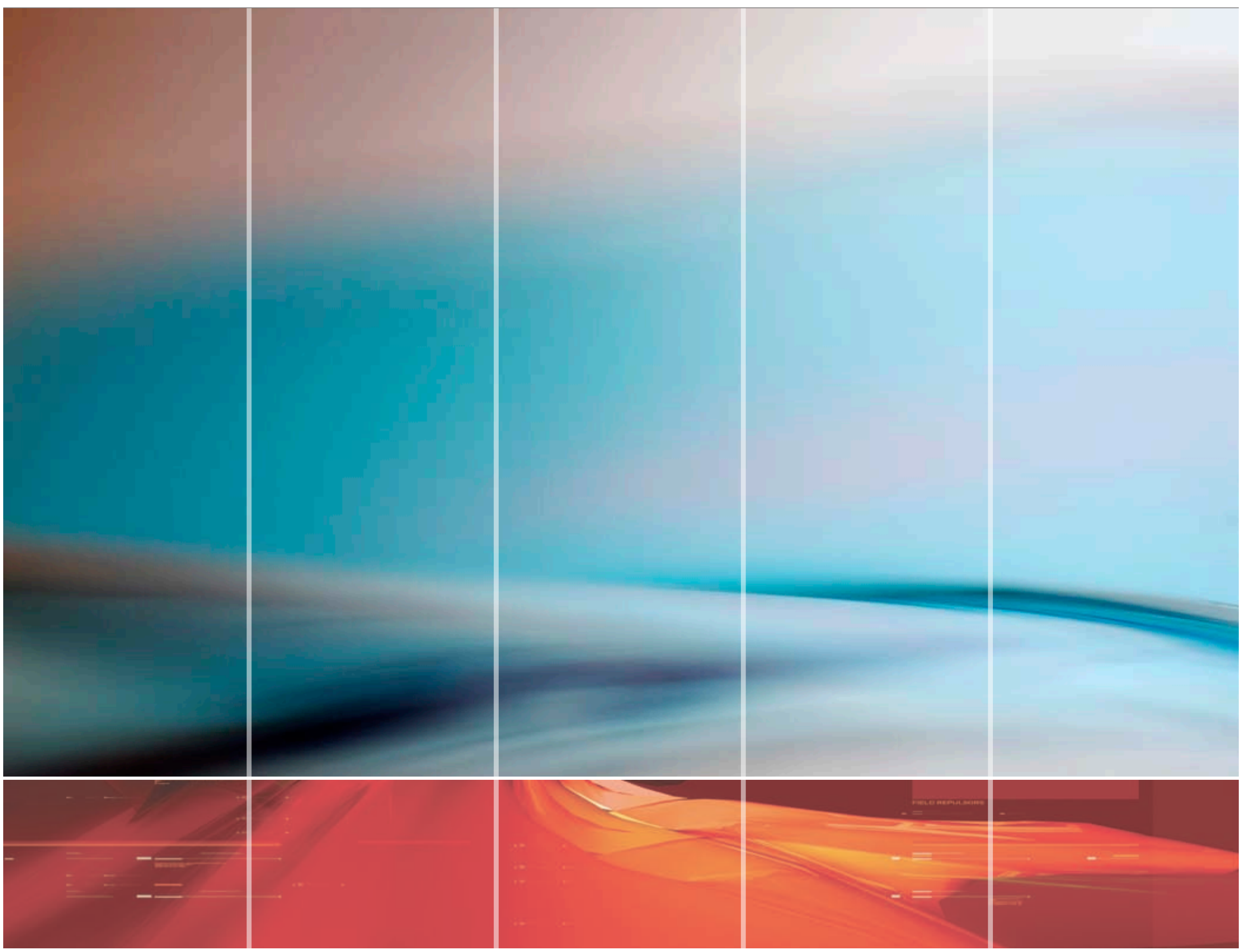
CORNERSTONE RESEARCH

Securities Class Action Filings

2010 Year in Review



Research Sample

- The Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research has identified 3,227 federal securities class action filings between January 1, 1996, and December 31, 2010.
- These filings include 313 IPO Allocation filings, 68 Analyst filings, 25 Mutual Fund filings, 40 Options Backdating filings, 23 Ponzi filings, and 207 Credit-Crisis filings; the last category includes 21 Auction Rate Securities filings.
- The sample used in this report excludes IPO Allocation, Analyst, and Mutual Fund filings.
- Multiple filings related to the same allegations against the same defendant(s) are consolidated in the database through a unique record indexed to the first identified complaint.

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OVERVIEW

Federal securities fraud class action filing activity jumped in the second half of 2010. A total of 104 federal securities fraud class actions (filings or class actions) were filed in the second half of the year compared with 72 filings in the first six months of the year. However, the number of filings for the full year of 2010 remained low at 176 filings, 9.7 percent below the annual average of 195 filings between 1997 and 2009 (Figure 1).

Filings related to the credit crisis were sharply lower for the year, with 13 such filings in 2010, a 76.4 percent decrease from the 55 filings in 2009 and an 87 percent decrease from the 100 credit-crisis-related filings in 2008. As the wave of credit-crisis filings subsided, filings in the financial sector decreased, as financial companies were defendants in 24.4 percent of 2010 filings compared with 47 percent in 2009. The Heat Maps of S&P 500 Securities Litigation™ show that in 2010 only 10.3 percent of S&P 500 companies in the Financials sector were named defendants in a class action compared with the 10-year historical average ending December 2009 of 11.8 percent. These companies represented 31.1 percent of the Financials sector's market capitalization, above the historical average of 23.9 percent.

In contrast filings against S&P 500 companies in the Health Care sector spiked in 2010 after a lull in 2009 and made Health Care the hottest sector on the Heat Maps for the year. In 2010 15.4 percent of the companies in the Health Care sector, representing 33.7 percent of the sector's market capitalization, were named defendants in a class action.

Figure 1

CLASS ACTION FILINGS SUMMARY

	Average (1997–2009)	2009	2010
Class Action Filings	195	168	176
Disclosure Dollar Loss ($ Billions)	$133	$84	$72
Maximum Dollar Loss ($ Billions)	$696	$550	$474

OVERVIEW *continued*

The market capitalization declines associated with announcements at the end of the class periods have remained low. The total Disclosure Dollar Loss (DDL) of $72 billion in 2010 represented a 14.3 percent decrease from 2009 and was 45.9 percent below the historical average of $133 billion between 1997 and 2009. There were four mega DDL filings in 2010 with end-of-class market capitalization losses of more than $5 billion, all of which occurred in the first half of the year. These filings represented 49.6 percent of the DDL Index™ in 2010. Similarly the market capitalization declines during the class period decreased in 2010. The total Maximum Dollar Loss (MDL) of $474 billion in 2010 was 13.8 percent below the total MDL in 2009. Fourteen mega MDL filings with market capitalization losses of more than $10 billion represented 79.1 percent of the MDL Index™ in 2010.[1]

There were several notable developments in 2010. First, the number of lawsuits related to merger and acquisition (M&A) transactions—most alleged breach of fiduciary duty—increased 471 percent. There were 40 filings that alleged misconduct related to mergers and acquisitions in 2010 compared with seven such filings in 2009. Second, an unprecedented number of Chinese companies were subject to new filings; in 2010 12 cases were filed against Chinese issuers, a number representing 42.9 percent of the filings against foreign issuers. Lastly, the U.S. Government Accountability Office (GAO) and U.S. Department of Education recently alleged deceptive recruiting practices and reported poor student loan repayment rates at a number of for-profit colleges. These findings have since led to 10 class actions against for-profit colleges. Please see the New Developments section of this report for additional discussion.

New for the *2010 Year in Review* is a comparison of the settlement and dismissal rates of credit-crisis-related and non-credit-crisis-related class actions filed between 2007 and 2009 (see Figures 5–8). The analysis shows that settlement rates are lower for credit-crisis filings compared with non-credit-crisis filings, while the dismissal rates are similar between the two types. The difference in settlement rates appears to be driven by filings in the Second Circuit. In addition the analysis shows that the mean and median MDL for credit-crisis filings are larger than for non-credit-crisis filings.

A second new analysis focuses on filings that occurred between 1996 and 2005 and shows that class actions filed in more recent years tend to reach dismissal more quickly, though the time to reach settlement has remained stable. For example a higher percentage of dismissed class actions filed between 2001 and 2005 reached dismissal within three years compared with class actions filed between 1996 and 2000, and dismissed class actions filed between 2003 and 2005 were less likely to take more than four years to reach dismissal compared with class actions filed before 2003 (see Figure 15). In contrast the percentages of filings that reached settlement after the same number of years are similar across filing year cohorts (see Figure 16).

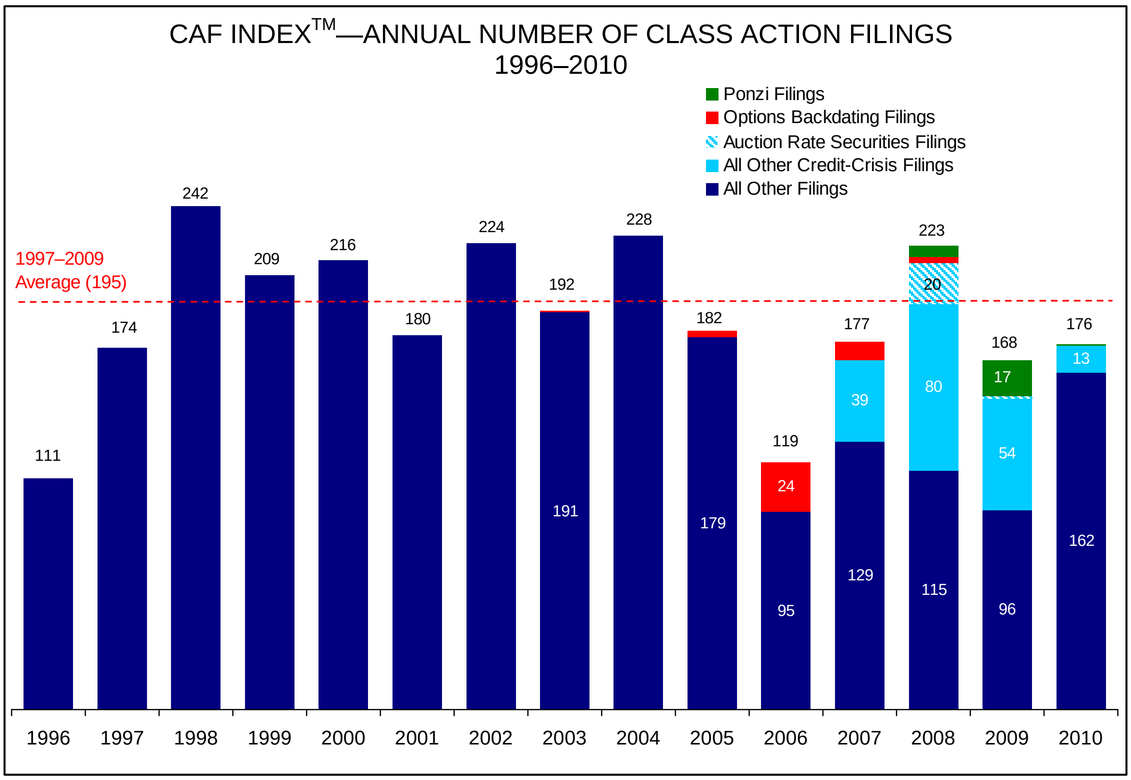
This report also introduces new analyses of the litigation exposure for companies in the S&P 500 Index as of year-end 1999 and for newly public companies following an initial public offering (IPO). This analysis shows that companies in the S&P 500 Index as of year-end 1999 had a 49.9 percent chance of being subject to at least one securities class action in the subsequent 11 years (see Figure 20). The litigation exposure for newly public companies was substantially lower. A newly public company has a 28.7 percent chance of being subject to at least one securities class action in the 11 years after its IPO (see Figure 22). The IPO analysis also shows that exposure to securities class actions is highest during the first few years after an IPO. The incremental litigation exposure decreases over time as companies mature and the volatility of their stock price decreases. Companies bore the highest risk in the second year after an IPO when they faced a 4.1 percent chance of being sued.

[1] Disclosure Dollar Loss and Maximum Dollar Loss are defined in the Market Capitalization Losses section of this report.

NUMBER OF FILINGS

The Class Action Filings Index™ (CAF Index) reports 176 filings in 2010 (Figure 2), which is a 4.8 percent increase from 168 filings in 2009. Helped by a large number of class actions related to M&A transactions and for-profit colleges, the number of non-credit-crisis and non-Ponzi filings made a notable return to 2005 levels. Such filings increased from 96 in 2009 to 162 in 2010, an increase of 68.8 percent. Filings related to the credit crisis decreased 76.4 percent from 55 filings in 2009 to 13 filings in 2010. Credit-crisis filings in 2010 represented just 7.4 percent of all filings compared with 32.7 percent in 2009.

