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Securities Class Action Filings

2009: A Year in Review

Research Sample

- The Stanford Law School Securities Class Action Clearinghouse, in cooperation with Cornerstone Research, has identified 3,052 federal securities class action filings between January 1, 1996, and December 21, 2009.
- These filings include 313 “IPO Allocation” filings, 67 “Analyst” filings, 25 “Mutual Fund” filings, 40 “Options Backdating” filings, 23 “Ponzi” filings, and 192 “Credit Crisis” filings; the Credit Crisis category includes 21 filings related to auction rate securities.
- 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.

Overview

Federal securities fraud class action filing activity was down sharply in 2009 compared to 2008 and also fell below historical averages. A total of 169 federal securities fraud class actions ("filings" or "class actions") were filed in 2009, a 24 percent decrease from the 223 filings observed in 2008 and 14 percent below the annual average of 197 filings between 1997 and 2008 (Figure 1).[1] After dominating filings activity in 2008, credit crisis-related filings ("credit crisis filings") declined even more dramatically in 2009. The number of credit crisis filings fell 47 percent from 100 in 2008 to 53 in 2009, with only 17 credit crisis filings in the second half of the year.

The decline in 2009 credit crisis filings was also associated with a decline in market capitalization losses in 2009. The disclosure dollar loss attributable to 2009 class actions was $83 billion, a 62 percent decrease from 2008.[2] The disclosure dollar loss attributable to credit crisis filings in 2009 was $29 billion, a 68 percent decrease from 2008. These credit crisis filings accounted for 35 percent of total disclosure dollar losses in 2009, down from 41 percent in 2008. The maximum dollar loss attributable to all 2009 class actions was $634 billion, a 24 percent decrease from 2008. The maximum dollar loss attributable to credit crisis filings in 2009 was $287 billion, a 38 percent decrease from 2008. Credit crisis filings accounted for 45 percent of total maximum dollar losses in 2009, down from 55 percent in 2008.

Figure 1

Class Action Filing Summary

	Average (1997 – 2008)	2008	2009
Class Action Filings	197	223	169
Disclosure Dollar Loss ($ Billions)	$137	$220	$83
Maximum Dollar Loss ($ Billions)	$710	$839	$634

An unusually large number of 2009 filings exhibit a substantial lag between the end of the class period and the filing date ("filing lag"). The median filing lag observed in the second half of 2009 was more than three times longer than the historical average, driven by a sharp increase in filings with a lag longer than one year. Historically, filings with longer lags have been dismissed at a higher rate than filings with shorter lags.

This report reviews federal securities class actions filed in 2009, characterizing the class actions in terms of the number of filings and the associated market capitalization losses; the current status of filings; and the distribution of filings across industries, stock exchanges, federal circuits, and nature of the allegations.

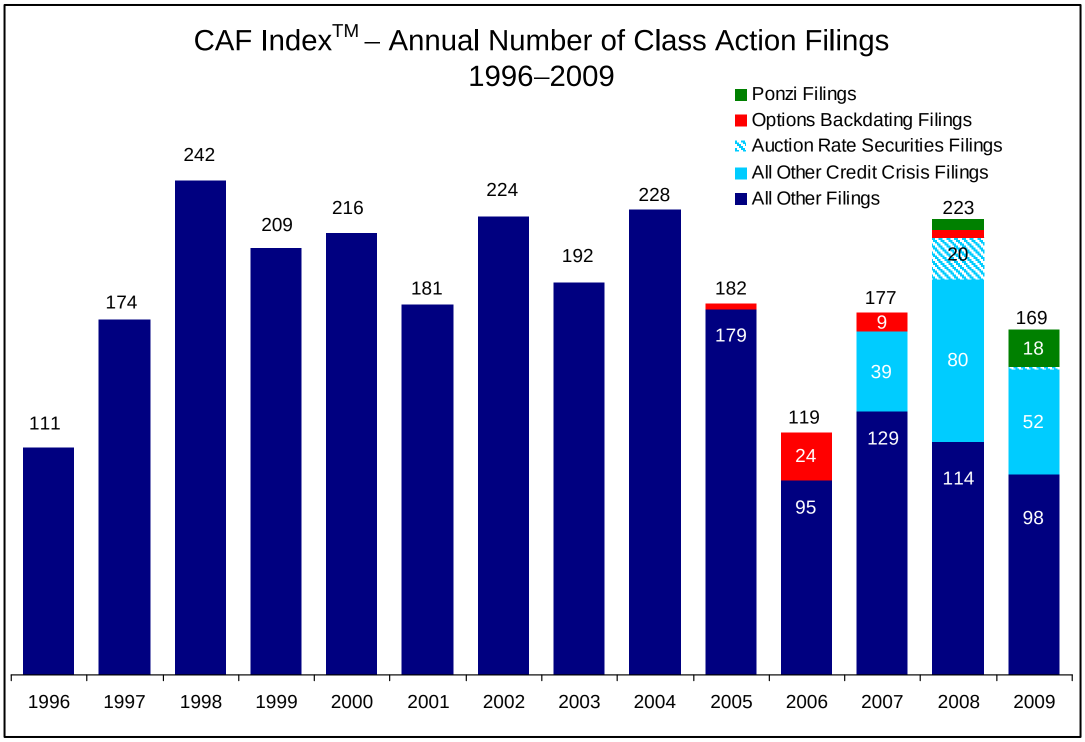
[1] 2009 filings include class actions identified as of December 21, 2009. Typically, few class actions are filed during the last two weeks of the year. All other years include filings through December 31. The indices and charts in this report exclude IPO Allocation, Analyst, and Mutual Fund filings. Multiple filings related to the same allegations against the same defendant(s) are consolidated and counted as one legal action or "filing."

[2] 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 (CAF) Index™ shows 169 filings in 2009, a 24 percent decrease from the 223 filings in 2008 (Figure 2). The 2009 filings included 53 credit crisis filings and 18 filings related to the Madoff and other alleged Ponzi schemes. The number of credit crisis filings fell even more dramatically, declining 47 percent from 100 in 2008 to 53 in 2009.

Figure 2



Number of Filings
continued

While 2009 overall was characterized by a decline in filing activity, the dominant causes of this decline differed between the first and second half of 2009 (Figure 3). The decline in the first half of the year was driven by a decline in "traditional" class action filings that were unrelated to the credit crisis (classified as "all other filings"), while the decline in the second half of the year was driven by a decline in credit crisis filings. There were only 30 "all other filings" in the first half of 2009, compared to 49 in the first half of 2008 and 65 in the second half of 2008. The number of credit crisis filings held stable at 36 filings in the first half of 2009, with most filings made in the first quarter. In the second half of 2009, the composition of filings changed considerably, with only 17 credit crisis filings and 68 "all other filings."

The large drop in 2009 filings was accompanied by a decline in market volatility, especially in the second half of the year (Figures 3 and 4). High filing activity tends to occur in periods of high stock market volatility as measured by the Chicago Board Options Exchange Volatility Index (VIX).[3]

