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From preliminary to final approval: How often do settlements in securities class actions fail?

In securities class actions, a settlement proceeds through several stages: a tentative agreement between the parties, preliminary court approval, notice to the class, and final approval. Although preliminary approval is a significant milestone, it does not guarantee final approval. A settlement can still fail if a blow provision is triggered or if the court finds the deal unfair.[1]

In this *CRA Insights*, we present analysis of the Institutional Shareholder Services (ISS) data on cases filed in the past 10 years involving allegations under Section 10(b) of the Securities Exchange Act of 1934. We did not find any example of a settlement that had received preliminary approval to be denied at final approval. More commonly, there are procedural delays rather than a settlement termination or withdrawal.

Background on settlement process

The securities class action settlement process involves several stages. First, plaintiffs and defendants reach a tentative settlement. The settlement is then subject to court approval under Federal Rule of Civil Procedure 23(e).[2] The court process involves:[3]

- **Preliminary approval:** The court reviews the settlement to ensure that it appears fair and reasonable.
- **Notice to the class:** Class members are informed about the preliminary approval and given a chance to object or opt out.
- **Final approval:** The court decides whether to grant final approval.

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1 A blow provision allows the defendants to terminate a settlement if too many class members opt out. “A fair settlement takes into account both the defendant’s incentive to minimize total settlement compensation and the plaintiffs’ inherent conflict when facing a limited amount of compensation available for class members that must be further diminished by contingent attorneys’ fees.” Gregory A. Markel, “Settling Class Actions: Process and Procedure,” Practical Law, October 2013: https://www.cadwalader.com/uploads/books/b917a8bcc802cf0ded2cdfc849f49d42.pdf.

2 Cornell Law School Legal Information Institute, “Rule 23. Class Actions,” last accessed October 17, 2025: https://www.law.cornell.edu/rules/frcp/rule_23. Typically, the tentative settlement between the parties is disclosed when the parties file the motion for preliminary approval. As such, for the purposes of this article, we assume that the tentative settlement and filing of the motion for preliminary approval were on the same date.

3 See Gregory A. Markel, “Settling Class Actions: Process and Procedure,” Practical Law, October 2013: https://www.cadwalader.com/uploads/books/b917a8bcc802cf0ded2cdfc849f49d42.pdf.

A settlement that has received preliminary approval can fail to reach final approval due to one or more of the following reasons:[4]

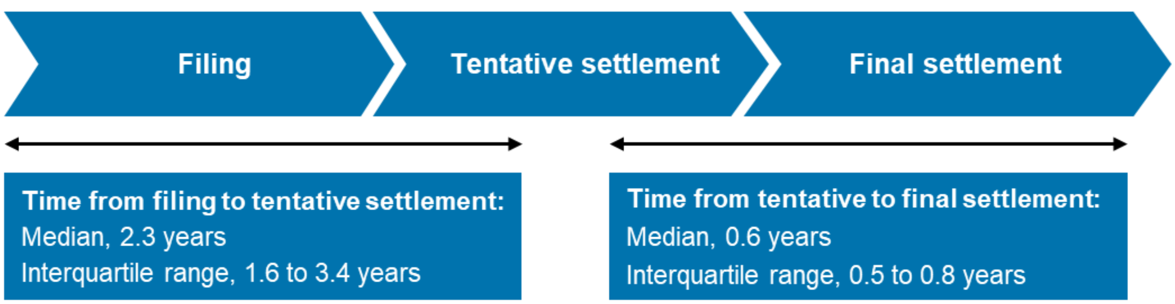
- **Excessive objections or opt-outs:** If too many investors object or opt out, the court can refuse final approval.
- **Blow provisions:** If opt-outs exceeded the threshold, defendants could exercise their right to terminate.
- The court finds the settlement unfair or collusive.

Blow provisions give the defendant the right to terminate or renegotiate the settlement if opt-outs exceed a negotiated threshold.[5] The threshold can be linked to the total opt-out damages or to the number or percentage of damaged shares that opt out.[6] The blow provisions are kept confidential to avoid strategic opt-outs; if the thresholds of the blow provision are known, then a group of class members with enough shares to exceed the threshold could come together to block the settlement or demand benefits from those who are supporting it.[7]

No evidence of settlement failures due to blow provision

We conducted a search in the ISS database for Section 10(b) cases that were filed between January 1, 2015, and December 31, 2024.[8] We did not include cases filed in 2025 as they are likely still active. The search resulted in 1,966 unique cases.[9] Of those cases, 998 have been dismissed, and the remaining 968 cases are either settled or currently active.[10] We removed 61 cases that reached tentative settlement in 2025 as they are likely to be in the process of getting final approval, if not already settled, resulting in 907 remaining cases.

