

# New Developments: An Excerpt from Securities Class Action Filings—2019 Year in Review

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## Cannabis-Related Filings

With the legalization of recreational marijuana in Canada in October 2018 and the increasing number of U.S. states permitting medicinal and recreational use, numerous corporations have entered the cannabis industry in recent years. These corporations are involved in the financing, farming, distribution, or sales of cannabis products. Peripheral businesses supporting the industry or developing products derived from cannabis (e.g., specialized drugs from cannabidiol) have grown in concert.

Beginning in the latter part of 2018, companies with connections to the cannabis industry were increasingly the target of federal class action filings. In 2018, six core federal filings involved companies selling cannabis or cannabidiol products. In 2019, 13 companies were sued in federal courts. Three of these companies also faced state 1933 Act claims.

Multiple Canadian cannabis-related companies with securities trading on U.S. exchanges were the subject of class action filings in 2018 and 2019. Nine of these filings involved many of the largest Canadian-licensed cannabis growers.

## State Court 1933 Act Claims

*Sciabacucchi v. Salzberg* is a matter currently before the Delaware Supreme Court. At issue is whether provisions in corporate charters can dictate that class action securities claims under the 1933 Act be adjudicated in federal courts.

In recent years, multiple companies chartered in Delaware have adopted so-called Federal Forum Provisions dictating that 1933 Act claims be adjudicated in federal rather than state courts. In the wake of the March 2018 U.S. Supreme Court ruling in *Cyan* permitting plaintiffs to continue to file 1933 Act claims in state courts, even more companies have adopted Federal Forum Provisions.

In December 2018, the Delaware Chancery Court ruled that the charter provisions were invalid under Delaware law. The decision was appealed by defendants, with briefing before the Delaware Supreme Court in the fall of 2019.

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