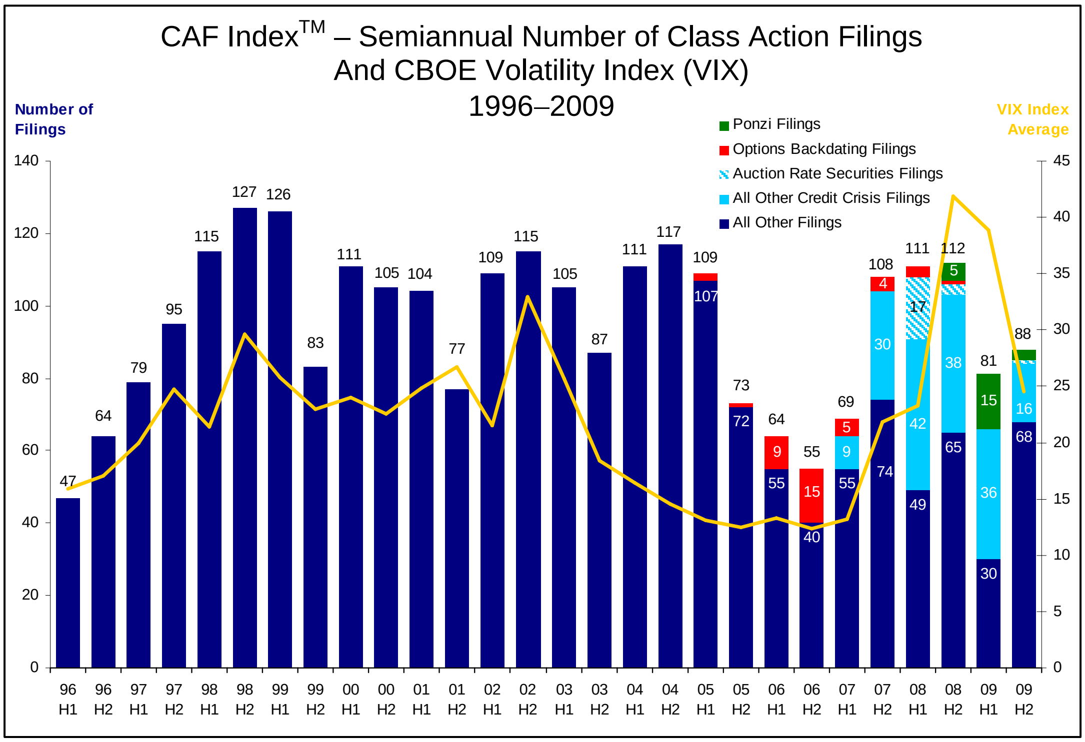


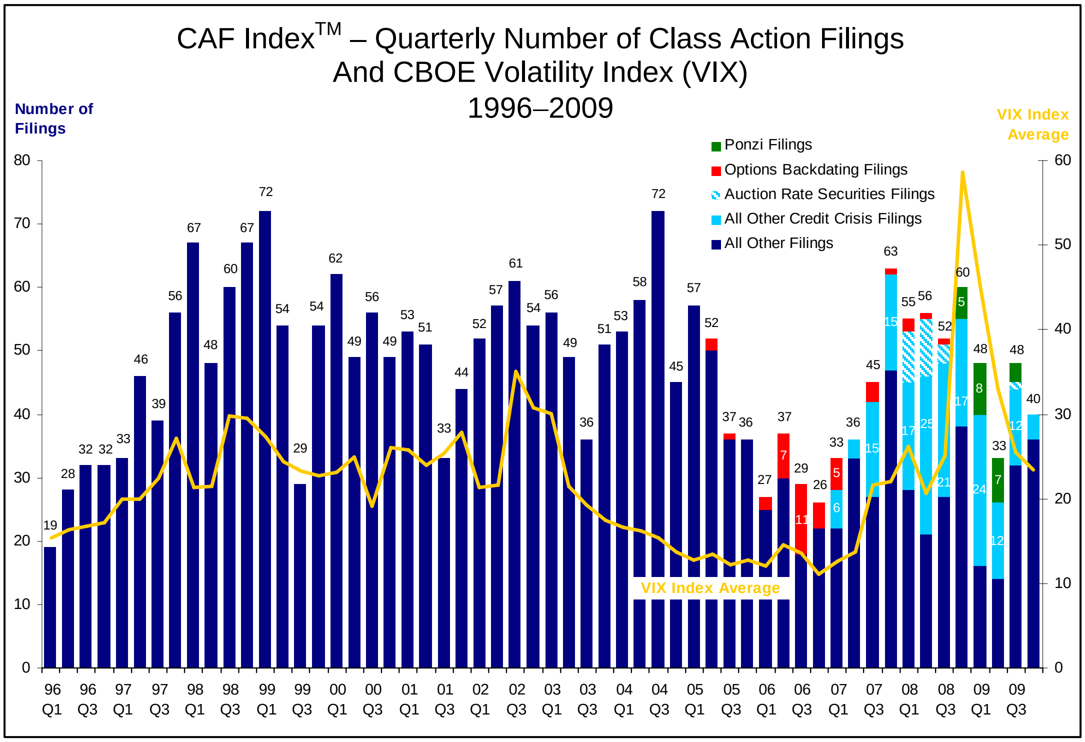
Figure 3

3 The VIX is a measure of market expectations of near-term volatility conveyed by S&P 500 stock index option prices. See http://www.cboe.com/micro/vix/introduction.aspx.

Number of Filings *continued*

Figure 4, based on quarterly data, also highlights the decline in the VIX Index in 2009 after peaking in the fourth quarter of 2008.

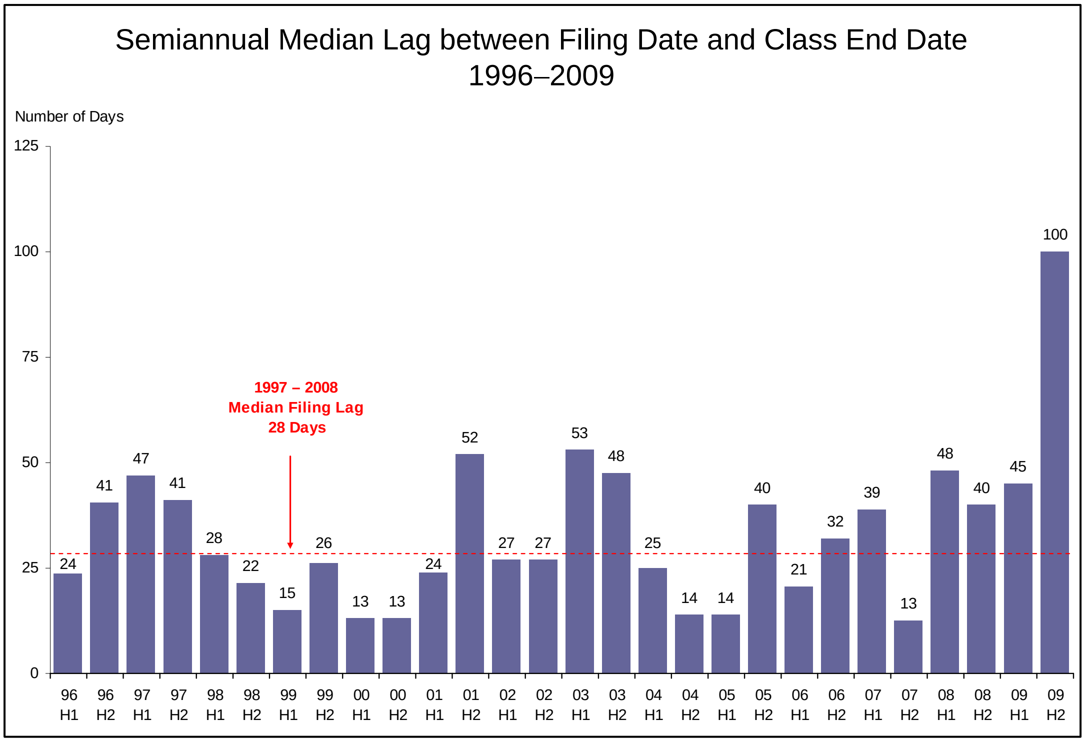
Figure 4



Filing Lag

The 2009 filings were marked by a much longer lag between the filing date and the end of the class period for the typical filing (Figure 5).[4] Historically, the median filing lag has been 28 days, while the median filing lag for 2009 was 64 days. Of particular note, the median filing lag reached 100 days in the second half of the year, more than three times the historical average.

Figure 5



4 The filing lag analysis in Figures 5, 6, and 7 only includes filings with a clearly defined class period in the first identified complaint.

Filing Lag
continued

Figure 6 shows the distribution of the number of filings by length of filing lag. The percentage of filings with a lag of more than a year has increased steadily from 5 percent in 2005 to a historical high of 18 percent in 2009. In contrast, the percentage of filings with a lag of less than six months has trended downward since 2005 to 71 percent in 2009, the second lowest on record since the enactment of the Private Securities Litigation Reform Act in 1995. The middle tier of filings, with a lag between six months and a year, has grown slightly since 2005 and has held steady at 11 percent since 2007.