We have summarized the median and the interquartile range of time from filing to tentative settlement and from tentative settlement to final settlement in the figure below.



4 See Gregory A. Markel, "Settling Class Actions: Process and Procedure," Practical Law, October 2013: https://www.cadwalader.com/uploads/books/b917a8bcc802cf0ded2cdfc849f49d42.pdf.

5 Mike Lange, "Three takeaways from the February 6 decision regarding the Petrobras ($3B) deal," February 9, 2018. Last accessed October 17, 2025: https://frtservices.com/insights/three-more-things-to-know-about-the-petrobras-case/.

6 Louis C. Ludwig, "Plantiffs' [sic] Attorneys and 'Blow Provisions': An Uneasy Coexistence," August 2019. Last accessed October 17, 2025: https://pomlaw.com/monitor-issues/plantiffs-attorneys-and-blow-provisions-an-uneasy-coexistence.

7 Louis C. Ludwig, "Plantiffs' [sic] Attorneys and 'Blow Provisions': An Uneasy Coexistence," August 2019. Last accessed October 17, 2025: https://pomlaw.com/monitor-issues/plantiffs-attorneys-and-blow-provisions-an-uneasy-coexistence.

8 Data accessed October 17, 2025.

9 A case is identified by a unique combination of its case number and court. We have removed the Securities and Exchange Commission (SEC) administrative proceedings cases where the settlement is negotiated prior to the SEC order.

10 A case is identified as "Settled" if the case status is "Settled," "Settled Disbursed," or "Settled Partially"; as "Dismissed" if the case status is "Dismissed"; and as "Active" for all other statuses, specifically, "Active," "Tentative Dismissal," "Partial Dismissal," "Tentative Partial Dismissal," "Class Certified," "Tentative Partial Settlement," or "Tentative Settlement."

Of the 907 cases, 570 cases reached tentative settlement in 2024 or earlier.[11] Of the 570 cases, 566 cases have reached final settlement, and the remaining four cases have not.

Section 10(b) cases that reached tentative settlement by 2024	570	100.0%
Cases that have reached final settlement	566	99.3%
Cases that have not yet reached final settlement	4	0.7%

We examine the four cases that have not yet reached final settlement and discuss their current case status in the table below.

Case name	Tentative settlement date	Current case status
Kiromic BioPharma, Inc; filed on 8/5/2022	8/7/2023	Defendant filed for bankruptcy in March 2025, initiating a stay on all case activities. As of October 2025, the defendant was still engaged in bankruptcy proceedings.[1]
Robinhood January 2021 Short Squeeze Trading; filed on 1/29/2021	5/28/2024	Defendants and the named plaintiffs settled the named plaintiffs' claims and stipulated the dismissal of those claims in May 2024.[1] In April 2025, a judge ordered remaining plaintiffs in the case to arbitrate their claims.[1] The case is prolonged by one pro se plaintiff's continued filing on procedural grounds (and the court's continued denials) as of October 2025.[1]
Tenet Fintech Group Inc. (f/k/a Peak Fintech Group Inc.); filed on 11/19/2021	4/8/2024	Parties tentatively settled in April 2024, but defendants did not provide payment according to the agreed-upon schedule.[1] Plaintiffs terminated the settlement as of September 2025, and as of October 2025, the court scheduled an ex parte settlement conference between the two parties for December 2025.[1] The defendants do not intend to challenge the decision to void the settlement.[1]
Wins Finance Holdings, Inc. (2017) (C.D. Cal.); filed on 4/20/2017	11/26/2018	The defendant is in China, and its funds are subject to Chinese currency restrictions. Defendant entered into an agreement on May 7, 2025, to raise financing outside China. As of August 2025, the court allowed an extension in light of the defendant's agreement, postponing the settlement hearing until April 2026.[1]

[11] For cases with multiple filings, we selected the latest available tentative settlement date across all filings. The remaining 337 cases did not reach a tentative settlement and are currently active.

Conclusion

In summary, we did not find any evidence of cases that had reached tentative settlement but did not reach final settlement; all cases that reached tentative settlement either ultimately settled or are currently active, suggesting that settlements were not terminated due to the court not providing final approval of the settlement or the triggering of a blow provision. However, because the blow provisions are kept confidential, it's possible that one was triggered but the settlement went through, either because the parties renegotiated or the defendants waived the right to terminate. In such cases, the blow provision may have caused, at most, a delay in the final approval.

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Contacts

Rahul Chhabra
Principal
+1-617-425-3523
rchhabra@crai.com