Figure 2

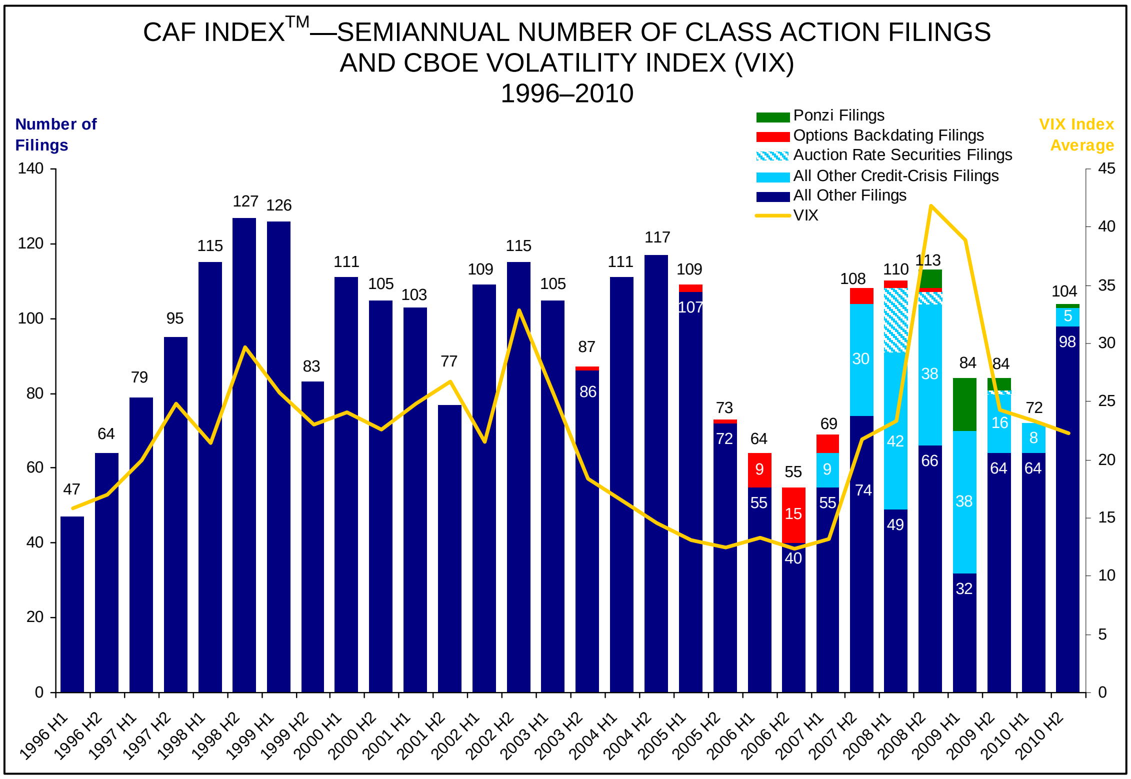


In addition there was one new filing related to the Madoff fraud and other Ponzi schemes in 2010, which peaked at 17 filings in 2009. There were no auction rate securities filings in 2010. Lawsuits against exchange-traded funds declined from 12 filings in 2009 to six in 2010, four of which were filed against ProShares Funds. Five of the six filings in 2010 were consolidated by the courts with 12 previous filings in 2009 into two filings against ProShares Trust and Direxion Shares ETF Trust.

NUMBER OF FILINGS *continued*

The semiannual number of filings increased 44.4 percent to 104 filings in the six months ending December 31, 2010, from 72 in the first half of 2010. In addition the number of filings related to the credit crisis continued to decline. In the last 24 months, the number of credit-crisis filings declined from 38 in the first half of 2009 to only five in the second half of 2010.

Figure 3

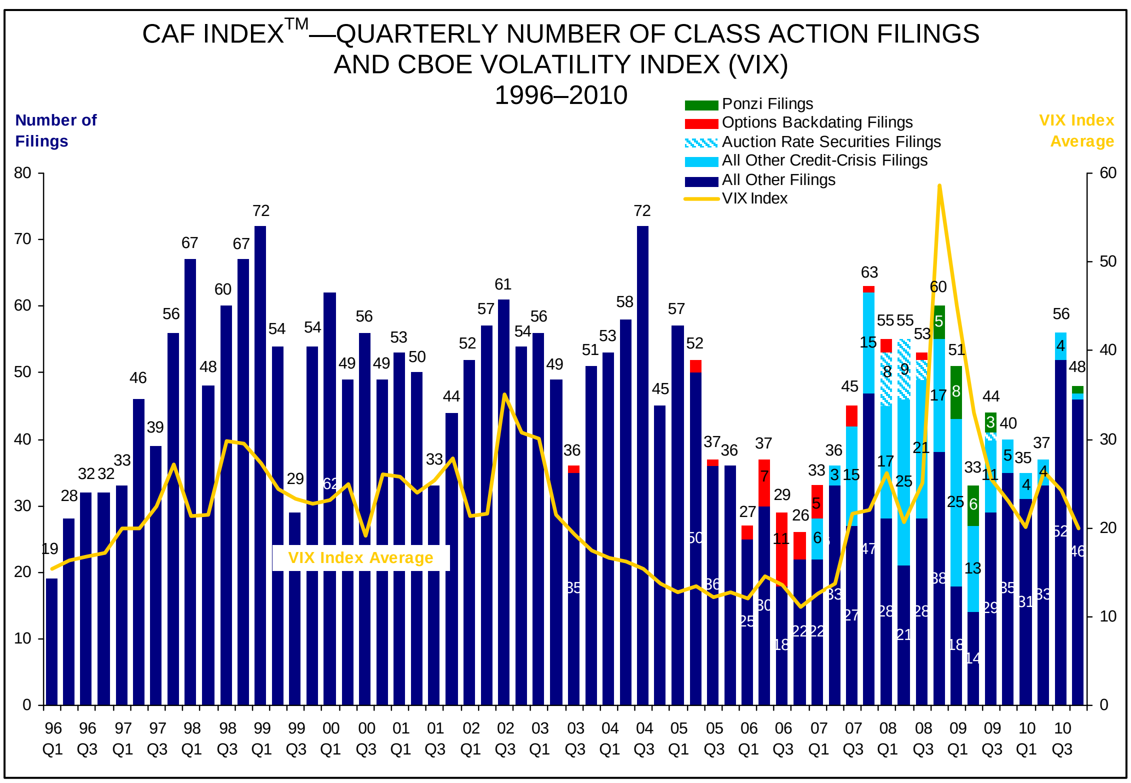


NUMBER OF FILINGS *continued*

The CAF Index shows that the quarterly number of filings has been volatile in the nine months ending December 31, 2010. The number of filings increased by 51.4 percent between the second and third quarters of 2010, but declined by 14.3 percent between the third and fourth quarters of 2010. The spike in filings during the third quarter is the result of five class actions against for-profit colleges following the August 2010 GAO report and 13 filings related to M&A transactions.

Securities litigation activity can be correlated with stock market volatility. The fourth quarter of 2008, a historic peak in stock market volatility as measured by the Chicago Board Options Exchange (CBOE) Volatility Index® (VIX), was associated with a flurry of securities class actions; in comparison, during the fourth quarter of 2006, the VIX was at its lowest point since its inception in the 1990s and was accompanied by a historically low number of filings (Figure 4). While the jump in the number of filings in the third and fourth quarters of 2010 appears to be inconsistent with the slight decline in market volatility during the same period, 13 filings in the third quarter and 14 filings in the fourth quarter were related to mergers and acquisitions instead of the traditional class actions following stock price declines. It is possible that filings related to mergers and acquisitions are not positively correlated with stock market volatility. In the first half of 2010, there were 13 filings related to mergers and acquisitions, five in the first quarter and eight in the second quarter. There were only seven such filings in all of 2009.

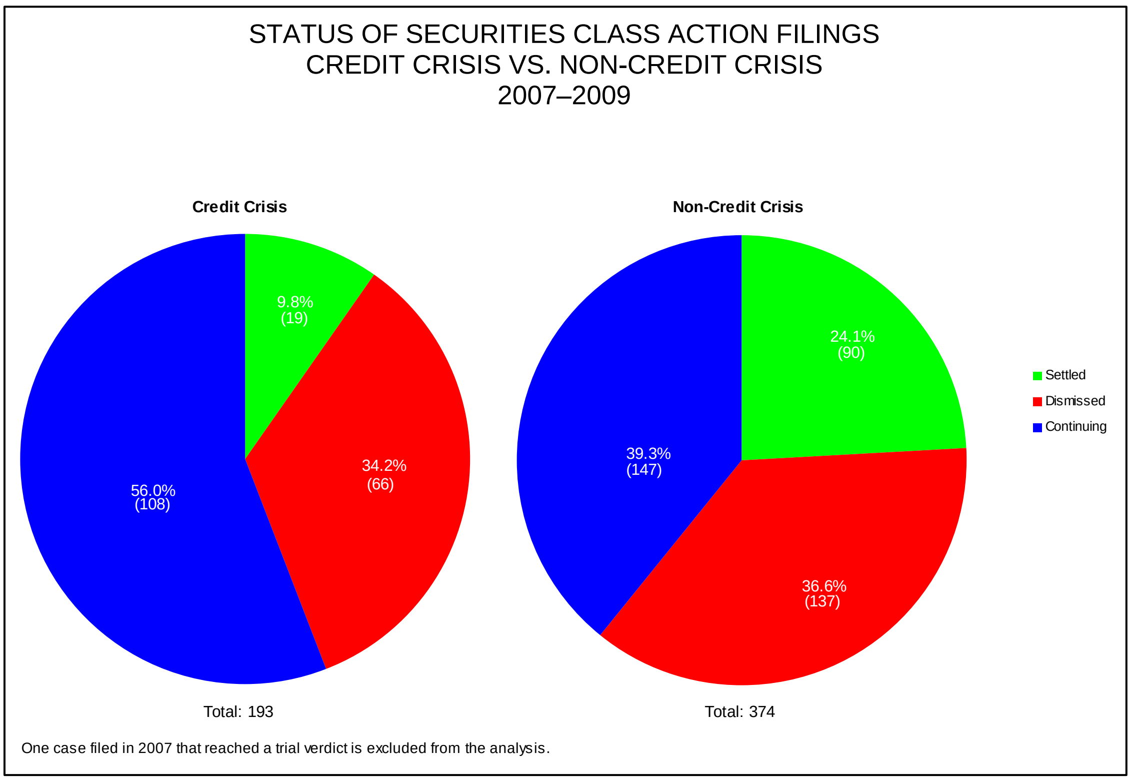
Figure 4



STATUS OF CREDIT-CRISIS FILINGS

New for the *2010 Year in Review* is a comparison of the settlement and dismissal rates of credit-crisis-related and non-credit-crisis-related class actions. The analysis shows that credit-crisis filings have significantly lower settlement rates compared to non-credit-crisis filings. The difference in settlement rates appears to be driven by filings in the Second Circuit. In contrast dismissal rates for credit-crisis filings do not appear to be different from non-credit-crisis filings. To date, a larger portion of credit-crisis filings remains unresolved compared with non-credit-crisis filings.

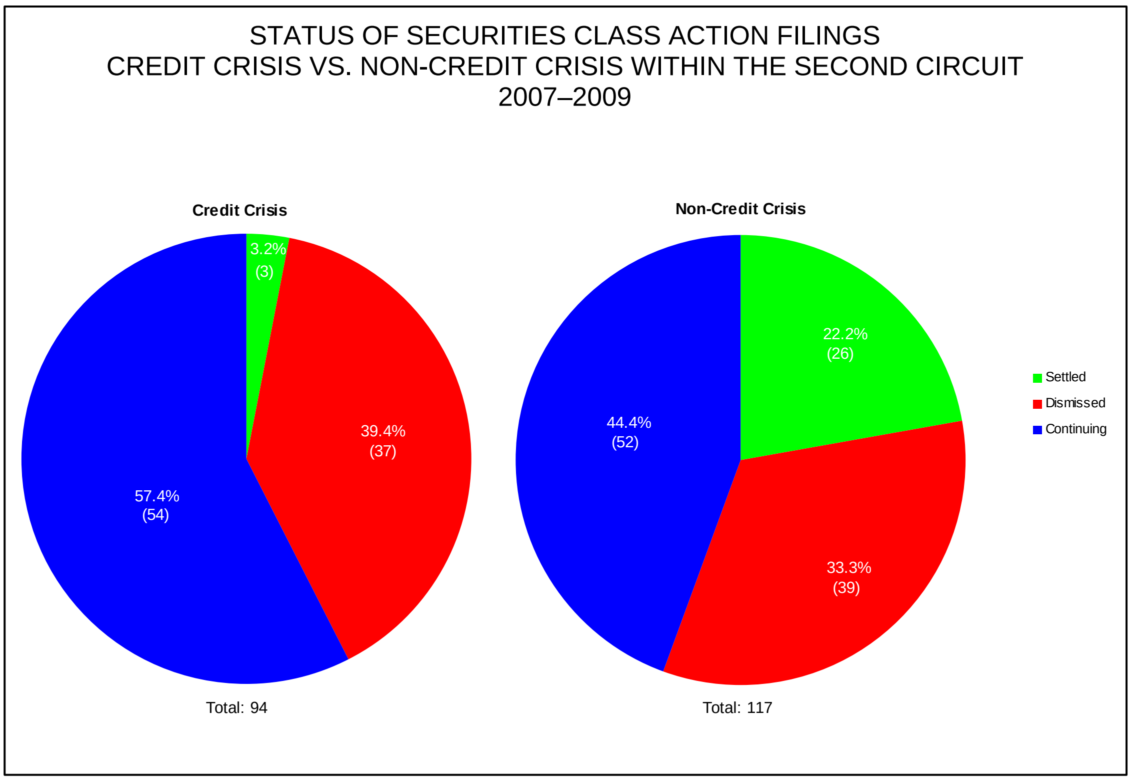
Figure 5



STATUS OF CREDIT-CRISIS FILINGS *continued*

Figure 5 shows the case status as of year-end 2010 for credit-crisis and non-credit-crisis class actions filed between 2007 and 2009. The 9.8 percent settlement rate for credit-crisis filings is statistically lower (at the 5 percent level[2]) from the 24.1 percent settlement rate for non-credit-crisis filings. Figures 6 and 7 show that this difference in settlement rates is driven by cases filed in the Second Circuit where the 3.2 percent settlement rate for credit-crisis filings is significantly lower than the 22.2 percent settlement rate for non-credit-crisis filings. By contrast in other circuits the 16.2 percent settlement rate for credit-crisis filings is not statistically significantly different at the 5 percent level from the 24.9 percent settlement rate for non-credit-crisis filings.[3] Furthermore, the settlement rate of credit-crisis filings within the Second Circuit is statistically significantly different than the settlement rate of credit-crisis filings outside of the Second Circuit.[4]

Figure 6



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2 There is less than a 5 percent chance that the relationship described occurred due to random chance.

