on the misrepresentation in choosing to purchase or sell the security at a particular price, (5) suffered an economic loss, and (6) that the plaintiff's loss was caused by the misrepresentation.⁴ With few exceptions, the federal securities laws apply to all transactions on domestic exchanges, whether the issuer is based in the United States or elsewhere.⁵

As federal securities class actions against Israeli issuers increase, so too will the importance of understanding US securities laws and taking steps to mitigate litigation risk. O'Melveny is a leader in the securities defense bar and has special experience defending foreign-based companies listed on US exchanges or involved in transactions with some other nexus to the United States. These cases are complex and often involve, among other things, significant motion practice, voluminous electronic discovery, engagement of market and damages experts, and familiarity with insurance issues. We would welcome the opportunity to share our experience with you.

1. PwC, *2016 Securities Litigation Study: A rising tide or a rogue wave?* (Apr. 2017) at iii, available at <http://www.pwc.com/us/en/forensic-services/assets/313021-2017-securities-litigation-2017-v9.pdf>.

2. *Id.* at 4. 2016 was the first year since 2013 (and only the second since the financial crisis of 2007 and 2008) that saw a year-over-year increase in both the number of securities class actions filed and the S&P 500's aggregate rate of return. ↩

3. Antoinette Gartrell, "Israeli Tech Firms Targeted in More Class Securities Suits," *Bloomberg BNA* (Mar. 30, 2017), available at http://news.bna.com/sdln/SDLNWB/split_display.adp?fedfid=108214981&vname=sldbulallissues&jd=a0m1h4x6d8&split=0.

4. See, e.g., *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341 (2005).

5. See generally *Morrison v. Nat'l Austl. Bank, Ltd.*, 561 U.S. 247, 266

(2010).

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