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NAREIT's Law, Accounting & Finance Conference

March 22 – 24, 2017

NAREIT D&O Program Update



Agenda

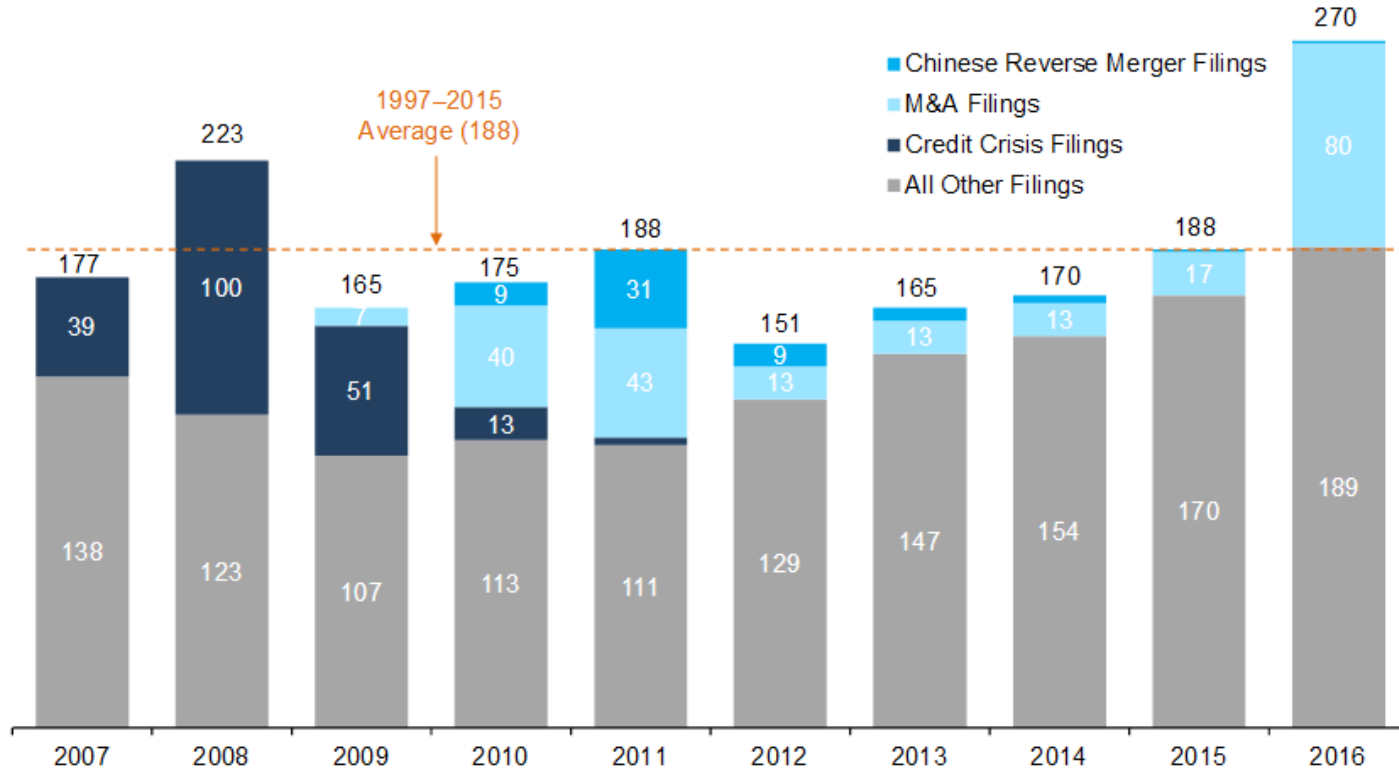


- ◆ D&O Program Update
- ◆ Securities Class Action filings in 2016
- ◆ REIT D&O Litigation Trends
- ◆ Key Takeaways
- ◆ Q&A