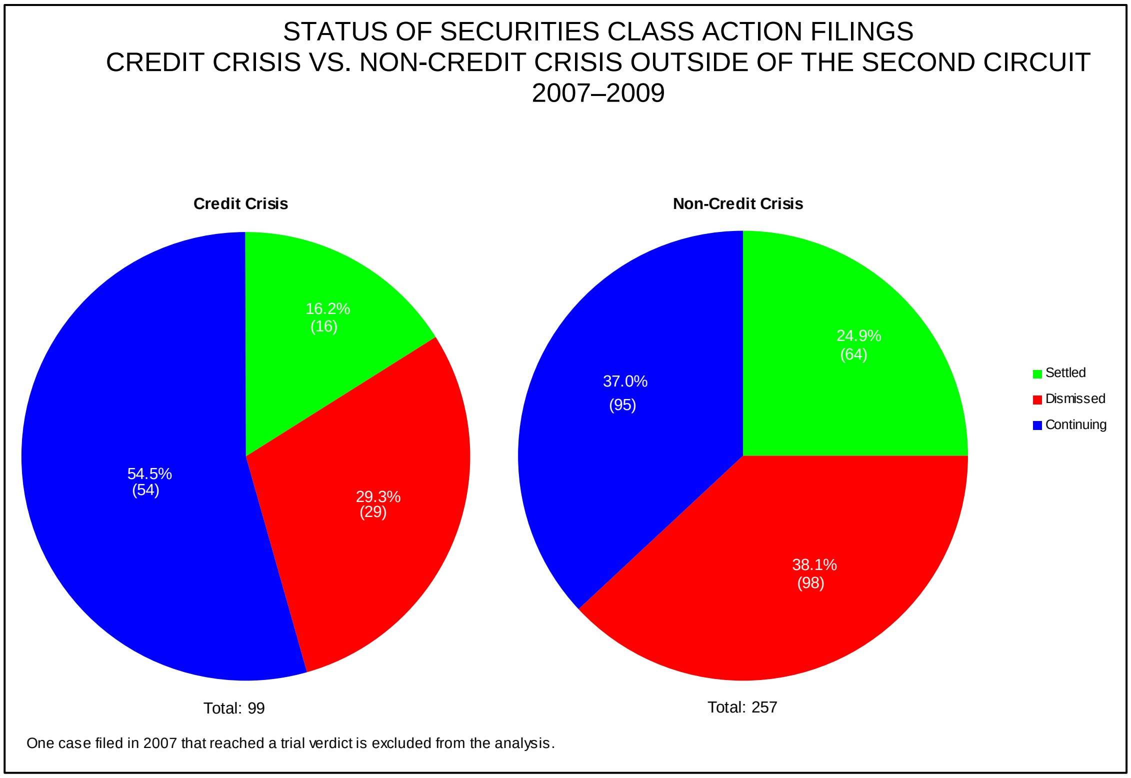
3 The two figures are statistically significantly different at the 10 percent level.

4 To control for the timing of the filings, additional analyses were performed on class actions filed in 2008 when the number of credit-crisis filings peaked. While the settlement rates for 2008 filings differed slightly from the all filings between 2007 and 2009, the statistical results regarding the settlement rates remained the same.

STATUS OF CREDIT-CRISIS FILINGS *continued*

Credit-crisis-related filings also tend to take longer to resolve. For class actions filed between 2007 and 2009, 56 percent of credit-crisis filings remain unresolved compared with 39.3 percent of non-credit-crisis filings that remain unresolved (see Figure 5). This difference in the percentage of filings that remain open is statistically significant at the 5 percent level.[5] The statistical result is the same if one were to analyze filings outside of the Second Circuit (see Figure 7). However, the difference in the percentage of unresolved cases is not statistically significant at the 5 percent level for filings within the Second Circuit (see Figure 6).[6]

Figure 7



In contrast the dismissal rates of credit-crisis and non-credit-crisis filings are not statistically significantly different. This result holds for class actions filed inside or outside of the Second Circuit, as well as all filings between 2007 and 2009.[7]

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5 The result also holds if one were to analyze only class actions filed in 2008 to control for the timing of the filings.

6 The difference is statistically significant at the 10 percent level within the Second Circuit.

7 The result also holds if one were to analyze only class actions filed in 2008 to control for the timing of the filings.

STATUS OF CREDIT-CRISIS FILINGS *continued*

Figure 8 provides summary statistics on MDL and DDL for class actions filed between 2007 and 2009 based on case status (settled, dismissed, or continuing) and type (credit crisis or non-credit crisis). The mean and median MDL are larger for credit-crisis filings in every case status category. The difference in median MDL between credit-crisis and non-credit-crisis filings is statistically significant at the 5 percent level for all case status categories. By contrast the mean and median DDL are not always larger for credit-crisis filings, and the only statistically significant difference at the 5 percent level is the median DDL for settled cases.

Figure 8

CREDIT-CRISIS VS. NON-CREDIT-CRISIS FILINGS
DISCLOSURE DOLLAR LOSS AND MAXIMUM DOLLAR LOSS
2007–2009
Dollars in Billions

	Settled			Dismissed			Continuing		
MDL	Mean	Median	Total	Mean	Median	Total	Mean	Median	Total
Credit-Crisis	$3.9	$1.8*	$55.2	$7.9	$1.9*	$261.5	$12.4*	$1.8*	$704.8
Non-Credit-Crisis	$1.0	$0.4	$78.5	$3.9	$0.7	$405.5	$5.0	$1.3	$560.5
DDL	Mean	Median	Total	Mean	Median	Total	Mean	Median	Total
Credit-Crisis	$0.5	$0.3*	$7.3	$1.7	$0.1	$55.8	$1.7	$0.2	$95.4
Non-Credit-Crisis	$0.3	$0.1	$23.3	$1.3	$0.2	$140.2	$1.3	$0.3	$141.0

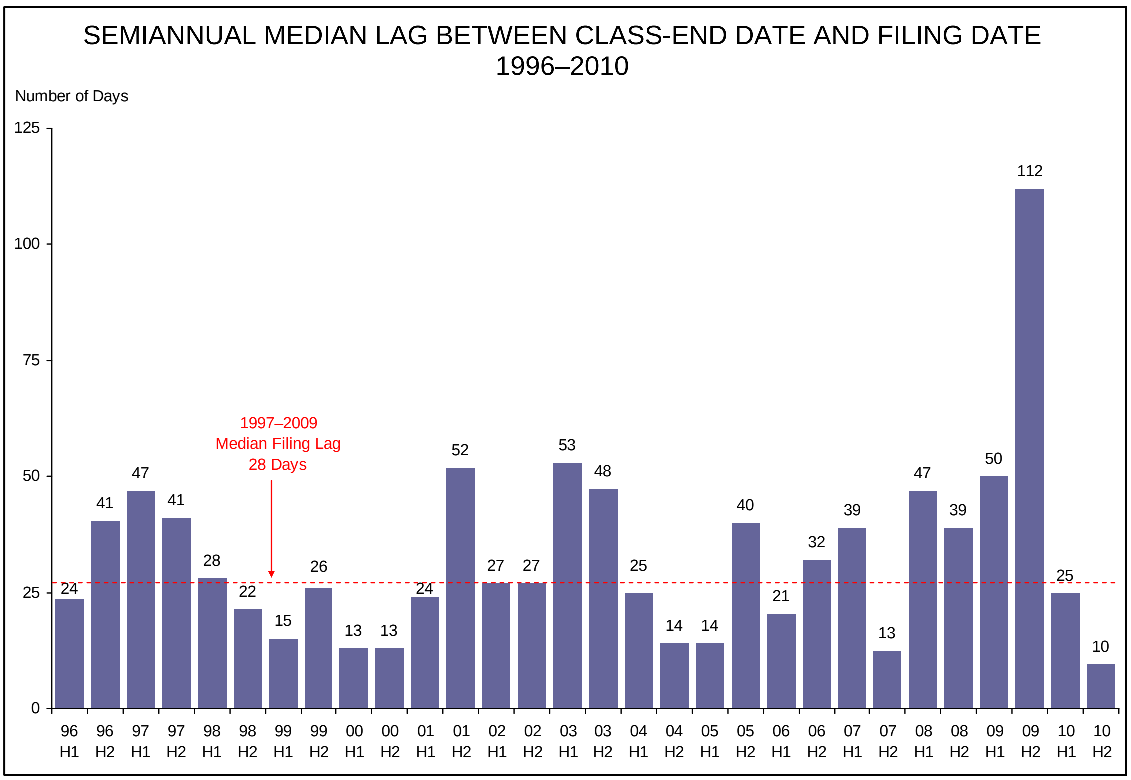
* Indicates a statistically significant difference at the 5 percent level from the corresponding non-credit-crisis number. One case filed in 2007 that reached a trial verdict is excluded from the analysis.

FILING LAG

In the second half of 2010, the median lag time between the end of the class periods and the filing dates decreased to 35.7 percent of the historical median filing lag of 28 days from 1997 through 2009 (Figure 9). The median lag time was 10 days in the second half of 2010, which represents a 60 percent decrease from the median lag time of 25 days in the first half of 2010 and a 91.1 percent decrease from the median lag time of 112 days in the second half of 2009. This decline of median lag time is associated with a decrease in the percentage of filings that have a six-month or longer lag time. The percentage of such filings was 39.3 percent in the second half of 2009, 28.6 percent in the first half of 2010, and 12 percent in the second half of 2010. Between 1997 and 2009, the percentage of filings that have a six-month or longer lag time was 20.3 percent.

The short lag time between the end of the class periods and the filing dates can be partially explained by the large number of filings related to mergers and acquisitions in 2010. Filings related to M&A transactions tend to be filed quickly after the end of the class period. If the 40 filings related to M&A transactions were excluded from the analysis, the median filing lag would increase to 29 and 23 days for the first and second half of 2010, respectively.

Figure 9

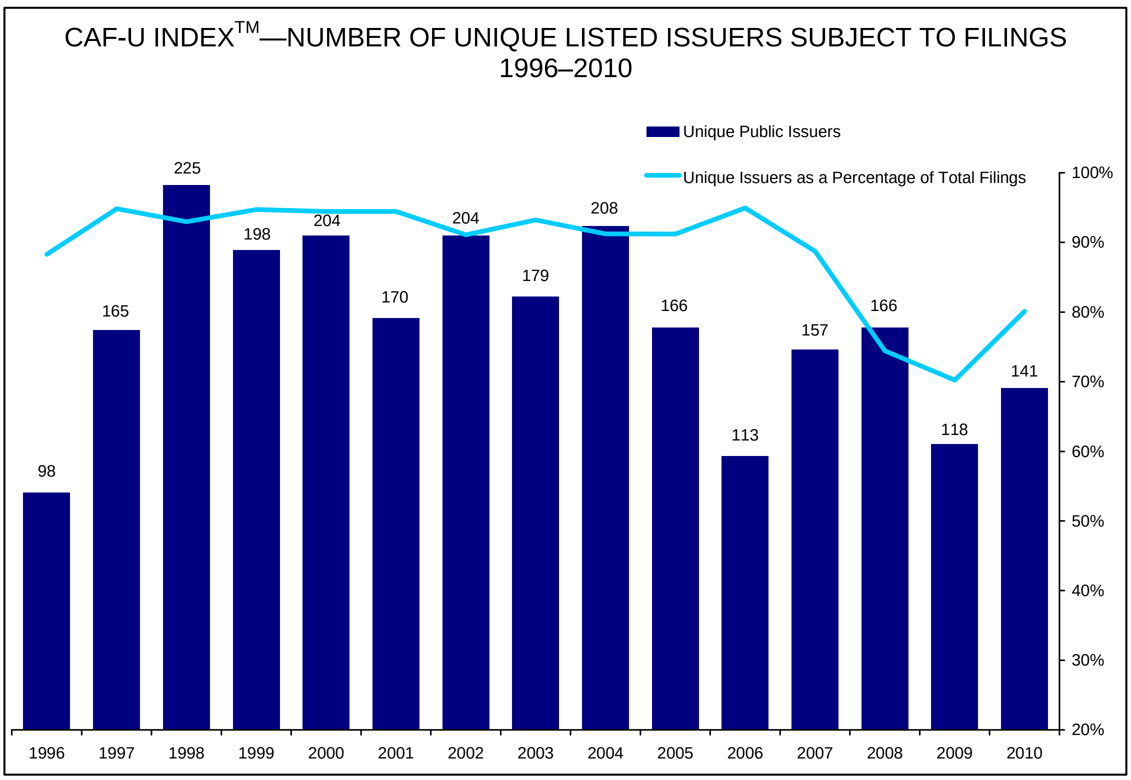


FILINGS BY ISSUER

The Class Action Filings-Unique Issuers Index (CAF-U Index™) is a metric that tracks the number of unique issuers[8] whose exchange-traded securities were involved in class actions.[9] In 2010 this metric shows a slight rebound in the number of unique issuers involved in filings (Figure 10).