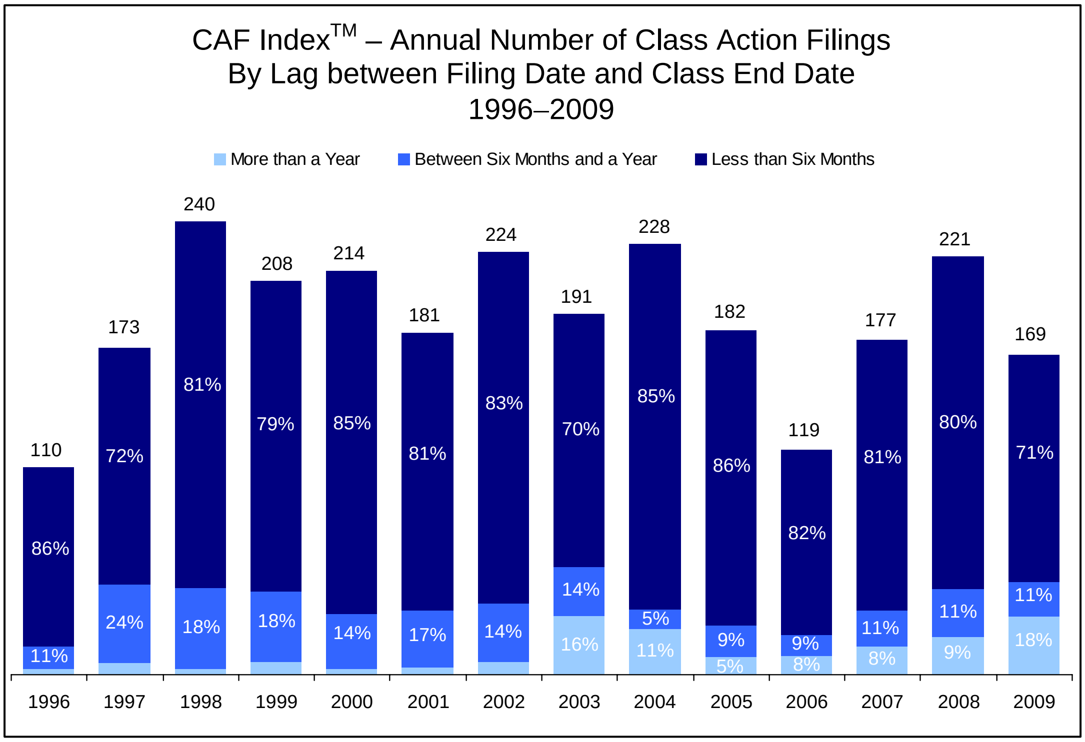


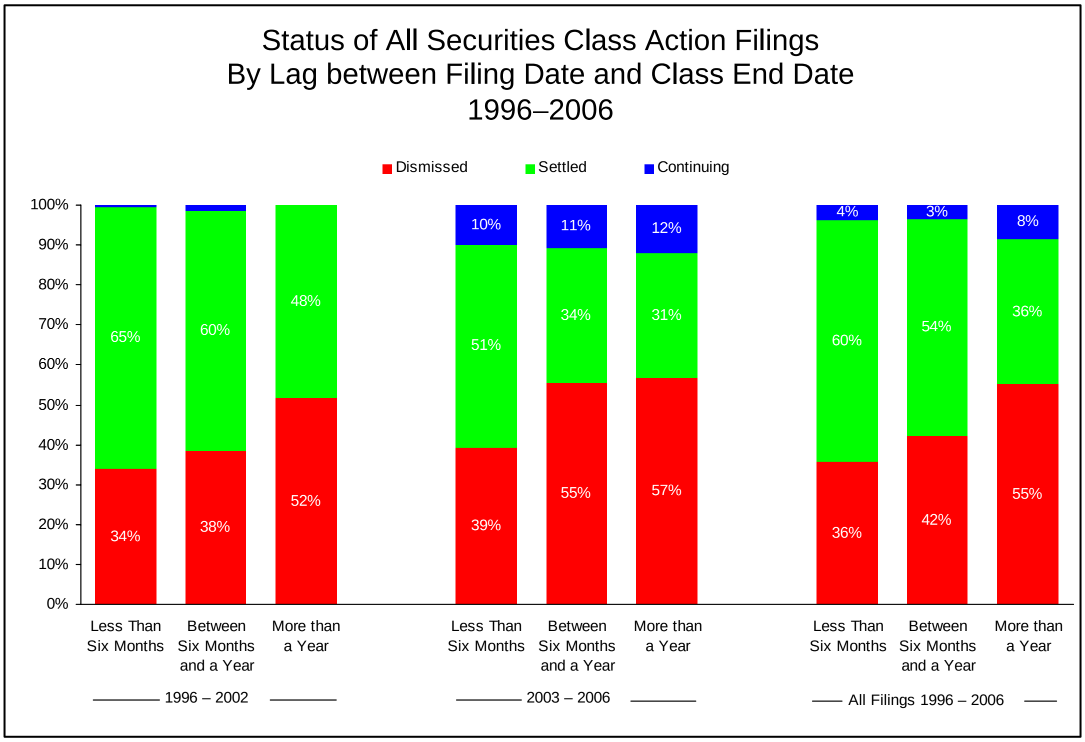
Figure 6

Filing Lag
continued

Historically, class actions with longer filing lags have been dismissed at a higher rate than class actions with shorter filing lags (Figure 7). Between 1996 and 2006, 55 percent of the filings with a lag of more than a year have been dismissed, compared to a 42 percent dismissal rate for filings with a lag between one year and six months and 36 percent for filings with a lag of less than six months.

The recent surge in filing lags potentially suggests that the pool of current litigation opportunities is shrinking and that plaintiff law firms are revisiting cases involving more distant price drops that were previously viewed as being lower in priority because, among other reasons, they are more likely to be dismissed.

Figure 7



Filings by Issuer

The Class Action Filings-Unique Issuers Index (CAF-U Index™) is a metric that was introduced in Cornerstone Research's *2009 Mid-Year Assessment*.[5] This metric tracks the number of unique issuers whose exchange-traded securities were involved in class action lawsuits.[6] In 2009 this metric shows a large decrease in the number of unique issuers involved in filings (Figure 8).

While the total number of filings in 2009 fell 24 percent from 2008, the total number of unique issuers decreased by 32 percent to 114 issuers in 2009, reflecting an increase in multiple filings against some issuers. This increase was driven by a large number of filings against bond mutual funds managed by OppenheimerFunds, Inc., in the first half of 2009 and a large number of filings against exchange-traded funds managed by ProShares Trust in the second half of 2009 (see the "New Developments" section of this report). Also in 2009 there were a relatively large number of filings related to non-exchange-traded securities and private companies (including Ponzi filings) and filings involving mortgage-backed securities and preferred stock.

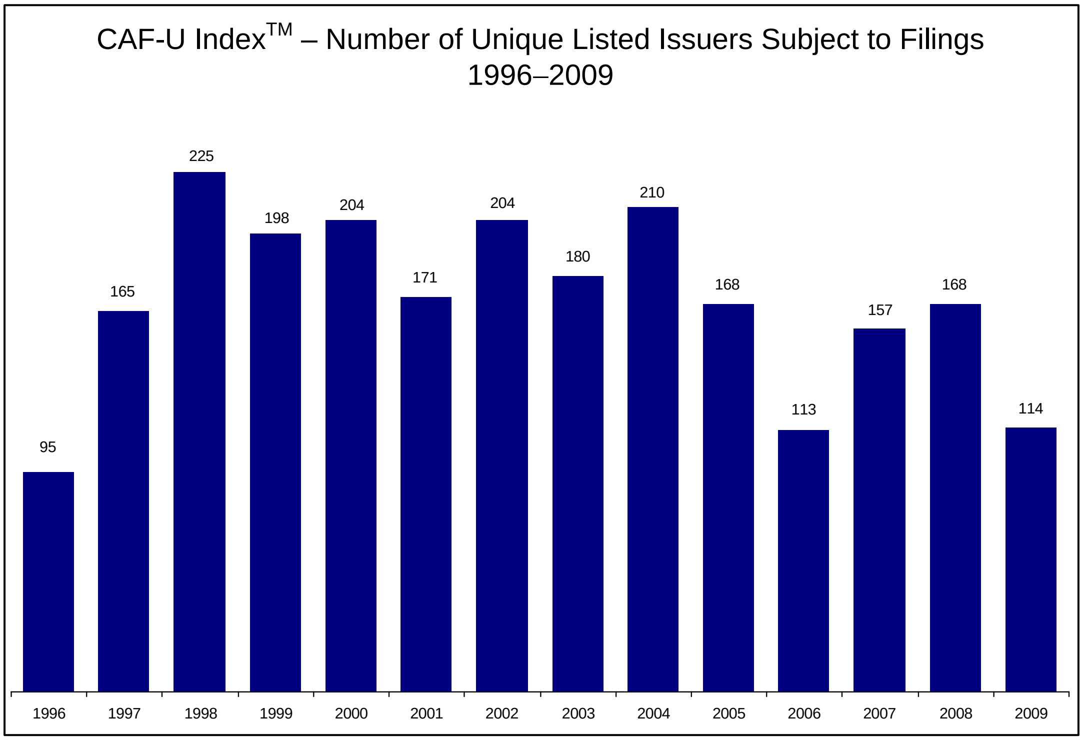


Figure 8

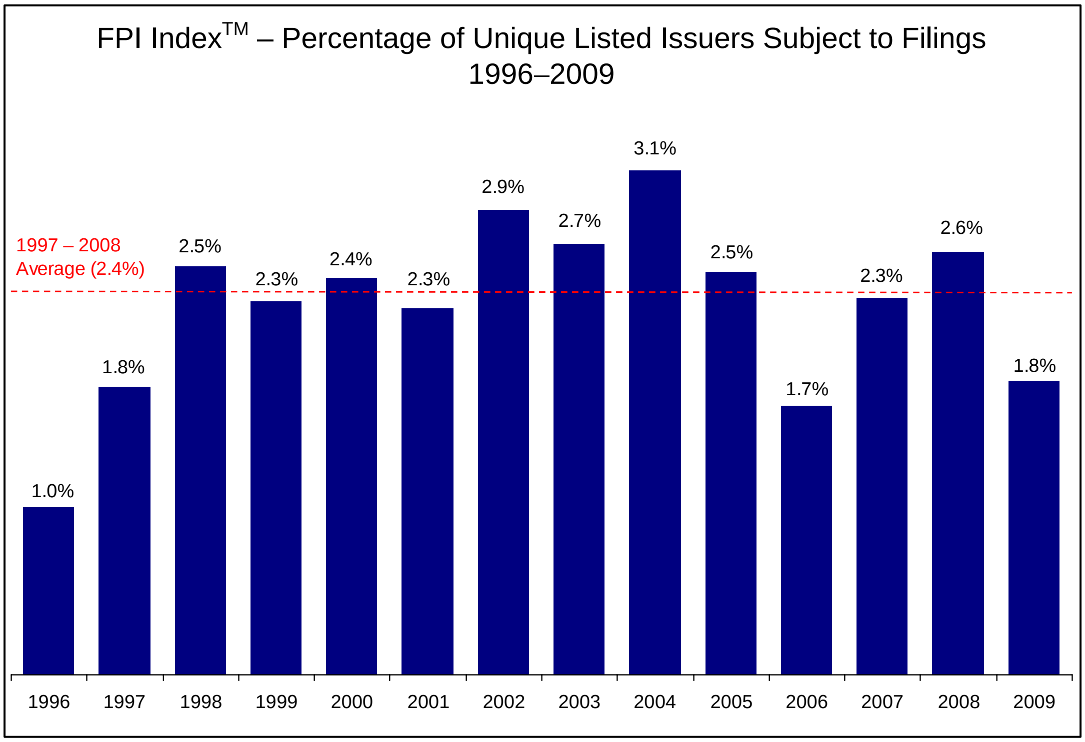
5 When the number of companies involved in litigation is presented in Figures 8, 9, 11, and the filings per issuer line in Figure 23, all filings against the same company have been consolidated so that the count is a count of unique companies.