Trends in Securities Class Action Filings

- ◆ Filings in 2016 were 44% higher than both the number in 2015 and the historical average
- ◆ Filings excluding M&A and CRM were 11% higher in 2016 than 2015
- ◆ The 80 M&A filings in 2016 was the largest number since 2009

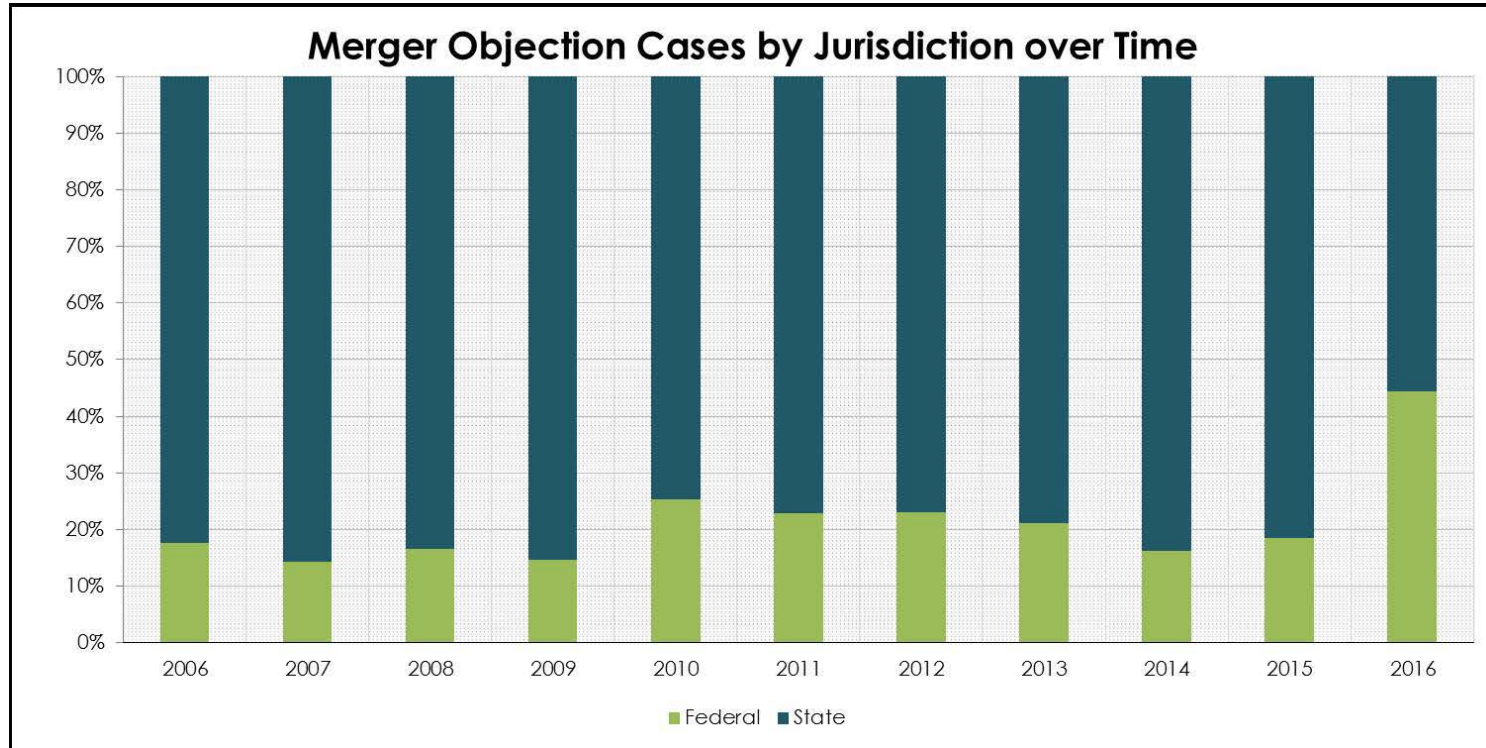
Class Action Filings (CAF) Index™



Note: There were two cases in 2011 that were both an M&A filing and a Chinese reverse merger company. These filings were classified as M&A filings in order to avoid double counting.