While the total number of filings increased by only 4.8 percent between 2009 and 2010, the total number of unique issuers increased by 19.5 percent to 141 issuers. Multiple filings against the same issuer declined in 2010. Unique issuers as a percentage of total 2010 filings increased to 80.1 percent from a historic low of 70.2 percent in 2009. From 1997 to 2007 the average ratio of unique issuers to total filings was 92.9 percent.

Figure 10



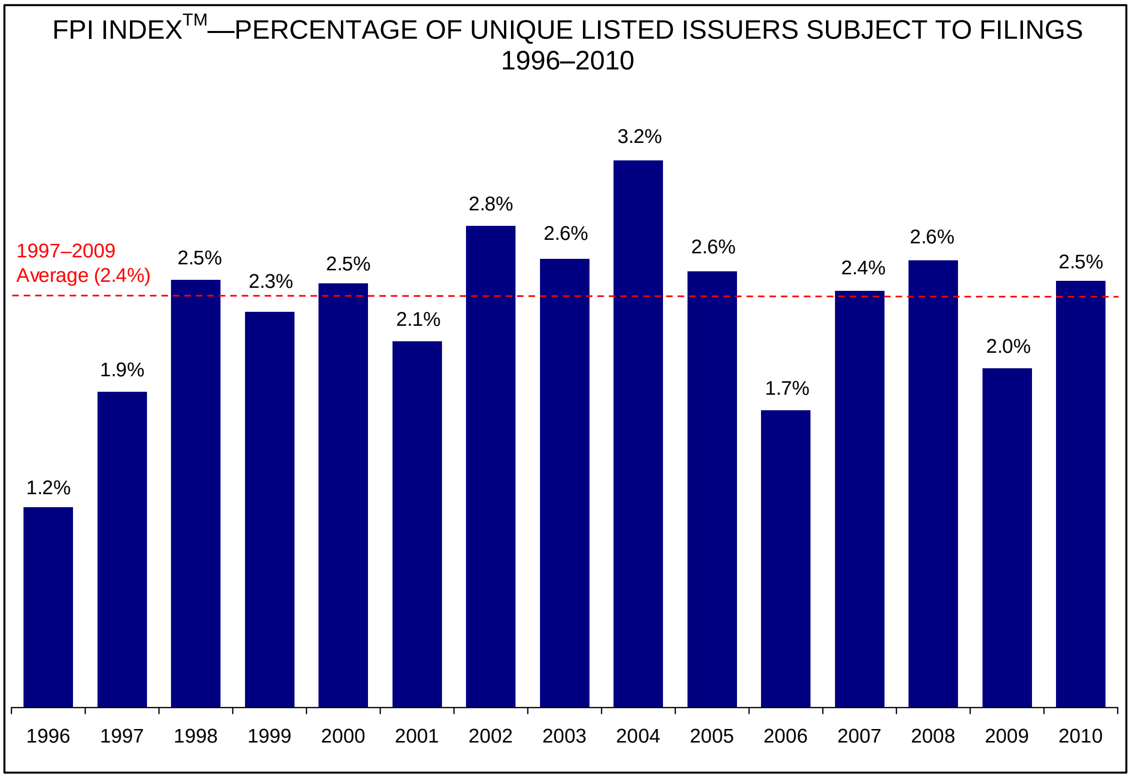
[8] When the number of issuers involved in litigation is presented in Figures 10 and 11, all filings against the same issuer have been consolidated so that the count is a count of unique issuers.

[9] The index considers securities that were traded on NYSE, NASDAQ, or Amex when the alleged fraud occurred.

FILINGS BY ISSUER *continued*

The Filings per Issuer (FPI) Index™ shows that the number of unique issuers involved in class action filings as a percentage of total issuers on NYSE, NASDAQ, or Amex increased (Figure 11). Of the companies listed on those exchanges, 2.5 percent were defendants in class actions filed in 2010 compared with 2 percent in 2009. The figure for 2010 is slightly above the 2.4 percent historical average for the 13 years ending December 2009.

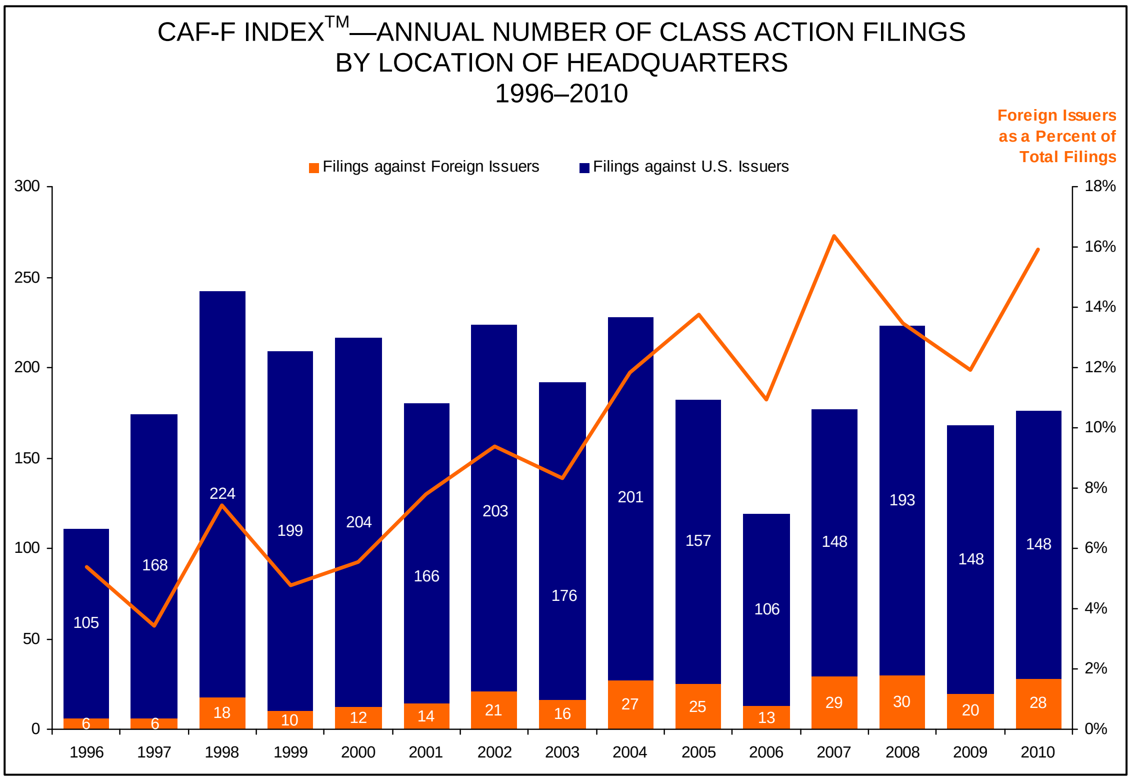
Figure 11



FOREIGN FILINGS

The Class Action Filings-Foreign Index (CAF-F Index™) tracks the number of filings against foreign issuers, i.e., corporations headquartered outside of the United States, relative to total filings (Figure 12). Filings against foreign issuers as a percent of total filings has generally increased since 1996 and peaked in 2007 at 16.4 percent before declining to 13.5 and 11.9 percent in 2008 and 2009, respectively. In 2010 filings against foreign issuers accounted for 15.9 percent of total filings—a large rebound even after the Supreme Court's ruling in *Morrison v. National Australia Bank Ltd.* on June 24, 2010, which banned so-called "foreign-cubed" lawsuits (cases brought by foreign investors that involve foreign securities traded on foreign exchanges) in the United States. There were 17 foreign filings during the second half of 2010, which was a 54.5 percent increase from the first six months of the year.

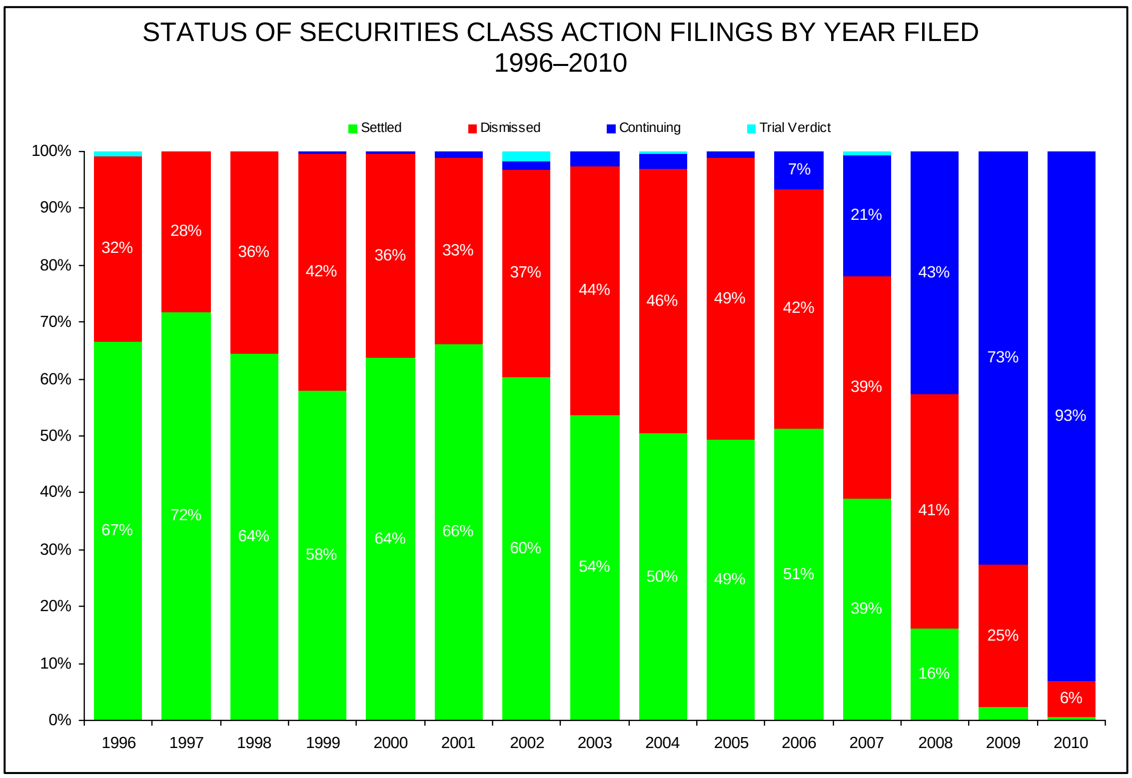
Figure 12



FILINGS BY STATUS

Figure 13 shows the status of securities class actions by filing year. Since the typical time to dismissal is shorter than the typical time to settlement, there are more dismissals than settlements among resolved class actions in younger class action cohorts. The mix of settled and dismissed class actions changes as the cohorts age. Among the resolved cases, 43 percent were dismissed, 56.7 percent were settled, and 0.3 percent reached a verdict at trial. The majority of resolved class actions were resolved after the first ruling on the motion to dismiss but before a ruling on summary judgment, with 70.4 percent of dismissals and 60 percent of settlements occurring during this stage. For class actions filed from 1996 to 2007 and resolved by the end of 2010, the median time to resolution was 31 months with a median time to settlement of 36 months and a median time to dismissal of 23 months.