6 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 also decreased as a percentage of total issuers on the NYSE, NASDAQ, or Amex exchanges (Figure 9). Of all the companies listed on those exchanges at the start of the year, 1.8 percent were defendants in federal securities class actions filed in 2009 compared to 2.6 percent in 2008 and 2.4 percent annual average for the 12 years ending December 2008.

Figure 9

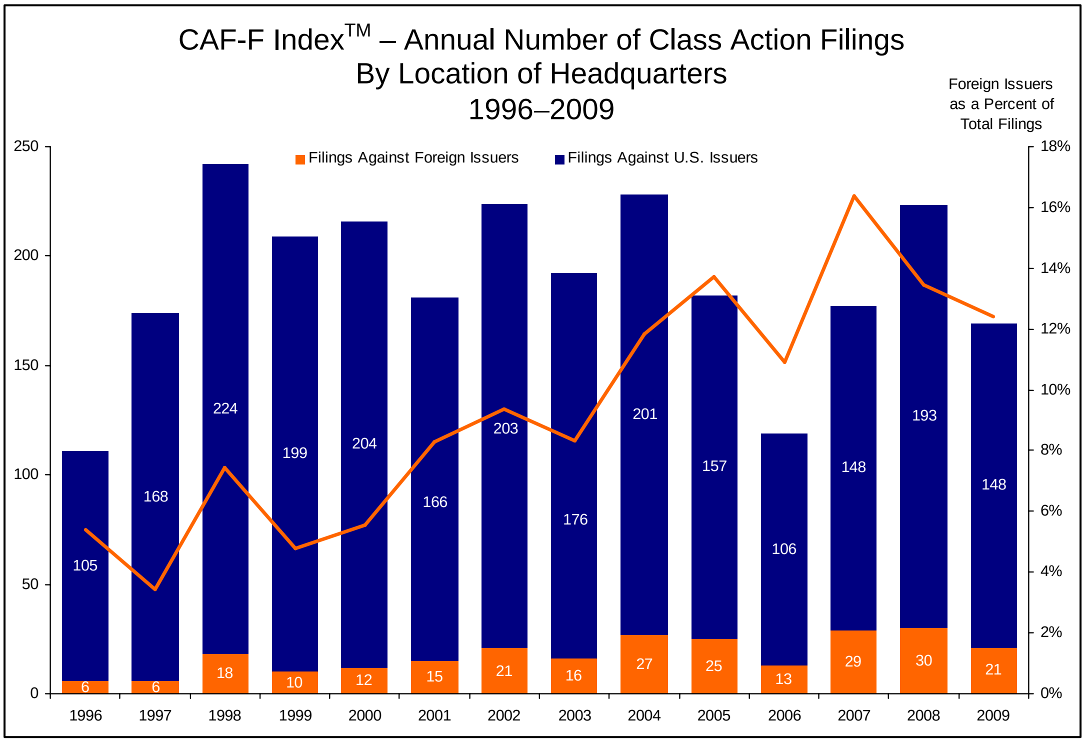


Filings by Issuer *continued*

The Class Action Filings-Foreign Index (CAF-F Index™), another metric introduced in Cornerstone Research's *2009 Mid-Year Assessment*, tracks the number of filings against foreign issuers, i.e., corporations headquartered outside the United States, relative to total filings (Figure 10). After peaking at 16.4 percent in 2007, the percentage of filings against foreign issuers declined to 13.5 percent in 2008 and to 12.4 percent in 2009.

As noted in the mid-year report, many recent filings against foreign issuers were related to the credit crisis. As the credit crisis-related activity continues to subside, lawsuits against foreign issuers may fall back to the levels observed before the crisis.

Figure 10



Heat Maps

Cornerstone Research's *2008 Year in Review* introduced the S&P 500 Securities Litigation Heat Maps™, a tool for analyzing securities class action activity by industry. This tool focuses on companies in the S&P 500 index, aggregated by industry, and addresses two questions for each industry.[7] First, what percentage of the companies in the index was subject to at least one new filing during the year? Second, of the total market capitalization of the companies in the index, what percentage was accounted for by companies subject to at least one new filing during the year?

Figure 11

S&P 500 Securities Litigation Heat Maps™
Percent of Companies Subject to New Filings*
2000–2009

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Basic Materials	2.4%	0.0%	0.0%	0.0%	0.0%	3.4%	0.0%	0.0%	0.0%	0.0%
Communications	8.3%	17.4%	22.7%	4.8%	2.3%	4.8%	2.3%	6.5%	4.8%	2.4%
Consumer Cyclical	5.5%	4.1%	5.3%	5.5%	2.7%	9.5%	2.8%	5.9%	2.9%	6.3%
Consumer Non-Cyclical	4.5%	5.6%	9.7%	7.4%	8.4%	9.6%	7.1%	9.3%	7.4%	3.9%
Energy	0.0%	3.3%	19.2%	0.0%	4.0%	0.0%	0.0%	0.0%	0.0%	2.4%
Financial	4.2%	1.4%	18.3%	8.9%	21.0%	7.5%	2.4%	10.6%	32.6%	11.5%
Industrial	2.9%	0.0%	6.1%	4.5%	4.5%	4.6%	1.6%	1.6%	3.2%	4.6%
Technology	11.4%	14.8%	5.3%	3.6%	3.6%	7.1%	9.3%	0.0%	6.0%	2.0%
Utilities	5.9%	5.9%	34.3%	2.9%	6.1%	3.0%	0.0%	3.2%	3.3%	0.0%
All S&P 500 Companies	**5.0%**	**5.6%**	**12.0%**	**5.2%**	**7.2%**	**6.6%**	**3.6%**	**5.4%**	**9.2%**	**4.6%**

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

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

Industries are based on *Bloomberg* sector classifications.

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.

Overall, 4.6 percent of companies in the S&P 500 index were defendants in a class action filed during 2009 (Figure 11). In comparison, Figure 9 shows that approximately 1.8 percent of all listed companies were defendants. Historically, larger companies such as those in the S&P 500 index have been more likely to be involved in a filing than smaller companies. As Figure 11 shows, in 2009 the intensity of new filings in the financial industry returned to pre-2008 levels; 11.5 percent were defendants in 2009 filings compared to a historically high 32.6 percent just a year earlier.

7 This analysis uses the sector classifications provided by *Bloomberg*. According to *Bloomberg*, "sector" is the broadest classification that represents the general economic activities of a company. *Bloomberg* divides companies into 10 sectors: basic materials, communications, consumer cyclical, consumer non-cyclical, diversified, energy, financial, industrial, technology, and utilities. The consumer cyclical sector includes airlines, apparel, auto manufacturers, auto parts and equipment, distribution/wholesale, entertainment, food service, home builders, home furnishings, housewares, leisure time, lodging, office furnishings, retail, and storage/warehousing. The consumer non-cyclical sector includes agriculture, beverages, biotechnology, commercial services, cosmetics/personal care, food, healthcare products, healthcare services, household products/wares, and pharmaceuticals. The diversified sector is not shown as none of the S&P 500 companies are classified as diversified in many years.

Heat Maps *continued*

The 4.6 percent of S&P 500 companies defending class actions in 2009 accounted for 8.7 percent of the market capitalization of the S&P 500 index, just over half the 17.1 percent level in 2008 (Figure 12).[8] Class actions were filed disproportionately against larger companies within the S&P 500, most notably in the financial sector, where 11.5 percent of companies that were subject to new filings accounted for 39.1 percent of the sector's total market capitalization. This is the highest percentage of any industry in 2009 but well below the 54.9 percent level observed in 2008.

Figure 12

S&P 500 Securities Litigation Heat Maps™
Percent of Market Capitalizations Subject to New Filings*
2000–2009

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Basic Materials	8.9%	0.0%	0.0%	0.0%	0.0%	5.6%	0.0%	0.0%	0.0%	0.0%
Communications	23.6%	28.0%	34.5%	1.7%	4.2%	1.7%	0.4%	7.2%	4.7%	0.6%
Consumer Cyclical	10.1%	4.6%	5.2%	2.7%	4.3%	4.8%	8.9%	3.3%	4.0%	7.1%
Consumer Non-Cyclical	20.6%	4.7%	22.2%	11.0%	15.3%	11.5%	12.0%	13.9%	11.2%	1.4%
Energy	0.0%	6.8%	8.2%	0.0%	44.2%	0.0%	0.0%	0.0%	0.0%	0.9%
Financial	3.2%	0.8%	30.1%	20.0%	47.9%	22.4%	8.3%	19.0%	54.9%	39.1%
Industrial	4.3%	0.0%	12.1%	4.7%	5.7%	6.5%	0.6%	0.3%	24.9%	22.8%
Technology	3.3%	29.5%	2.9%	0.7%	1.6%	15.6%	12.6%	0.0%	13.7%	0.6%
Utilities	9.2%	4.0%	42.1%	4.3%	5.0%	5.6%	0.0%	5.8%	4.1%	0.0%
All S&P 500 Companies	**11.6%**	**10.6%**	**18.7%**	**7.9%**	**17.8%**	**10.7%**	**6.7%**	**8.3%**	**17.1%**	**8.7%**

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 first trading day of each year.