Source: Stanford Law School/Cornerstone Research

Merger Objection Cases Filed



Source: Advisen Ltd.: Year End D&O Claims Trend 2016

REIT D&O Litigation Trends

◆ M&A Related Litigation

- ◆ Delaware Court rulings have not materially impacted REITs
 - ◆ REIT M&A: Filed in Maryland and other State Courts
- ◆ Evolution of REIT M&A
 - ◆ Shareholders of Target Co. Sue for Breach of Fiduciary Duty, Inadequate Consideration (“Bump-Up”)
 - ◆ Shareholders of Target Co. Also Sue Acquirer for “Aiding and Abetting”
 - ◆ Shareholders of Acquirer Sue for Excessive Consideration, Loss of Control
- ◆ Settlements = Corrective Disclosure + Plaintiffs Attorney Fees and Defense Costs
 - ◆ NAREIT D&O: Removed Plaintiffs Attorney Fee Exclusion for M&A in 2015

◆ M&A Continues to be a Large Driver of REIT SCAs

- ◆ 2016: 13 REIT SCAs (7 M&A Related)

REIT D&O Litigation Trends

- ◆ 6 Non-M&A Related REIT SCAs in 2016
 - ◆ Filed Against Public, Equity REITs
 - ◆ Most in any Single Year since 2009
 - ◆ Previously, an average of 4 SCAs per Year against REITs
 - ◆ Consistent with Trend of Rising SCA Filings in the U.S.
 - ◆ No Commonality in the Allegations
- ◆ REITs More Widely Held + Creative Plaintiffs Bar + Broad D&O Policies = Greater Variety of Claims and Increase in REIT D&O Litigation
- ◆ Steady Volume of Non-SCA Litigation against REITs Continues
 - ◆ NAREIT Program: Averaging 12 per Year since 2009

REIT D&O Litigation Trends

◆ Derivative Demand

- ◆ Recent wave of Shareholder Demand Letters
 - ◆ Activist investors/Hedge Funds
 - ◆ Executive Compensation – typically allege that the company violated by-laws/exec comp plan by issuing too many shares
 - ◆ Similar to M&A litigation these typically settle for corrective disclosure (amending by-laws/share authorizations) and substantial plaintiff fee awards
- ◆ NAREIT Coverage:
 - ◆ \$500K sublimit for Derivative Demand Investigation Costs
 - ◆ Increase in frequency of claims under the Derivative Demand sublimit
 - ◆ Have been adding Books & Records coverage

REIT D&O Litigation Trends

◆ Regulatory/Investigations

◆ Accounting practices

- ◆ Costly to defend/settle (example, 2014 SCA filed against a publicly-traded equity REIT that involved a restatement settled for \$73M plus defense costs earlier this month)

◆ Disclosure and use of Non-GAAP metrics

- ◆ 2016 SCA against a publicly-traded equity REIT involved accounting improprieties and allegations of manipulating non-GAAP metrics that were incorporated into public disclosure (press releases, presentations, etc.)
- ◆ Overall increase in SEC focus on use and reporting of Non-GAAP metrics

◆ These issues typically bring increased shareholder/media/analyst scrutiny which can lead to additional litigation

◆ NAREIT policy includes inquiry coverage (added for NAREIT members in 2015) and investigation coverage of entity by an investigating authority (built into the NAREIT D&O Policy when written in 2010).

Key Takeaways

- ◆ Securities Class Actions against Companies (including REITs) have Increased Significantly
- ◆ Increase in Federal SCA Filings is Partly Driven by M&A Litigation
- ◆ REIT M&A Litigation Has Evolved and Continues to Settle in State Courts
- ◆ Significant Increase in Shareholder Demand Letters / Derivative Demand Investigation Costs for REITs
 - ◆ Activists
 - ◆ Executive Compensation
- ◆ Risk of Regulatory Investigations Continues to be High

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