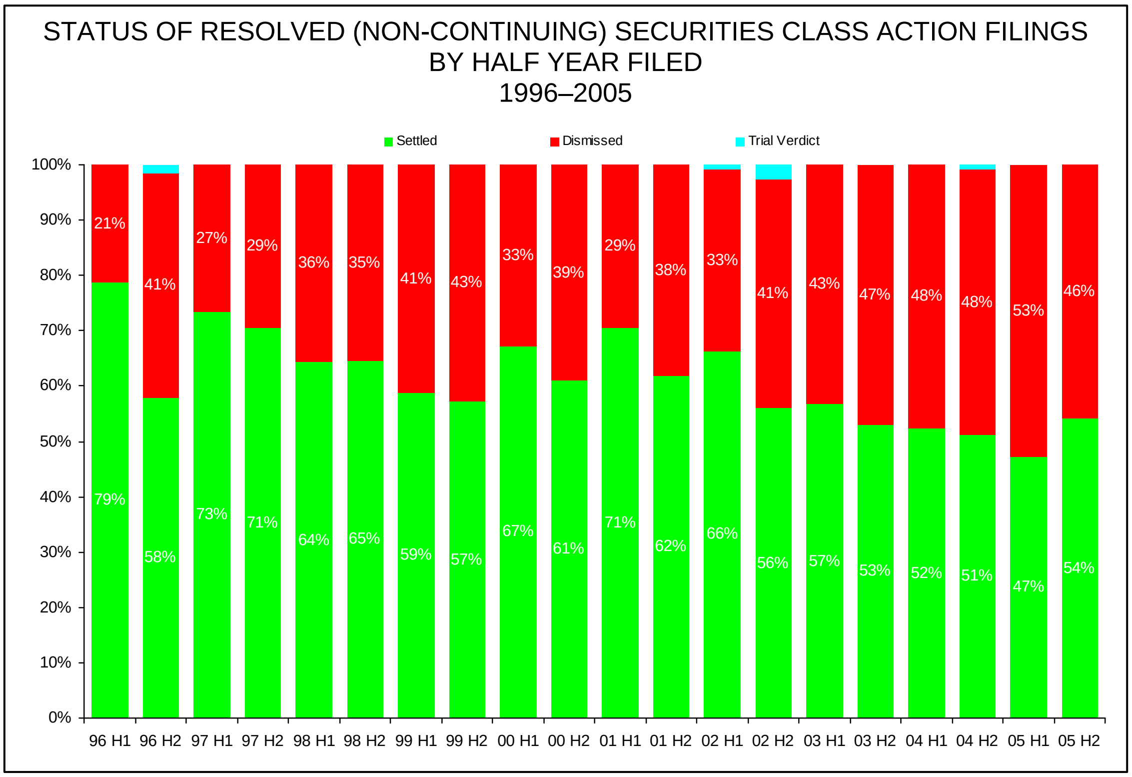
Figure 13



FILINGS BY STATUS *continued*

Figure 14 shows the breakdown between settlements, dismissals, and trial verdicts for class actions that have been resolved. The data for the cohorts between 1996 and 2005—cohorts in which more than 95 percent of the class actions in each cohort have been resolved to date (see Figure 13)—show that an increasing percentage of filings were terminated due to a dismissal and a corresponding decrease in the percentage of filings ending in a settlement.

Figure 14



FILINGS BY STATUS *continued*

Figure 15 focuses exclusively on dismissal of cases filed from 1996 to 2005, years for which the vast majority of the filings have been resolved (see Figure 13), and categorizes them according to the number of years it took for the case to reach dismissal. For example for class actions filed in 1997 that were eventually dismissed, 27 percent were dismissed within one year of the filing date, 31 percent were dismissed two years after the filing date, and 14 percent were dismissed after three years, and so on.

Figure 15

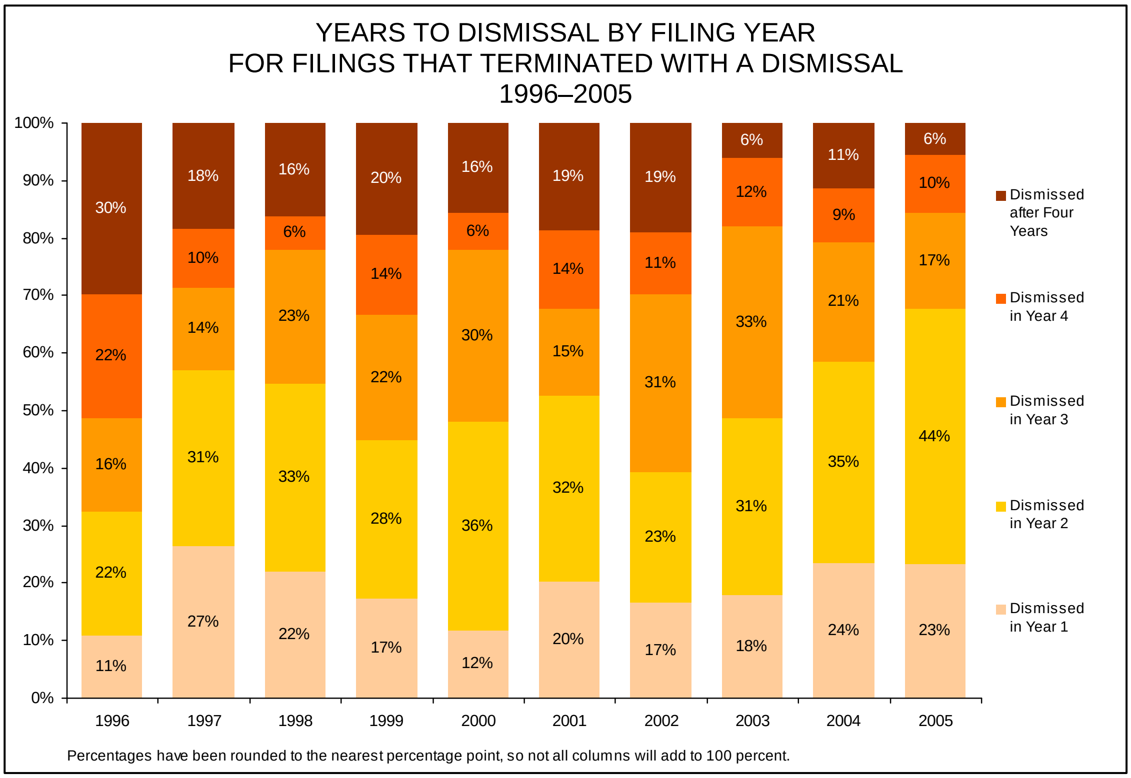
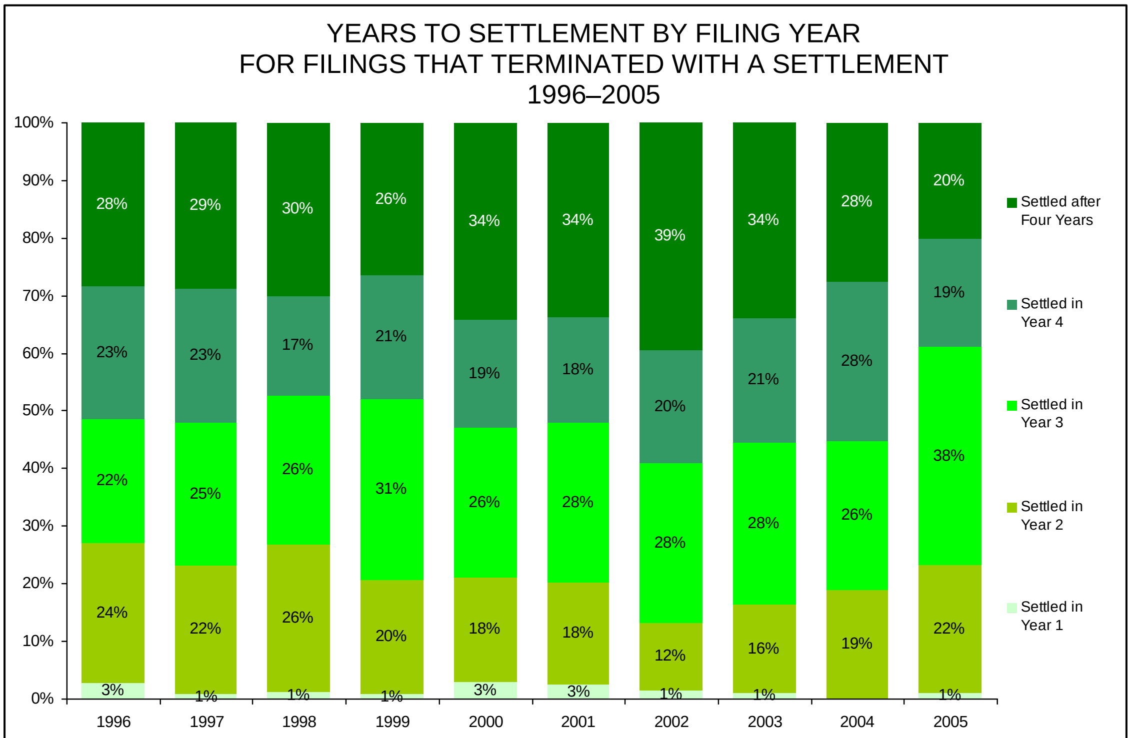


Figure 15 also reveals that for filings that were eventually dismissed, the time to reach dismissal has decreased over time. For example 88 percent of dismissed filings from 2001 to 2005 reached dismissal within four years of the filing date, but only 81 percent of the dismissed filings from 1996 to 2000 were dismissed within the same time frame. Similarly, while 78 percent of dismissed filings from 2001 to 2005 were dismissed within three years, only 71 percent of dismissed filings were dismissed that quickly for filings from 1996 to 2000. Class actions filed between 2003 and 2005 had a much lower percentage of cases taking more than four years to reach dismissal compared with those filed before 2003.

FILINGS BY STATUS *continued*

The observation that the time to reach termination for dismissed filings has decreased in recent years does not translate to filings that ended in settlement. Figure 16 shows the percentage of settled filings that reached settlement within a given number of years from the filing date. Among class actions filed between 1996 and 2000, 50 percent of settled filings were settled within three years of the filing date compared with 47 percent for class actions filed between 2001 and 2005. Similarly, 70 percent of settled class actions filed between 1996 and 2000 settled within four years, while 68 percent of settled class actions filed between 2001 and 2005 settled within the same time frame.

Figure 16



Percentages have been rounded to the nearest percentage point, so not all columns will add to 100 percent.

HEAT MAPS

The Heat Maps of S&P 500 Securities Litigation™ facilitate analysis of securities class action activity by sector. The analysis focuses on companies in the S&P 500 Index, which represents 500 large, publicly traded companies in all major sectors. Starting with the composition of the S&P 500 Index at the beginning of each year, the Heat Maps examine two factors for each sector. First, what percent of these companies was subject to new securities class actions in federal court during the year? Second, of the total market capitalization of the companies, what share was accounted for by companies named in new securities class actions?

Overall, about one out of every 19 companies in the S&P 500 Index at the beginning of 2010 was a defendant in a class action filed during the year compared with an average of about one out of every 15 companies between 2000 and 2009 (Figure 17).[10]

Figure 17

HEAT MAPS OF S&P 500 SECURITIES LITIGATION™
PERCENTAGE OF COMPANIES SUBJECT TO NEW FILINGS*
2000–2010

	Average 00–09	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Consumer Discretionary	**5.3%**	3.3%	2.4%	10.2%	4.6%	3.4%	10.3%	4.4%	5.7%	4.5%	3.8%	5.1%
Consumer Staples	**4.3%**	7.3%	8.3%	2.9%	2.9%	2.7%	8.6%	2.8%	0.0%	2.6%	4.9%	0.0%
Energy	**1.4%**	0.0%	0.0%	8.0%	0.0%	4.2%	0.0%	0.0%	0.0%	0.0%	2.6%	7.7%
Financials	**11.8%**	4.2%	1.4%	16.7%	8.6%	19.3%	7.3%	2.4%	10.3%	31.2%	13.1%	10.3%
Health Care	**9.5%**	2.6%	7.1%	15.2%	10.4%	10.6%	10.7%	6.9%	12.7%	13.7%	3.7%	15.4%
Industrials	**3.8%**	2.8%	0.0%	6.0%	3.0%	8.5%	1.8%	0.0%	5.8%	3.6%	6.9%	0.0%
Information Technology	**6.9%**	9.7%	18.2%	10.3%	5.2%	3.6%	7.5%	9.0%	2.6%	2.9%	0.0%	3.9%
Materials	**1.2%**	4.1%	0.0%	0.0%	2.9%	0.0%	3.1%	0.0%	0.0%	0.0%	0.0%	3.2%
Telecommunication Services	**8.3%**	23.1%	16.7%	15.4%	8.3%	0.0%	0.0%	0.0%	0.0%	0.0%	11.1%	0.0%
Utilities	**7.5%**	5.0%	7.9%	40.5%	2.8%	5.7%	3.0%	0.0%	3.1%	3.2%	0.0%	0.0%
All S&P 500 Companies	**6.5%**	**5.0%**	**5.6%**	**12.0%**	**5.2%**	**7.2%**	**6.6%**	**3.6%**	**5.4%**	**9.2%**	**4.8%**	**5.4%**

Legend	0%	0% – 5%	5% – 15%	15% – 25%	25%+

* The chart is based on the composition of the S&P 500 as of the last trading day of the previous year.

Sectors are based on the Global Industry Classification Standard.

Percent of Companies Subject to New Filings equals the number of companies subject to new securities class action filings in federal courts in each sector divided by the total number of companies in that sector.

[10] In Figures 17 and 18, filings against the same company were consolidated so that the number and market capitalization of companies involved in new securities litigation reflect unique companies.

HEAT MAPS *continued*

The 5.4 percent of the S&P 500 companies subject to new filings in 2010 accounted for 11.2 percent of the market capitalization of the S&P 500 Index at the beginning of 2010 (Figure 18). The percentage of companies in the Financials sector that were named as defendants continued to decline from the sector's peak during the credit crisis in 2008, reaching just 10.3 percent in 2010. These companies represented 31.1 percent of the Financials sector's market capitalization at the beginning of 2010 compared with 38.3 percent in 2009. New litigation activity in the Financials sector was similar to the historical average between 2000 and 2009 both as percentage of companies and as a percentage of market capitalization.

In contrast the Health Care sector of the S&P 500 Index experienced a pickup in filings during the first half of 2010, and the trend continued in the second half of the year. In 2010 15.4 percent of the S&P 500 Health Care companies were involved in new filings, representing 33.7 percent of the sector's market capitalization, making it the hottest sector on the Heat Maps for the year. The spike in litigation in this sector came after a year of low activity in 2009, when only 3.7 percent of the S&P 500 Health Care companies or 1.7 percent of the sector's market capitalization were involved in class actions.

