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NY Law Firms Benefit From Rise in Securities Lawsuits Over Cryptocurrencies

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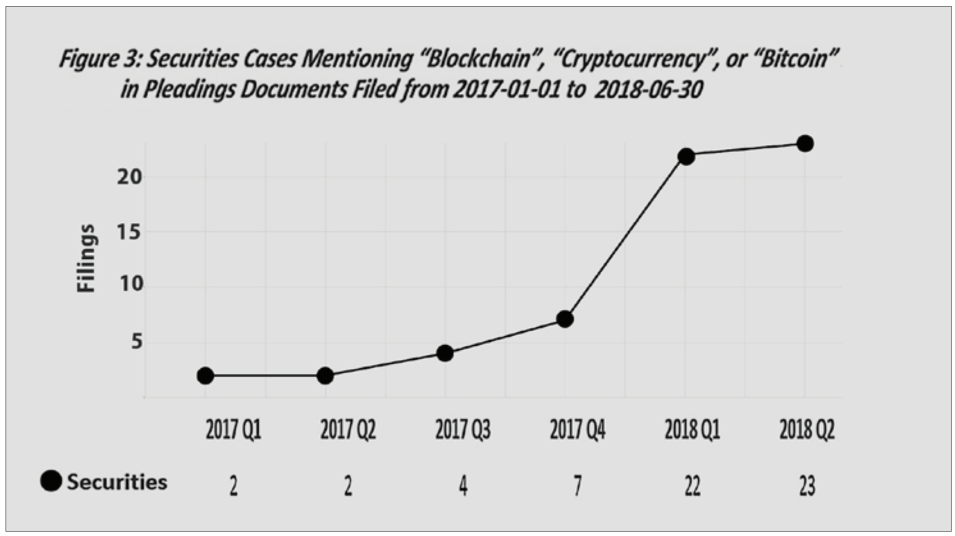
BY AMANDA BRONSTAD



Securities lawsuits filed over either cryptocurrencies or bitcoin have tripled so far this year as U.S. Securities and Exchange Commission chairman Jay Clayton announced a crackdown on that industry, according to a new report by legal analytics firm Lex Machina.

Released on Tuesday, the report found there were 45 cases filed so far this year that mentioned "blockchain," "cryptocurrency" or "bitcoin" in the filings, up from 15 in 2017. And the SEC, which has vowed to scrutinize cryptocurrencies and initial coin offerings (ICOs), was responsible for 30 percent of the cases filed in 2018, according to Laura Hopkins, legal data expert at Lex Machina, a unit of LexisNexis. That's the second-most popular filer of such cases, topped only by the law firm Levi & Korsinsky, she said.

The report also found that, during that same period, New York's Skadden, Arps, Slate, Meagher & Flom topped the list of defense firms handling securities cases, as well as a separate ranking of those with the most defense wins. Sidley Austin, Latham & Watkins and Gibson, Dunn & Crutcher also made the top 10 of both lists.

"The depth of our experience across a wide range of industries, coupled with our seamless coordination across offices—both nationally and internationally—is key to our success," said Jay Kasner, head of Skadden's securities litigation group. "We are extremely hardworking, strategic and collaborative, and truly operate as one team with the common goal of delivering the best service to our clients around the world."

Lex Machina's Securities Litigation Report of 2018 compared securities cases filed from July 1, 2015, to Dec. 31, 2016—just before President Donald Trump nominated Clayton on Jan. 4, 2017—to those brought from Jan. 1, 2017, to June 30, 2018. Clayton became the SEC's chairman on May 4, 2017. The report identified securities cases in federal district courts and included regulatory lawsuits, like those brought by the SEC.

Hopkins said the report compared cases based on Clayton's tenure because the data showed a clear shift that centered around the Trump administration: There were 1,097 securities cases filed in 2016 and 1,676 in 2017, a 50 percent increase.

"At a very high level, we think it's an interesting trend because the popular narrative might be that securities enforcement under the new administration, given its deregulatory and other policy positions, might have fallen," said Owen Byrd, chief evangelist and general counsel at Lex Machina. "We thought it was noteworthy and newsworthy to uncover that filings had increased at the very time when you might think from other signals in the sphere of news that the trend might have gone another way."

Of course, the filings also include cases brought by plaintiffs firms, some of which have sued over the market decline in cryptocurrencies. Shareholder surveys released this year by Cornerstone Research and Stanford Law School's Securities Class Action Clearinghouse and NERA Economic Consulting found that shareholder filings were on the rise, with Pomerantz and The Rosen Law Firm among the top plaintiffs firms. Lex Machina ranked Levi & Korsinsky at No. 2, just below the SEC, with 266 cases in the past 18 months.

"They are aggressively expanding their practice in plaintiffs-side securities work," Byrd said of Levi & Korsinsky.

Eduard Korsinsky and Joseph Levi, name partners of New York's Levi & Korsinsky, did not respond to a request for comment.

As in the other shareholder surveys, Lex Machina found a decrease in the amount of damages in settlements and other dispositions of securities cases. According to Lex Machina's report, penalties obtained by the SEC and the Commodity Futures Trading Commission dropped from $570 million to $412 million. Other securities damages, which include CFTC cases, dropped from $676 million to $364 million.

One factor might be the U.S. Supreme Court's Kokesh v. United States decision, which limited the SEC's ability to get disgorgement of profits beyond five years. Clayton has raised concern about the practical effect of that 2017 ruling. Disgorgement, which includes cases by the SEC and plaintiffs firms, fell from $3.5 billion to $1.9 billion. "It does look like there's a decline," Hopkins said, but it might be too early to tell.

Here's some other trends from Lex Machina's report:

The federal district court in Delaware jumped to No. 3 from No. 14 in number of securities cases filed, with 198, or 8 percent, of the total number during the past 18 months. Only 36 cases were filed in that district in 2015 and 2016 combined. Several recent court decisions, such as the Delaware Court of Chancery's 2016 decision in In re Trulia Stockholder Litigation, which rejected disclosure-only settlements, are driving the increase of cases in federal court.

Defendants are winning more cases through judgments on the pleadings and voluntarily dismissals by plaintiffs. In the 18 months prior to Clayton's nomination, judgments on the pleadings contributed to 3 percent of all defense wins, and plaintiffs voluntarily dismissed 12 percent of cases. After Clayton's nomination, those numbers jumped to 8 percent and 28 percent, respectively. "Yes, there are more cases, but a lot of them are being tossed out before being heard by the court," Hopkins said.

Cases took less than half as long to end. The median "time to termination" for cases prior to Clayton's nomination was 419 days, while it took just 138 days in the 18 months after that date.

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