Industries are based on *Bloomberg* sector classifications.

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.

8 The Percent of Market Capitalizations Subject to New Filings includes the market capitalization of all S&P 500 companies subject to new filings, not only filings involving publicly traded common equity securities. The figure for the 2004 financial sector includes a number of filings involving mutual funds managed by several companies in the sector.

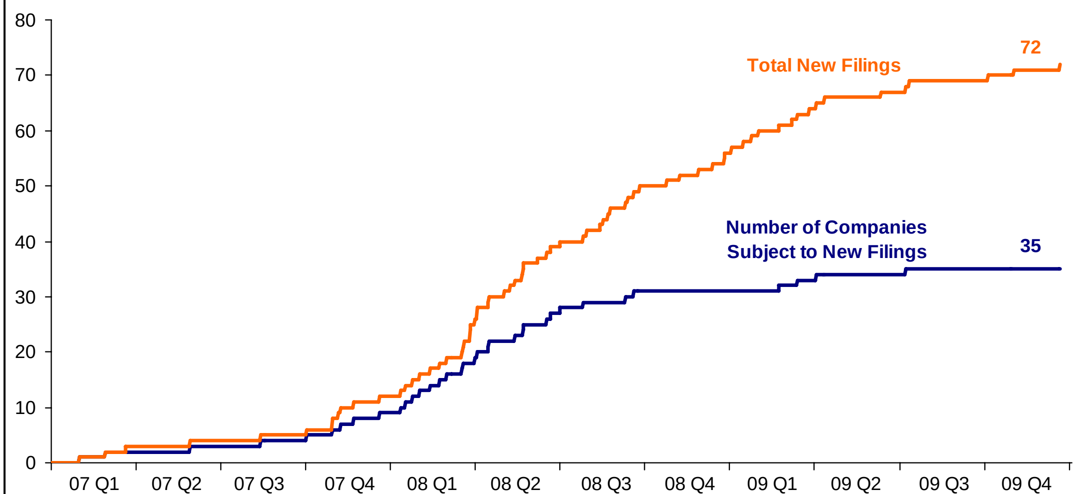
Heat Maps
continued

The S&P 500 Securities Litigation Heat Maps™ also show that the number of class actions against major financial companies has leveled off after high intensity in 2008, especially after the first quarter of 2009.

Of the 85 financial sector companies in the S&P 500 at the beginning of 2007 (before the start of the crisis), a total of 35 of those companies have been sued through the end of 2009, accounting for 72 different filings (Figure 13). However, most of these class actions were filed prior to the end of 2008: 31 of the 35 companies and 57 of the 72 total filings.

The pattern of filing activity against S&P 500 financial companies also matches the overall drop-off in credit crisis filings seen after the first quarter of 2009. While there were seven new filings affecting two new financial companies in the first quarter of 2009, there were only eight new filings affecting two new financial companies in the last three quarters of 2009.

Incidence of New Filings in 2007, 2008, and 2009
Against Financial Companies in the 2007 S&P 500 Index



* The chart is based on the composition of S&P 500 as of the first trading day of 2007 and *Bloomberg* financial sector classification.

Number of Companies Subject to New Filings equals the number of companies subject to new securities class action filings in federal courts in 2007, 2008, or 2009.

Total New Filings equals the number of new securities class actions in federal courts in 2007, 2008, or 2009.

Figure 13

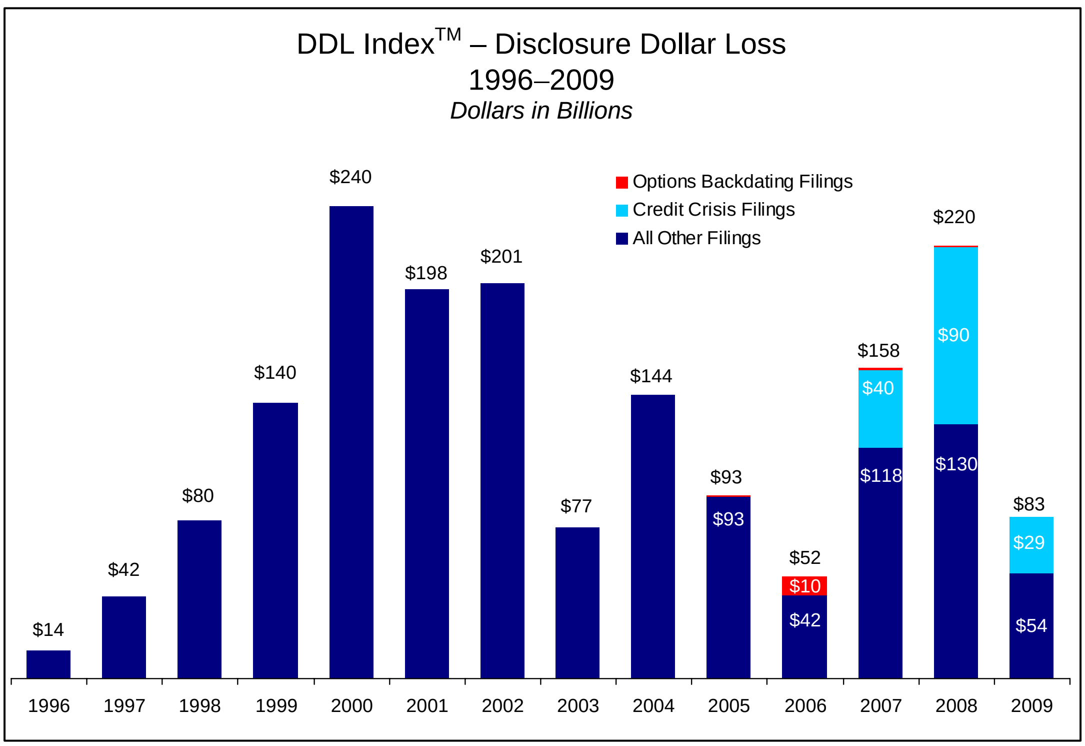
Market Capitalization Losses

To measure changes in the size of class action filings, the following metrics track market capitalization losses for defendant firms during and at the end of class periods.[9] Declines in market capitalization over extended periods may be driven by market, industry, and firm-specific factors. To the extent that the observed losses reflect factors unrelated to specific allegations in class action complaints, indices based on class period losses would not be representative of potential defendant exposure in class action litigation. This is especially relevant for the post-*Dura* securities litigation environment.[10] This report tracks market capitalization losses at the *end* of each class period using Disclosure Dollar Loss (DDL) and market capitalization losses *during* each class period using Maximum Dollar Loss (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 calculated as the dollar value change in the defendant firm's market capitalization from the trading day during the class period with the highest market capitalization 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 the information revealed at the end of or during the class period, including information unrelated to the litigation.

The Disclosure Dollar Loss (DDL) Index™ tracks the running sum of DDL for all class actions filed in a given year. The DDL Index™ shows that disclosure losses in 2009 were substantially below the disclosure losses in 2008 (Figures 14 and 15). DDL for 2009 totaled $83 billion, 62 percent lower than in 2008 and 39 percent lower than the annual average for the 12 years ending December 2008. In 2009 credit crisis filings accounted for $29 billion of DDL, or 35 percent of the total for the year, compared to 41 percent for 2008.

Figure 14



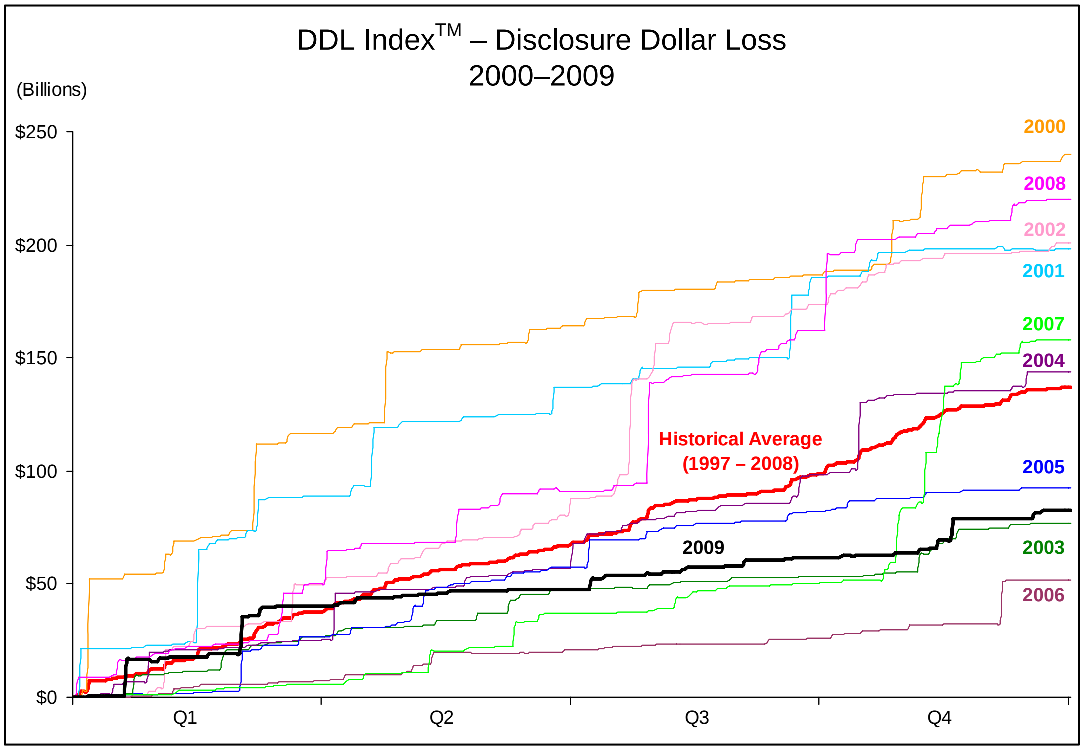
9 Market capitalization measures are calculated for publicly traded common equity securities only.