There were no filings against S&P 500 companies in the Consumer Staples, Industrials, Telecommunication Services, and Utilities sectors in 2010.

Figure 18

HEAT MAPS OF S&P 500 SECURITIES LITIGATION™
PERCENTAGE OF MARKET CAPITALIZATION SUBJECT TO NEW FILINGS*
2000–2010

	Average 00–09	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Consumer Discretionary	**7.5%**	6.5%	1.3%	24.7%	2.0%	7.9%	5.7%	8.9%	4.4%	7.2%	1.9%	4.9%
Consumer Staples	**5.6%**	34.5%	6.3%	0.3%	2.3%	0.1%	11.4%	0.8%	0.0%	2.6%	3.9%	0.0%
Energy	**3.2%**	0.0%	0.0%	1.7%	0.0%	44.9%	0.0%	0.0%	0.0%	0.0%	0.9%	3.3%
Financials	**23.9%**	3.3%	0.8%	29.2%	19.9%	46.1%	22.2%	8.2%	18.1%	55.0%	38.3%	31.1%
Health Care	**16.8%**	11.0%	5.4%	35.2%	16.3%	24.1%	10.1%	18.1%	22.5%	20.0%	1.7%	33.7%
Industrials	**8.7%**	3.9%	0.0%	13.3%	4.6%	8.8%	5.6%	0.0%	2.2%	26.4%	23.2%	0.0%
Information Technology	**9.5%**	8.5%	37.6%	5.7%	1.0%	1.5%	12.4%	9.9%	4.2%	1.7%	0.0%	6.8%
Materials	**1.6%**	8.6%	0.0%	0.0%	1.4%	0.0%	5.1%	0.0%	0.0%	0.0%	0.0%	12.5%
Telecommunication Services	**12.5%**	39.5%	13.3%	19.9%	4.0%	0.0%	0.0%	0.0%	0.0%	0.0%	1.7%	0.0%
Utilities	**9.7%**	5.6%	17.4%	51.0%	4.3%	4.8%	5.6%	0.0%	5.5%	4.0%	0.0%	0.0%
All S&P 500 Companies	**11.8%**	**11.1%**	**10.9%**	**18.8%**	**8.0%**	**17.7%**	**10.7%**	**6.7%**	**8.2%**	**16.2%**	**8.6%**	**11.2%**

Legend	0%	0% – 5%	5% – 15%	15% – 25%	25%+

* The chart is based on the market capitalizations of the S&P 500 companies as of the last trading day of the previous year.
If the market capitalization on the last trading day is not available, the average fourth-quarter market capitalization is used.

Sectors are based on the Global Industry Classification Standard.

Percent of Market Capitalizations Subject to New Filings equals the total market capitalization of companies subject to new securities class action filings in federal courts in each sector divided by the total market capitalization of all companies in that sector.

HEAT MAPS *continued*

New for the *2010 Year in Review* is an analysis of the probability that companies in the S&P 500 Index as of year-end 1999 would be subject to at least one securities class action in the subsequent 11 years. Since this analysis tracks a fixed set of companies through a long period of time, it becomes necessary to account for "survivorship bias," i.e., the fact that over time some of the companies will cease to be independent entities. Figure 19 shows the cumulative survival rates for S&P 500 companies as of year-end 1999 over the next 11 years. The figure shows that by year-end 2010, only 65.1 percent of the original companies remained as publicly traded companies on a major U.S. exchange.[11]

Figure 19

SURVIVAL RATES OF COMPANIES
IN THE S&P 500 AS OF DECEMBER 31, 1999

Year	Percent of Companies Surviving to End of Year
2000	93.4%
2001	89.4%
2002	86.8%
2003	85.6%
2004	84.4%
2005	81.6%
2006	77.2%
2007	73.1%
2008	68.9%
2009	67.1%
2010	65.1%

Figure 20 shows the cumulative litigation exposure over time for S&P 500 companies as of year-end 1999, controlling for "survivorship bias."[12] The chart splits the companies in the S&P 500 as of December 31, 1999, into 10 sectors and tracks the cumulative litigation exposure in each sector from 2000 to 2010. Figure 20 shows that Information Technology companies in the S&P 500 as of year-end 1999 had a 9.7 percent chance of being subject to a securities class action in 2000. In the following year Information Technology companies that survived and were not yet sued faced an additional 15.3 percent chance of being sued, increasing the cumulative litigation exposure for companies in the sector to 25 percent by the end of 2001. The Telecommunication Services sector also showed large increases in litigation exposure in the first few years, reaching a cumulative litigation exposure of 54.8 percent by the end of 2003. The large increases in exposure to securities class actions in the Information Technology and Telecommunication Services sectors between 2000 and 2003 reflect the fallout from the Internet bubble, and since that was not a recurring event, litigation exposure in these sectors leveled off between 2004 and 2010.

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[11] This analysis defines "survival" to mean that the same company is still tracked in the Center for Research in Security Prices (CRSP) U.S. Stock Database as of November 30, 2010. Companies might not "survive" for a number of reasons, including delisting from the major U.S. stock exchanges, mergers and acquisitions, changes to the corporate structure, etc.

[12] Cumulative litigation exposure correcting for survivorship bias is calculated using the following formula:

$$\left(\text{cumulative litigation exposure in year } t\right) = 1 - \prod_{i=1}^{t}(1-p_i) \text{, where:}$$

$$p_i = \frac{\text{number of companies sued in year } i}{\text{number of companies surviving at the end of year } (i-1)}$$

HEAT MAPS *continued*

Overall, companies in the Financials sector had the highest cumulative litigation exposure and had an 82 percent chance to be subject to at least one securities class action by the end of 2010. The Financials sector is followed closely by the Health Care and Telecommunication Services sectors, both of which had more than a 60 percent cumulative litigation exposure over 11 years. Overall, companies in the S&P 500 Index as of year-end 1999 had a 49.9 percent chance of being subject to at least one securities class action in the subsequent 11 years after controlling for company survival.

Figure 20

HEAT MAPS OF S&P 500 SECURITIES LITIGATION™
FOR COMPANIES IN THE S&P 500 AS OF DECEMBER 31, 1999*
CUMULATIVE LITIGATION EXPOSURE CONTROLLING FOR COMPANY SURVIVAL

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Consumer Discretionary	3.3%	5.6%	13.9%	17.2%	20.5%	26.7%	28.7%	32.9%	35.0%	37.1%	38.2%
Consumer Staples	7.3%	14.8%	19.7%	22.0%	24.2%	30.7%	32.8%	32.8%	34.8%	39.1%	41.2%
Energy	0.0%	0.0%	10.0%	10.0%	19.5%	19.5%	19.5%	19.5%	19.5%	19.5%	30.2%
Financials	4.2%	5.6%	21.9%	26.7%	41.9%	46.8%	48.6%	54.5%	73.7%	79.7%	82.0%
Health Care	2.7%	8.6%	29.2%	36.1%	42.5%	48.4%	55.5%	63.8%	69.8%	69.8%	76.7%
Industrials	2.8%	5.5%	9.6%	12.2%	16.2%	18.7%	19.9%	22.4%	25.9%	31.8%	32.9%
Information Technology	9.7%	25.0%	33.9%	37.3%	38.4%	39.5%	44.9%	47.0%	47.0%	47.0%	49.5%
Materials	4.1%	4.1%	4.1%	10.9%	10.9%	13.2%	13.2%	13.2%	13.2%	13.2%	13.2%
Telecommunication Services	25.0%	38.6%	49.8%	54.8%	54.8%	54.8%	54.8%	54.8%	54.8%	62.3%	62.3%
Utilities	5.0%	10.8%	39.5%	41.6%	43.6%	45.6%	45.6%	47.5%	49.5%	49.5%	49.5%
All S&P 500 Companies	5.0%	9.9%	20.2%	24.1%	28.9%	32.6%	35.1%	38.4%	44.0%	47.3%	49.9%

Legend	0%	0% – 25%	25% – 50%	50%+

* The chart is based on the composition of the S&P 500 as of December 31, 1999.
Sectors are based on the Global Industry Classification Standard (GICS).

IPO LITIGATION EXPOSURE

New for the *2010 Year in Review* is an analysis of the litigation exposure following IPOs. Companies that recently completed an IPO tend to be higher-risk companies that are in their high growth stage of development. These companies tend to have higher company-specific risk, i.e., are more likely to have extreme positive and negative surprises and hence may have higher litigation exposure. This analysis confirms that exposure to securities class actions is highest during the first few years after an IPO, and incremental litigation exposure decreases as companies mature and the volatility of their stock price decreases.[13]

According to University of Florida Professor Jay Ritter's dataset of IPOs, there were a total of 3,510 IPOs between January 1, 1996, and December 31, 2009.[14] Out of these companies, 648 were defendants in at least one securities class action between 1996 and 2010, which corresponds to 18.5 percent of the sample of IPOs.[15]

Similar to the litigation exposure analysis conducted for the companies in the S&P 500 Index as of year-end 1999, this analysis corrects for "survivorship bias" within the sample of IPOs.[16] Figure 21 shows the cumulative survival rate of the IPO sample, which shows that only 39.4 percent of the companies were still publicly trading on a major U.S. exchange 11 years following their IPO. Much like the risk of being subject to a securities class action, companies were most likely to "die" in the first few years after an IPO, with more than 35 percent of companies failing to survive through the end of their fourth year following the IPO.

Figure 21

SURVIVAL RATES OF COMPANIES AFTER IPO

Years After IPO	Percent of Companies Surviving to End of Year
1	97.7%
2	87.4%
3	74.3%
4	64.5%
5	57.5%
6	52.5%
7	48.9%
8	46.3%
9	44.1%
10	41.5%
11	39.4%

[13] The median standard deviation of daily returns for the IPO sample decreases from 4.6 percent during the first year of public trading to 3.3 percent during the eleventh year after an IPO.

[14] Professor Ritter's dataset contained an additional 114 IPOs that were not tracked by the CRSP U.S. Stock Database. These IPOs were excluded from the analysis.

[15] This analysis excludes "IPO Allocation," "Analyst," and "Mutual Fund" filings.

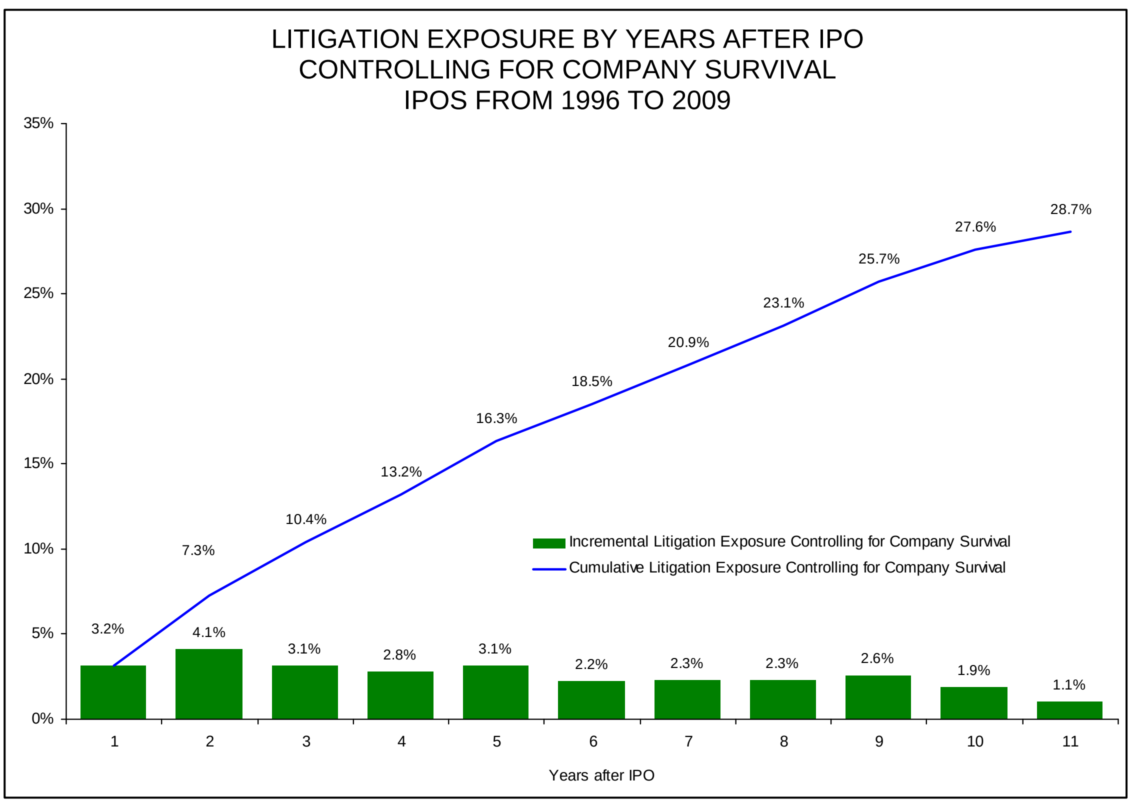
[16] Survivorship bias in the IPO analysis is corrected using the same method as the S&P 500 analysis. "Survival" in the IPO sample is also defined in the same way as the S&P 500 analysis.

