



LET'S TALK ABOUT...

FINANCIAL LEXICON EDITED BY THE SWISS ASSOCIATION OF ASSET MANAGERS

Class Action

(Part One) The legal term, which originated in the United States, denotes a form of lawsuit carried on not just by a single person, but a large group of people, in a collective and representative form, so bringing a common claim and defending common interests against a company or institution. Such form of action is pretty common in the Anglo-Saxon legal context, where the principles of the common law are dominant, whilst in the European countries, where legal scenario are based on totally different principles, introducing class actions has required regulation changes, which had however to be adopted under the pressures of consumer-defence groups and other organizations, particularly when certain events took place which had great echo in the media and the public opinions. A class action may be carried on in different domains, commercial, industrial (just remind the asbestos case), medical, but our interest is particularly oriented to the financial sector, where many class actions concern investment-related matters, financial issuers and promoters, their instruments and products. In the United States the history of class actions goes back to 1833, when a court stated that when many people brought a common claim, just one or some of them could proceed against the common defendants as representatives of the whole group, and the related decision was then valid for them all. Such statement was later ratified by the Supreme Court, although the subject of ass classes remains sometimes contradictory and complex. The matter is now pretty consolidated, at least in the United States. The class action that many persons promote in defence of their rights against a certain corporation or institution, normally by creating an ad hoc representative committee, offers many advantages, first of all making the lawsuit more efficient and spreading the connected costs on a wider numbers of subjects, so making them more affordable. The judicial procedure also may be some simplified and more rapid in terms of collecting evidences, witnesses, appraisals, and so on. Other advantages may come from the increased visibility of the subject discussed in the legal suit, not to mention the interest of the media for it. Another advantage is the possibly to reach a "critical mass", so justifying the action itself. In the event of a financial crack, an insolvency or fraud, the single investor of few bonds or shares, might find the legal action not so convenient, but if thousands of investors share the same condition, the legal action is not only more practicable in terms of motivation and public interest, but also in terms of costs and expected benefits and compensations. *(to be continued)- GLT*

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(Part Two) A legal action that many investors promote on common basis, usually through an *ad hoc* established committee, may give many advantages, in improving their claim possibilities while spreading and making related costs more affordable. Thus class actions may not just make reimbursements more likely but also act as a deterrent for other financial actors. It may also contribute to better clarify claims and responsibilities and make the participants' treatments more fair. For example, were a fund to become insolvent or be involved in fraudulent situations (as in the case of a Ponzi scheme), the class actions not only check the legal rights of the suit's promoters, but also retrace and in case revoke the operations and transactions carried on before the collapse took place, along with a certain period of time, so to make funds available to be shared, if possible, and according to fair criteria, among all entitled participants. Moreover class actions are a sort of unifying solutions when different courts might treat the same matter in different ways, although some sentences by US courts have reaffirmed that single claimers may promote further suits should they not be satisfied by the class action's outcome.

And the class action has been widely appraised by the US Congress itself. However, despite such acknowledgements and commendations, together with progressive procedural consolidations, particularly in the Anglo-Saxon legal environment, the class action is not exempt from criticisms and polemics. Often cited arguments consider the high costs required by the claimers' committees and their lawyers in promoting and proceedings along the legal action, the privileged treatments some participants may enjoy to prejudice of others, and the not always clear and complete communication made available about the legal process itself. That was for instance the case for some events involving defaulting Italian bond issuers some years ago. So it may happen that class action participants find them bound by agreements whose terms of partial or complex settlements may sound inadequate and unsatisfactory, with no possibilities of further actions, particularly within those European jurisdictions which do not benefit from the principles of the Anglo-Saxon "common law". (*to be continued*)- GLT

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