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

Market Capitalization Losses *continued*

The DDL Index™ shows that disclosure losses remained low after the first quarter of 2009 and ended the year as the third lowest total since 2000 (Figure 15).

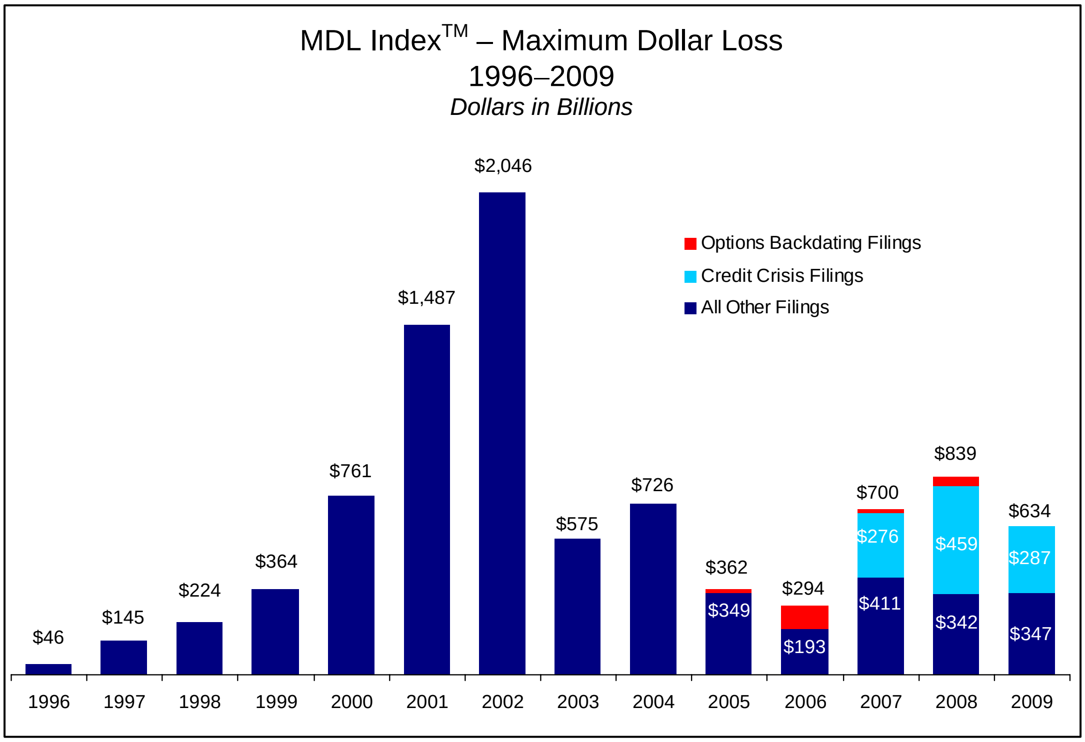
Figure 15



Market Capitalization Losses *continued*

The Maximum Dollar Loss (MDL) Index™ shows lower market value losses in 2009 than in 2008 and the historical average, but the level is closer to the historical average than the DDL Index™ (Figures 16 and 17). MDL for 2009 was $634 billion, 24 percent lower than in 2008 and 11 percent lower than the annual average for the 12 years ending December 2008. MDL for credit crisis filings totaled $287 billion in 2009, or 45 percent of MDL for the year, compared to 55 percent for 2008.

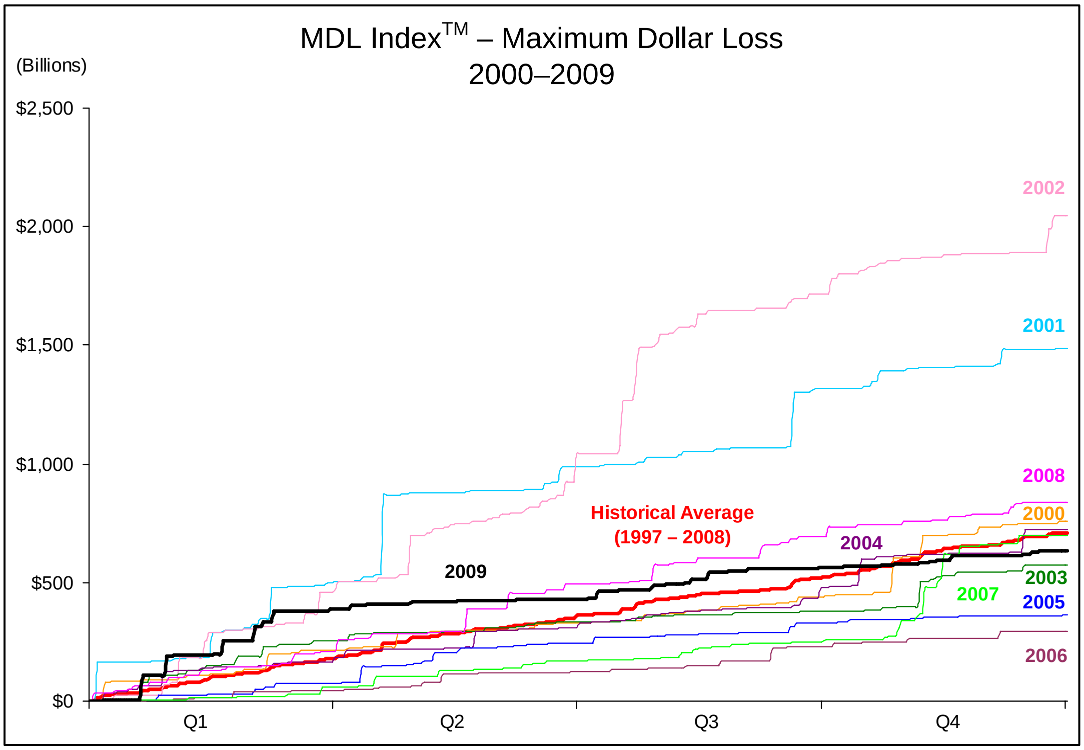
Figure 16



Market Capitalization Losses ***continued***

Although the MDL in the first quarter of 2009 was well above the historical average, the 2009 total ended lower than 2008 and the historical average.

Figure 17



Market Capitalization Losses *continued*

Figure 18 provides summary statistics for 2009 filings compared to 2008 and the annual average over the 1997–2008 period. Both the 2009 average DDL of $757 million and median DDL of $125 million were low relative to 2008. In contrast, the 2009 average MDL of $5.8 billion and median MDL of $0.9 billion were close to 2008 levels and higher than the historical average.

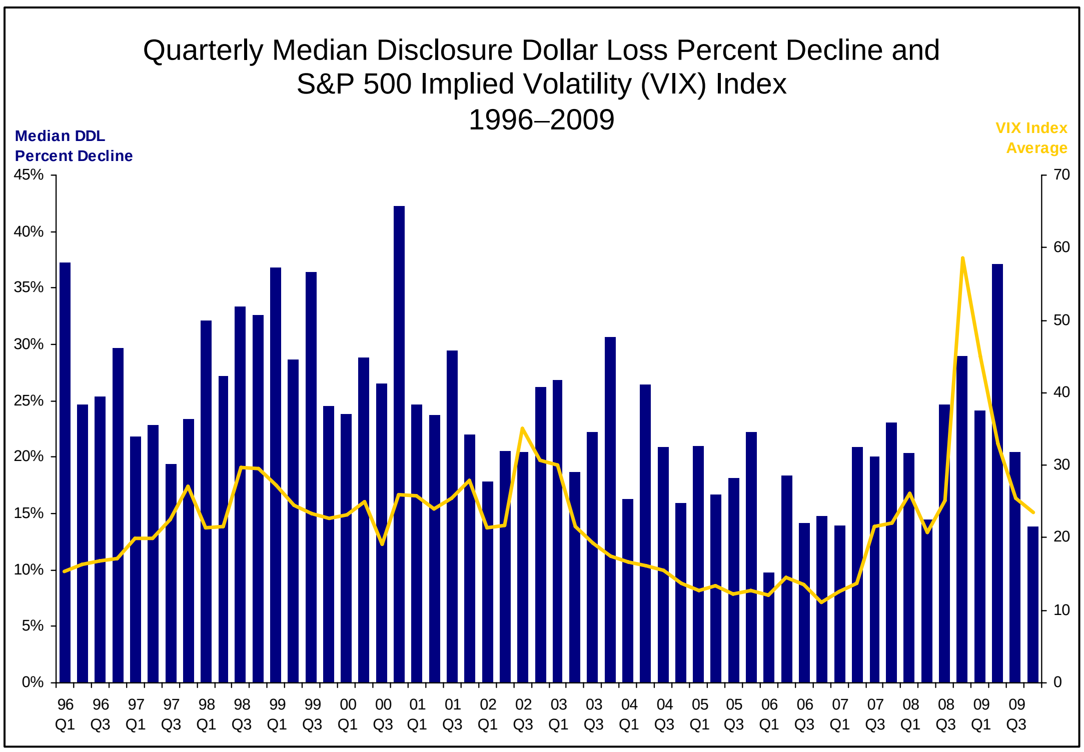
Median DDL percent decline for class actions filed in 2009 was 19.0 percent, the second lowest year after 2007 and well below the 23.6 percent in 2008 and the 23.7 percent annual average for the 12 years ending December 2008.[11] Historically, there has been a statistical relationship between quarterly median DDL percent declines and stock market volatility (Figure 19).