IPO LITIGATION EXPOSURE *continued*

Figure 22 shows the litigation exposure for the IPO sample after correcting for survivorship bias. The green bars indicate the incremental litigation exposure, which is the probability of a surviving company that had not previously been subject to a securities class action being sued in that year. For example companies that survive through two years after their IPO have a 3.1 percent chance of being sued in the third year. The blue line indicates the cumulative litigation exposure, which is the probability of surviving companies being defendants in at least one securities class action that many years after the IPO. The cumulative litigation exposure in the IPO sample is 28.7 percent over 11 years after correcting for survivorship bias. The chart shows that a company was most likely to be subject to a securities class action during the first few years after an IPO, with the highest risk in the second year after the IPO, when surviving companies faced a 4.1 percent chance of being sued.

It is interesting to note that the cumulative litigation exposure for companies included in the S&P 500 Index as of year-end 1999 was 49.9 percent after the following 11 years, while the cumulative litigation exposure for the IPO sample over 11 years after the IPOs was only 28.7 percent. An explanation for this could be that companies in the IPO sample tend to be small firms. The median market capitalization of the IPO sample up to the 11 years since the IPO was only $186 million. In contrast the median market capitalization of companies included in the S&P 500 Index as of year-end 1999 over the subsequent 11 years was $8.8 billion. Holding other factors equal, filing a securities class action against a small company is less lucrative for plaintiff law firms.

Figure 22

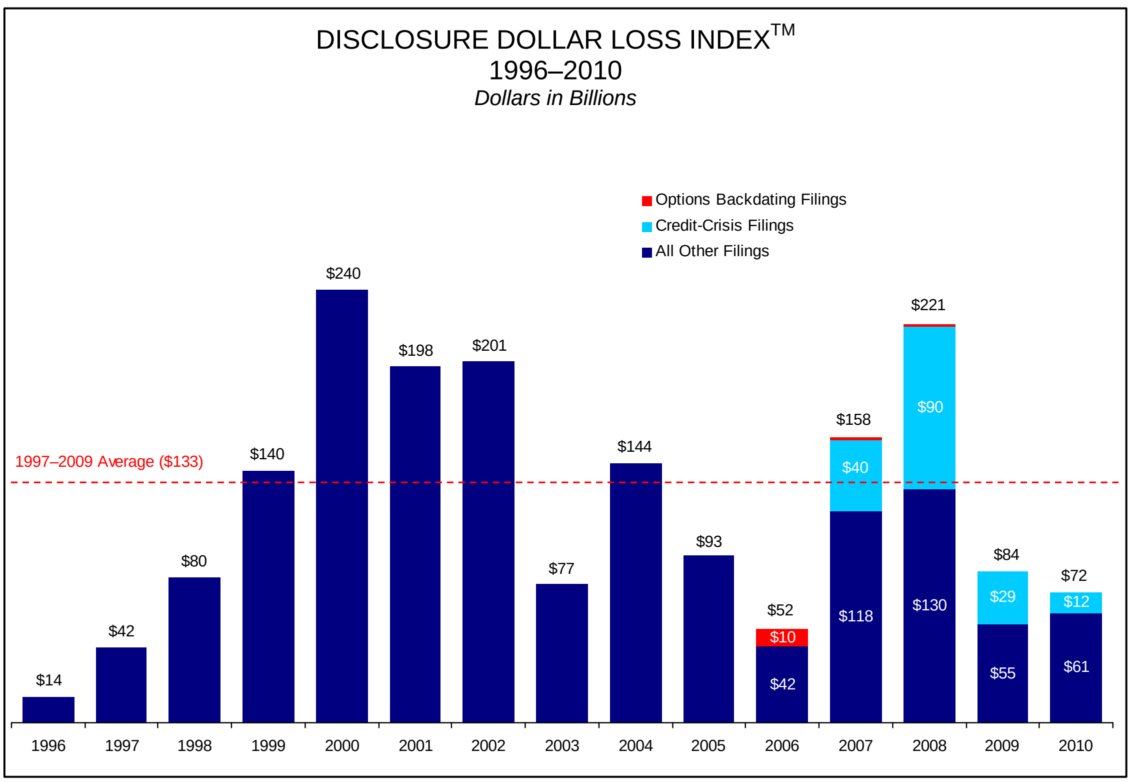


MARKET CAPITALIZATION LOSSES

To measure changes in the size of class action filings, we track market capitalization losses for defendant firms during and at the end of class periods.[17] Declines in market capitalization may be driven by market, industry, and firm-specific factors. To the extent that the observed losses reflect factors unrelated to the allegations in class action complaints, indices based on class period losses would not be representative of potential defendant exposure in class actions. This is especially relevant in the post-*Dura* securities litigation environment.[18] This report tracks market capitalization losses at the *end* of each class period using DDL and market capitalization losses *during* each class period using MDL.

DDL is the dollar value change in the defendant firm's market capitalization between the trading day immediately preceding the end of the class period and the trading day immediately following the end of the class period. MDL is the dollar value change in the defendant firm's market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period. DDL and MDL should not be considered indicators of liability or measures of potential damages. Instead, they estimate the impact of all of the information revealed during or at the end of the class period, including information unrelated to the litigation.

Figure 23



[17] Market capitalization measures are calculated mainly for publicly traded common equity securities, closed-ended mutual funds, and exchange-traded funds where data are available.

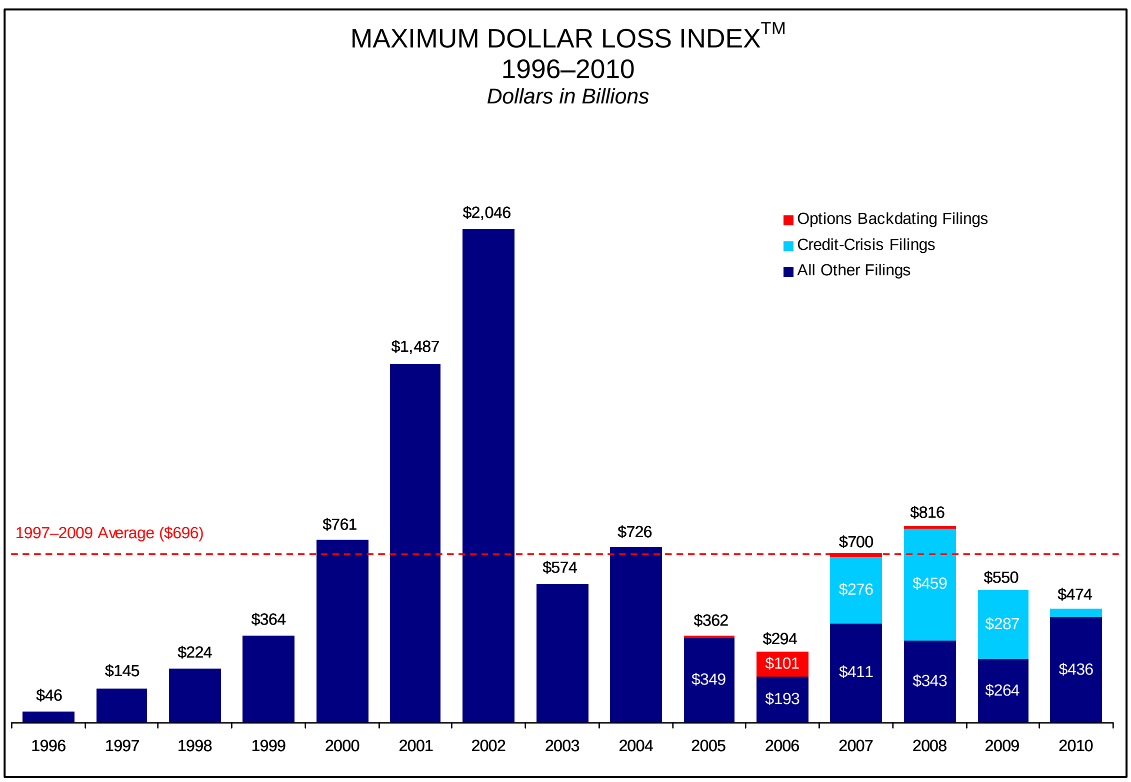
[18] In April 2005 the Supreme Court ruled that plaintiffs in a securities class action are required to plead a causal connection between alleged wrongdoing and subsequent shareholder losses.

MARKET CAPITALIZATION LOSSES *continued*

Despite a slight increase in the number of filings in 2010 from 2009, we observed a slight decrease in both total DDL and total MDL compared with 2009. The Disclosure Dollar Loss Index™ (DDL Index) tracks the running sum of DDL for all class actions filed in a given year (Figure 23). The DDL Index shows that, compared with the average of $133 billion for the 13 years ending December 2009, disclosure losses remained low in 2010. The DDL Index in 2010 totaled $72 billion, 14.3 percent lower than the DDL Index of $84 billion in 2009 and 45.9 percent below the annual average between 1997 and 2009. However, DDL not related to the credit crisis totaled $61 billion in 2010, which was 10.9 percent higher than the non-credit-crisis-related DDL of $55 billion in 2009. Reflecting the 76.4 percent decline in the number of credit-crisis-related filings compared with 2009, credit-crisis-related DDL dropped substantially in 2010 to $12 billion from $29 billion in 2009, a 58.6 percent decline.

The Maximum Dollar Loss Index™ (MDL Index) shows that market value losses during the class period for filings in 2010 remained below the historical average (Figure 24). The MDL Index in 2010 totaled $474 billion, 13.8 percent lower than the MDL Index of $550 billion in 2009 and 31.9 percent below the annual average for the 13 years ending December 2009. Credit-crisis-related MDL declined 86.8 percent compared with 2009, totaling $38 billion in 2010.

Figure 24



MARKET CAPITALIZATION LOSSES *continued*

Figure 25 provides summary statistics for 2010 filings compared with 2009 filings and the annual average between 1997 and 2009. The 2010 average DDL of $687 million was lower than the average for 2009 and the average for the 13 years ending December 2009. However, the 2010 median DDL was above the 2009 median and the 13-year average median DDL. Filings in 2010 had a median MDL of $0.60 billion, which was 43.9 percent lower than the median MDL of $1.07 billion for 2009 filings and is comparable to the historical average median MDL of $0.67 billion.

Figure 25

FILINGS COMPARISON

	Average (1997–2009)	2009	2010
Class Action Filings	195	168	176
Disclosure Dollar Loss			
Total ($ Millions)	$133,086	$83,786	$72,181
Average ($ Millions)	807	830	687
Median ($ Millions)	118	138	146
Median DDL % Decline	23.3%	21.6%	20.6%
Maximum Dollar Loss			
Total ($ Billions)	$696.1	$550.2	$474.1
Average ($ Billions)	4.22	5.45	4.52
Median ($ Billions)	0.67	1.07	0.60

MEGA FILINGS

An analysis of mega filings, as measured by MDL and DDL, shows that a few mega filings account for a majority of the total market capitalization losses associated with class actions.

Disclosure Dollar Loss

In 2010 there were four mega DDL filings—filings with a DDL of $5 billion or more. These four filings accounted for $36 billion, or 49.6 percent, of the DDL Index in 2010. One of the four mega DDL filings was related to the credit crisis. In 2009 three mega DDL filings represented 49.3 percent of the DDL Index, one of which related to the credit crisis. Mega DDL filings between 1997 and 2009 represented 56.7 percent of the total DDL Index in that period.

Maximum Dollar Loss

Similarly mega filings represented a large portion of the MDL Index in 2010. In 2010 there were 14 mega MDL filings—filings with an MDL of $10 billion or more. These 14 filings accounted for $375 billion, or 79.1 percent, of the MDL Index. Two of the 14 mega MDL filings were related to the credit crisis, and five exceeded $25 billion in MDL. In 2009 there were 11 mega MDL filings, accounting for 72.6 percent of the MDL Index in that year. Six of the mega MDL filings in 2009 were related to the credit crisis, and six mega filings exceeded $25 billion in MDL. Mega MDL filings between 1997 and 2009 represented 73.5 percent of the total MDL Index in that period.

INDUSTRY

Figure 26 provides summary statistics on class actions by industry (as defined by the *Bloomberg Industry Classification System*). Unlike 2009 when the Financial sector had the most filings and highest market capitalization losses, securities class actions concentrated in the Consumer Non-Cyclical sector in 2010. Approximately 69 percent of the filings in the Consumer Non-Cyclical sector were related to health care companies, which parallels the spike in class actions against companies in the S&P 500 Health Care sector. The high number of Consumer Non-Cyclical filings was also partially driven by the 10 filings against for-profit colleges in 2010. Together, health care companies and for-profit colleges make up more than 85 percent of the filings in the Consumer Non-Cyclical sector. The Consumer Non-Cyclical sector had the highest MDL and DDL in 2010, accounting for 49.2 percent and 51.4 percent of the market capitalization losses for all filings, respectively.

Figure 26

FILINGS BY INDUSTRY*

Dollars in Billions

	Class Action Filings			Disclosure Dollar Loss			Maximum Dollar Loss		
Industry	Average 1997–2009	2009	2010	Average 1997–2009	2009	2010	Average 1997–2009	2009	2010
Financial	39	79	43	$21	$28	$15	$125	$247	$65
Consumer Non-Cyclical	44	35	58	39	8	37	137	33	233
Industrial	18	11	9	15	22	0	45	97	2
Technology	28	10	14	16	3	1	88	9	4
Consumer Cyclical	22	10	13	8	13	4	54	69	79
Communications	33	12	16	27	7	11	210	71	40
Energy	5	6	12	3	1	2	18	4	28
Basic Materials	3	5	6	1	2	1	7	22	23
Utilities	3	0	3	2	0	0	12	0	1
Total	195	168	174	$133	$84	$72	$696	$550	$474

* Analysis for 2010 excludes two filings in the Government and Service sectors.
Figures may not sum due to rounding.