Figure 18

Filings Comparison

	Average (1997 – 2008)	2008	2009
Class Action Filings	197	223	169
Disclosure Dollar Loss			
Total ($ Millions)	$137,093	$220,115	$82,540
Average ($ Millions)	$804	$1,508	$757
Median ($ Millions)	$117	$208	$125
Median DDL % Decline	23.7%	23.6%	19.0%
Maximum Dollar Loss			
Total ($ Billions)	$710.2	$839.3	$633.5
Average ($ Billions)	$4.1	$5.7	$5.8
Median ($ Billions)	$0.6	$1.1	$0.9

Figure 19



[11] DDL percent decline equals the DDL divided by the market capitalization on the trading day immediately preceding the end of the class period.

Mega Filings

As in previous years, a few “mega” filings in 2009 accounted for a majority of the total market capitalization losses associated with securities class action filings.

Disclosure Dollar Loss

In 2009 there were only three mega DDL filings—filings with a DDL of $5 billion or more. This is the second lowest number of mega DDL filings for any year in the database. These three filings combined accounted for a DDL of $41 billion, 50 percent of the total DDL in 2009. Only one of the three mega DDL filings was credit crisis-related.

Maximum Dollar Loss

In 2009 there were 12 mega MDL filings—filings with an MDL of $10 billion or more. This is a large decline from the 25 mega filings in 2008 and the lowest number since 2006. The total MDL of $477 billion for these filings is also the lowest total since 2006, yet the 12 mega MDL filings in 2009 still accounted for 75 percent of the total MDL in 2009, slightly below the 2008 figure of 78 percent. Half of the 12 mega MDL filings in 2009 were credit crisis-related, similar to the proportion seen in 2008.

There were seven filings in 2009 with an MDL in excess of $25 billion each. These seven filings accounted for $403 billion, or 64 percent of the total MDL for the year, the highest percentage since 2002. In comparison, in 2008 there were eight filings in 2008 with an MDL over $25 billion that accounted for 48 percent of the total in that year.

Case Status

Figure 20 shows the status of class actions in the Stanford Law School Securities Class Action Clearinghouse. Among the resolved class actions, 41 percent were dismissed and 59 percent settled. The majority of class actions were resolved after the first ruling on the motion to dismiss but before a ruling on summary judgment, with 72 percent of dismissals and 60 percent of settlements occurring during this stage. For class actions filed from 1996 to 2006 and resolved by the end of 2009, 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.

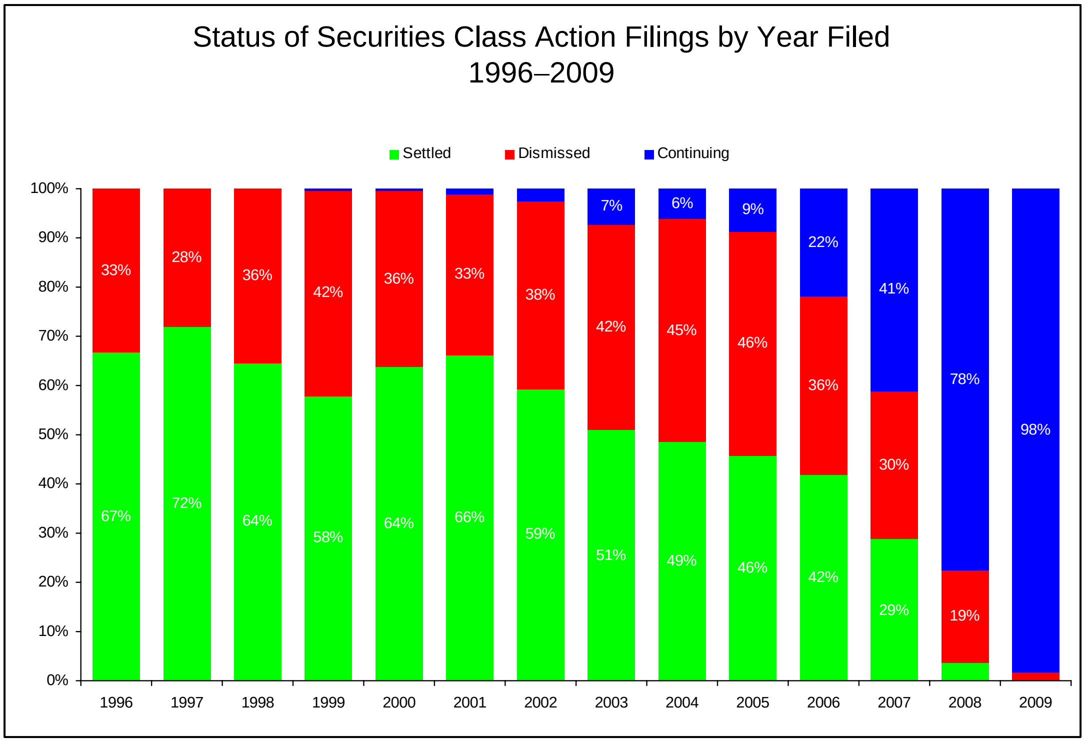
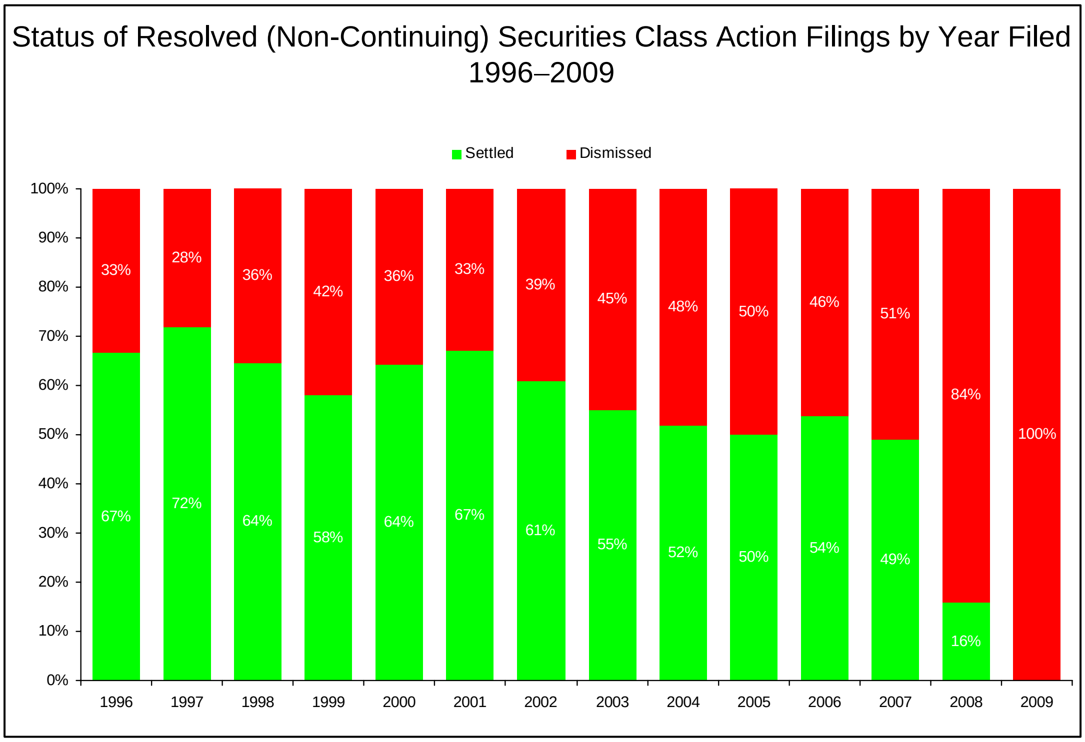


Figure 20

Case Status
continued

For class actions that have been resolved, Figure 21 shows the breakdown between settlements and dismissals. Because 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 evens out as cohorts age. Still, the 2004 and 2005 cohorts, with resolutions of more than 90 percent of the class actions in each year, have a slightly higher percentage of dismissed class actions compared to earlier years. The uptick in dismissals in recent years may be related to increased pleading standards in the wake of the 2005 *Dura* decision by the Supreme Court, but sample sizes are too small to support any firm conclusions in this regard. It also remains to be seen if this trend continues in subsequent years.

Figure 21



Industry

Figure 22 provides summary statistics on class actions by industry. Although the number of filings against companies in the financial sector decreased in 2009 relative to 2008, the sector still had the highest incidence of filings in 2009. Filings in the financial sector also had the highest MDL and DDL in 2009.