EXCHANGE

As in 2009 issuers listed on NYSE or Amex had more filings in 2010 than issuers listed on NASDAQ (Figure 27), although the gap has narrowed considerably. In 2010 75 class actions were filed against firms listed on NYSE or Amex and 73 against firms listed on NASDAQ. The market capitalization losses in filings related to issuers listed on NYSE or Amex continued to be larger than filings related to issuers listed on NASDAQ. In 2010 NASDAQ filings accounted for 49.3 percent of the total number of filings against issuers listed on major exchanges. However, these filings constituted only 13.4 percent of the total DDL and 10.6 percent of the total MDL in 2010.

Figure 27

FILINGS BY EXCHANGE LISTING

	Average (1997–2009)		2009		2010	
	NYSE/Amex	NASDAQ	NYSE/Amex	NASDAQ	NYSE/Amex	NASDAQ
Class Action Filings	80	100	75	54	75	73
Disclosure Dollar Loss						
Total ($ Millions)	$97,740	$34,894	$73,015	$10,726	$62,359	$9,640
Average ($ Millions)	1,413	366	1,404	244	1,386	189
Median ($ Millions)	258	82	287	132	381	104
Maximum Dollar Loss						
Total ($ Billions)	$456	$235	$496	$49	$422	$50
Average ($ Billions)	6.4	2.5	9.5	1.1	9.4	1.0
Median ($ Billions)	1.3	0.4	2.2	0.6	1.7	0.4

CIRCUIT

The three circuits with the highest number of filings in 2010 were the Ninth Circuit with 51 filings, the Second Circuit with 45 filings, and the Third Circuit with 14 filings. The Second and Ninth Circuits have been the most active circuits in each year since 1996. The fact that the Ninth Circuit surpassed the Second Circuit in 2010 is at least partially attributable to the decline in credit-crisis filings, which tend to be concentrated in the Second Circuit.

The circuits with the highest total DDL in 2010 were the Second Circuit with $31 billion, the Third Circuit with $12 billion, and the Seventh Circuit with $11 billion. The Second Circuit accounted for two of the four mega DDL filings, while the others were filed in the Third and Seventh Circuits. Historically, the Second, Third, and Ninth Circuits had the highest total DDL.

When ranked by MDL, the top three circuits in 2010 were the Second Circuit with $198 billion, the Ninth Circuit with $102 billion, and the Third Circuit with $54 billion. The Second Circuit had six of the 14 mega MDL filings, while the Third, Seventh, and Ninth Circuits each had two mega MDL filings. Historically, the Second, Ninth, and Third Circuits had the highest total MDL levels.

Figure 28

FILINGS BY COURT CIRCUIT
Dollars in Billions

	Class Action Filings			Disclosure Dollar Loss			Maximum Dollar Loss		
Circuit	Average 1997–2009	2009	2010	Average 1997–2009	2009	2010	Average 1997–2009	2009	2010
1	10	5	7	$7	$14	$2	$24	$51	$8
2	48	58	45	44	50	31	239	311	198
3	16	13	14	21	1	12	75	7	54
4	7	3	6	3	2	0	16	9	4
5	13	10	8	9	1	1	49	14	10
6	10	5	10	8	1	1	34	6	6
7	10	8	13	7	5	11	29	12	43
8	8	2	10	4	0	3	15	2	26
9	47	42	51	20	4	9	165	65	102
10	6	7	1	3	5	0	15	53	0
11	19	15	9	6	1	3	29	21	19
12	1	0	2	1	0	0	4	0	2
Total	195	168	176	$133	$84	$72	$696	$550	$474

Figures may not sum due to rounding.

CLASSIFICATION OF COMPLAINTS

The Securities Class Action Clearinghouse tracks allegations contained in class action complaints.[19] A comparison of class actions filed in 2010 with those filed since 2006 reveals the following findings (Figure 29).

- The percentage of filings with 10b-5 claims continued to decline, falling to 66 percent in 2010. In each year from 2006 to 2010, the percentage of filings with 10b-5 claims decreased relative to the previous year.
- The percentage of filings with Section 11 and Section 12(2) claims increased from 2006 to 2009 but dropped dramatically in 2010. Class actions with Section 11 and Section 12(2) claims accounted for only 15 percent and 10 percent of filings, respectively.
- Underwriter defendants were named in 10 percent of initial complaints, a substantial decrease from the 17 percent in 2008 and 15 percent in 2009.
- The incidence of initial complaints naming an auditor decreased slightly to 4 percent but was still at the second highest level in the past five years.
- The percentage of filings with allegations regarding false forward-looking statements declined to a historical low of 45 percent of filings compared with 51 percent in 2009 and 71 percent in 2006.
- The percentage of filings with allegations of insider trading remained low in 2010. Only 16 percent of 2010 filings contained allegations of insider trading compared with 14 percent in 2009 and 38 percent in 2006.
- The percentage of filings alleging violations of Generally Accepted Accounting Principles (GAAP) has been decreasing since 2006. In 2010 that percentage was 26 percent compared with 35 percent in 2009 and 57 percent in 2006.
- The majority of filings that alleged GAAP violations did not refer to an announcement by the company that it will or may restate its financial statements, or that its financial statements were unreliable.
- In 2010 22 percent of total filings alleged Internal Control Weaknesses.[20] However, filings that claim Internal Control Weaknesses as a percentage of filings that alleged GAAP violations experienced a large increase, reaching 83 percent in 2010. This percentage was below 50 percent between 2006 and 2009.
- The percentage of filings that alleged Internal Control Weaknesses and referred to an announcement by the company of such weaknesses has remained low.

[19] The classifications are based on the first identified complaint. Additional allegations and defendants may be added in subsequent complaints and are not captured in these analyses.

[20] The SEC required accelerated filers and their auditors to report on internal controls (SOX 404 Reports) beginning with fiscal years ending on or after November 15, 2004.

CLASSIFICATION OF COMPLAINTS *continued*

Figure 29

2010 Allegations Box Score

	Percentage of Total Filings				
General Characteristics	**2006**	**2007**	**2008**	**2009**	**2010**
10b-5 claims	87%	80%	75%	68%	66%
Section 11 claims	12	19	24	23	15
Section 12(2) claims	10	11	18	24	10
Underwriter defendant	4	11	17	15	10
Auditor defendant	3	1	3	6	4
Allegations					
Misrepresentations in financial documents	92%	92%	93%	87%	93%
False forward-looking statements	71	62	68	51	45
Insider trading	38	27	23	14	16
GAAP Violations[1]	57	44	41	35	26
Announced Restatement[2]	34	16	10	8	7
Internal Control Weaknesses[3]	26	16	12	14	22
Announced Internal Control Weaknesses[4]	11	4	2	3	3

1. First identified complaint includes allegations of GAAP Violations. In some cases, plaintiff(s) may not have expressly referenced GAAP; however, the allegations, if true, would represent GAAP violations.
2. First identified complaint includes allegations of GAAP Violations and refers to an announcement during or subsequent to the class period that the company will restate, may restate, or has unreliable financial statements.
3. First identified complaint includes allegations of GAAP Violations and Internal Control Weaknesses over Financial Reporting.
4. First identified complaint includes allegations of Internal Control Weaknesses and refers to an announcement during or subsequent to the class period that the Company has Internal Control Weaknesses over Financial Reporting.

NEW DEVELOPMENTS

Filings Related to Mergers and Acquisitions

There was a significant increase in the number of class actions related to M&A transactions in 2010, most of which alleged a breach of fiduciary duty but did not allege stock price inflation. These M&A filings usually allege an unfair transaction price or claim that shareholders received inadequate or misleading information about the transaction from the company. In 2010 there were 40 filings with allegations relating to M&A transactions, which was a 471 percent increase from the seven such filings in 2009.

One factor that may have contributed to the increase in M&A-related filings was the increase in the number of M&A deals. Thomson Reuters data indicate that announced M&A deals increased nearly 20 percent in 2010.[21] Although most M&A-related lawsuits are filed in state courts, 2010 saw a large increase in filings under federal jurisdictions.[22] These claims are typically generated by alleging violations of Section 14 of the Securities Exchange Act of 1934, which forbids solicitation of proxies in violation of rules and regulations, and making state law fiduciary claims. The 20 percent increase in underlying M&A activity seems insufficient to explain fully the almost sixfold increase of M&A-related filings, an increase that may be largely a result of changes in plaintiff law firm behavior rather than changes in underlying market factors.

Many analysts expect that there will be a higher number of M&A transactions in 2011, citing companies' ability to borrow at lower cost and large cash reserves, and positive market reactions to deals in 2010.[23] According to a Thomson Reuters survey, 85 percent of dealmakers expect an increase in the volume of M&A deals when surveyed in 2010 compared with 56 percent of dealmakers predicting an increase when surveyed in 2009.[24] Any increase in M&A deals in 2011 may contribute to an increase in the number of class actions next year.

21 "M&A Tops $2.2 Trillion in First Yearly Rise Since 2007," *Reuters*, December 17, 2010.

22 Of the 40 M&A-related filings in federal courts, 38 have corresponding filings in state courts. The two remaining federal M&A filings were related to mergers of foreign companies. Thirty-four of the 38 M&A-related filings were made after a corresponding lawsuit was filed in a state court.

23 "M&A Tops $2.2 Trillion in First Yearly Rise Since 2007," *Reuters*, December 17, 2010.

24 "Dealmakers More Positive of M&A Growth: Survey," *Reuters*, May 6, 2010.

NEW DEVELOPMENTS *continued*

Filings Related to Chinese Companies

There were 12 filings against Chinese issuers in 2010, accounting for 42.9 percent of filings against all foreign issuers, the highest ever observed in a single year. The high incidence of filings against Chinese issuers occurred against the backdrop of a year when filings against foreign issuers accounted for 15.9 percent of all filings, which is among the highest ever observed.

One factor that may explain the spate of filings against Chinese issuers is the increased scrutiny from investors and regulators resulting from being listed on a major U.S. stock exchange. The recent lawsuits may reflect the fact that investors and regulators are uncovering problems with these issuers. In fact, the Securities and Exchange Commission (SEC) has launched a number of investigations into the practice of using "reverse takeovers"—a merger between a Chinese company and a dormant U.S. shell company listed on a U.S. exchange—as a back-door process to get Chinese companies listed in the United States.[25] One area of investigation focuses on stock promoters, investment bankers, auditors, and law firms that facilitated a number of the reverse takeovers.[26] The SEC has also begun to investigate these Chinese companies for accounting violations and lax auditing practices.[27]

Indeed, most of the Chinese issuers involved in a securities class action in 2010 were only recently listed on major U.S. exchanges. Eight out of the 12 issuers were listed during 2009 or 2010, while the remaining three issuers were listed toward the end of 2006, 2007, and 2008. On average, the first securities class action complaint was filed 1.4 years after the listing date of the issuer. The median time to the filing of the first complaint was 1.3 years after the listing date. An analysis of the SEC filings for the 12 Chinese issuers shows that nine out of the 12 were listed on U.S. exchanges using a reverse takeover.

For-Profit Colleges Lawsuits

On August 4, 2010, the GAO reported that admissions representatives from 15 for-profit colleges allegedly offered misleading or fraudulent information to undercover agents posing as prospective students in a federal investigation.[28] Furthermore, on August 13, 2010, the U.S. Department of Education (DOE) released 2009 data on student loan repayment rates at the nation's colleges and universities that showed that repayment rates were 54 percent at public colleges and universities, 56 percent at private nonprofit institutions, and only 36 percent at for-profit colleges.[29] The findings have since led to 10 class actions against for-profit colleges.

In response to the alleged problems, the DOE released new student aid rules and proposed additional gainful employment rules, effective July 1, 2011, to protect students from aggressive or misleading recruiting practices and ensure that only eligible students or programs receive federal aid. The proposed rules require colleges to disclose graduation and job placement rates and assess the school's eligibility for federal student aid programs based on loan repayment rates and debt-to-income ratios.[30] Senator Tom Harkin, the Chairman of the Senate Health, Education, Labor and Pensions Committee, indicated that the investigation of for-profit colleges will continue.[31]

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[25] "Congress and SEC Hit Stocks Via China," *The Wall Street Journal*, December 21, 2010.

[26] "SEC Probes China Stock Fraud Network," *TheStreet.Com*, December 21, 2010.

[27] "Congress and SEC Hit Stocks Via China," *The Wall Street Journal*, December 21, 2010.

[28] "For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices," U.S. Government Accountability Office, August 4, 2010.

[29] Lewin, Tamar, "Low Loan Repayment Is Seen at For-Profit Schools," *The New York Times*, August 13, 2010.

[30] "Department of Education Establishes New Student Aid Rules to Protect Borrowers and Taxpayers," U.S. Department of Education, October 28, 2010.

[31] Korn, Melissa, "Lawmakers Increase Criticism Of Report On For-Profit Colleges," *The Wall Street Journal*, December 23, 2010.

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