Figure 22

Filings by Industry
Dollars in Billions

Industry	Class Action Filings: Average 1997 – 2008	Class Action Filings: 2008	Class Action Filings: 2009	Disclosure Dollar Loss: Average 1997 – 2008	Disclosure Dollar Loss: 2008	Disclosure Dollar Loss: 2009	Maximum Dollar Loss: Average 1997 – 2008	Maximum Dollar Loss: 2008	Maximum Dollar Loss: 2009
Financial	36	112	84	$20	$47	$27	$115	$395	$331
Consumer Non-Cyclical	45	37	33	$42	$57	$8	$145	$154	$33
Industrial	18	18	9	$15	$82	$22	$41	$122	$96
Technology	29	18	10	$17	$8	$3	$96	$66	$9
Consumer Cyclical	23	12	10	$8	$6	$13	$53	$25	$69
Communications	35	10	12	$29	$11	$7	$222	$50	$71
Energy	5	7	6	$4	$1	$1	$19	$3	$4
Basic Materials	3	5	5	$1	$4	$2	$5	$11	$22
Utilities	4	4	0	$2	$4	$0	$13	$14	$0
Total	197	223	169	$137	$220	$83	$710	$839	$634

Exchange

As in 2008, companies listed on NYSE or Amex had more filings in 2009 than companies listed on NASDAQ (Figure 23). In 2009, 81 class actions were filed against firms listed on NYSE or Amex and only 52 against firms listed on NASDAQ. The 81 NYSE/Amex filings in 2009 represent 61 percent of the total filings against companies listed on the major exchanges in that year, the same percentage as 2008 and higher than any prior year. While the 81 NYSE/Amex filings are just above the historical average for the 12 years ending December 2008, the 52 NASDAQ filings represent only half of the historical average.

Figure 23

Filings by Exchange Listing

	Average (1997 – 2008)		2008		2009	
	NYSE/Amex	NASDAQ	NYSE/Amex	NASDAQ	NYSE/Amex	NASDAQ
Class Action Filings	80	104	113	72	81	52
Filings per Issuer	2.1%	2.6%	2.8%	2.4%	1.9%	1.7%
Disclosure Dollar Loss						
Total ($ Millions)	$99,800	$36,807	$194,242	$25,725	$71,773	$10,723
Average ($ Millions)	$1,417	$373	$2,428	$422	$1,177	$249
Median ($ Millions)	$256	$78	$417	$128	$134	$138
Maximum Dollar Loss						
Total ($ Billions)	$453	$256	$696	$143	$579	$49
Average ($ Billions)	$6.1	$2.6	$8.7	$2.3	$9.5	$1.1
Median ($ Billions)	$1.2	$0.4	$2.4	$0.6	$1.9	$0.7

Circuit[13]

The three circuits with the highest number of filings in 2009 were the Second Circuit (New York) with 64 filings, the Ninth Circuit (California) with 40 filings, and the Eleventh Circuit (Florida/Georgia/Alabama) with 14 filings (Figure 24). The Second and Ninth Circuits have been the top two in every year in the database, and the Eleventh Circuit has been in the top four in every year other than 2005.

The circuits with the highest total DDL in 2009 were the Second Circuit with $49 billion and the First Circuit (Maine/Massachusetts/New Hampshire/Puerto Rico/Rhode Island) with $14 billion. The Second Circuit accounted for two of the three mega DDL filings, while the third was filed in the First Circuit. Historically, the Second, Third, and Ninth Circuits have had the highest DDL levels.

When ranked by MDL, the top three circuits in 2009 were the Second Circuit with $393 billion, the Ninth Circuit with $65 billion, and the Tenth Circuit (Colorado/Kansas/New Mexico/Oklahoma/Utah/Wyoming) with $53 billion. Second Circuit filings in 2009 were dominated by six of the 12 mega MDL filings, while the Ninth Circuit had two mega MDL filings and the Tenth Circuit had one mega MDL filing. Historically, the Second, Ninth, and Third Circuits have had the highest MDL levels.

Figure 24

Filings by Court Circuit
Dollars in Billions

	Class Action Filings			Disclosure Dollar Loss			Maximum Dollar Loss		
Circuit	Average 1997 – 2008	2008	2009	Average 1997 – 2008	2008	2009	Average 1997 – 2008	2008	2009
1	10	15	5	$6	$4	$14	$22	$14	$51
2	47	95	64	$43	$134	$49	$233	$403	$393
3	17	12	12	$23	$30	$1	$81	$102	$7
4	7	9	4	$3	$2	$2	$16	$13	$9
5	13	4	10	$10	$1	$1	$52	$3	$14
6	10	14	4	$9	$8	$1	$37	$40	$6
7	10	11	8	$7	$16	$5	$31	$61	$12
8	8	8	2	$4	$11	$0	$16	$39	$2
9	48	31	40	$21	$12	$4	$175	$151	$65
10	6	5	6	$3	$0	$5	$12	$1	$53
11	19	18	14	$7	$3	$1	$30	$13	$21
12	1	1	0	$1	$0	$0	$4	$0	$0
Total	197	223	169	$137	$220	$83	$710	$839	$634

[12] Circuit information corresponds to the first identified complaint.

Classification of Complaints[14]

The Stanford Law School Securities Class Action Clearinghouse tracks allegations contained in class action complaints. A comparison of class actions filed in 2009 with those filed since 2005 reveals the following findings (Figure 25).

- The percentage of filings with 10b-5 claims continued to decline, falling to 66 percent in 2009. In each year from 2005 to 2009, 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 continued to increase in 2009, accounting for 26 percent and 24 percent of 2009 filings respectively.
- Underwriter defendants were named in 18 percent of initial complaints, a slight increase from the 17 percent in 2008 and well above the previous three years.
- There was an increase in the incidence of initial complaints naming an auditor defendant to 7 percent, the highest level in the past five years.
- The percentage of filings with allegations regarding false forward-looking statements declined to a historically low 50 percent of filings compared to 68 percent in 2008 and 81 percent in 2005.
- The percentage of filings with allegations of insider trading continued to decline. Only 12 percent of 2009 filings contained allegations of insider trading compared to 23 percent in 2008 and 45 percent in 2005.
- The percentage of filings alleging violations of Generally Accepted Accounting Principles (GAAP) decreased from 41 percent in 2008 to 34 percent in 2009.
- 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.
- A new metric in the Allegations Box Score this year is the percentage of filings that allege weaknesses in Internal Controls over Financial Reporting ("Internal Controls Weaknesses").[14] In 2009, 14 percent of total filings alleged Internal Control Weaknesses (42 percent of the filings alleging GAAP violations).
- There has been a decrease in the percentage of filings that allege Internal Control Weaknesses and refer to an announcement by the company of such weaknesses.

[13] 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.

[14] 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 25

2009 Allegations Box Score

	Percentage of Total Filings				
General Characteristics	**2005**	**2006**	**2007**	**2008**	**2009**
10b-5 claims	91%	87%	80%	75%	66%
Section 11 claims	9%	12%	19%	24%	26%
Section 12(2) claims	5%	9%	11%	18%	24%
Underwriter defendant	5%	4%	11%	17%	18%
Auditor defendant	3%	3%	1%	3%	7%
Allegations					
Misrepresentations in financial documents	87%	92%	92%	93%	89%
False forward-looking statements	81%	72%	62%	68%	50%
Insider trading	45%	39%	27%	23%	12%
GAAP Violations[1]	43%	57%	44%	41%	34%
Announced Restatement[2]	20%	33%	15%	10%	8%
Internal Control Weaknesses[3]	19%	26%	16%	13%	14%
Announced Internal Control Weaknesses[4]	8%	11%	4%	2%	2%

[1] First identified complaint includes allegations of Generally Accepted Accounting Principles (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 weaknesses in Internal Control 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 weaknesses in Internal Control over Financial Reporting.

Coughlin Stoia's Involvement in Long Filing Lag Litigation

As discussed in the "Filing Lag" section above, filings in 2009 were marked by a high percentage of filings with a long lag between the filing date and the end of the class period. As noted in an article by the *National Law Journal*, the law firm of Coughlin Stoia Geller Rudman & Robbins ("Coughlin Stoia") has been prominent in filing these delayed class actions, "working through a backlog of potential targets."[15]

Analysis of law firms indicates that Coughlin Stoia filed a disproportionally large percentage of the class actions with long filing lags observed in 2009. Coughlin Stoia was involved in 63 percent of filings with lags longer than six months and 58 percent of filings with lags longer than a year. This compares to Coughlin Stoia's involvement in 39 percent of all filings and 29 percent of filings with lags shorter than six months. Thus, the probability of encountering Coughlin Stoia in a case with a filing lag of more than a year was about twice the probability of encountering the firm in a case with a filing lag shorter than six months. The law firm with the second highest involvement in filings with lags longer than six months was involved in only 12 percent of the filings.

Filings Related to Exchange-Traded Funds and Mutual Funds in 2009

In 2009 non-traditional exchange-traded funds (ETFs) became the subject of several securities class actions. ETFs are mutual funds designed to track the performance of financial indices, commodities, sectors, industries, or other benchmarks. However, unlike traditional mutual funds, which are priced just once a day, ETFs are priced and traded throughout the day, much like stocks.[16] Some ETFs, known as leveraged (ultra) funds, seek to achieve returns that correspond to a multiple of the daily performance of the index or benchmark they track. Inverse (short) funds seek to provide returns, on a daily basis, that are the opposite—or a multiple of the opposite, in the case of leveraged inverse (ultrashort) funds—of the performance of their benchmark. Most leveraged or inverse ETFs rebalance daily to meet their performance objectives for that day. However, their performance over longer periods will vary from that of the benchmark they are attempting to track, an effect that is augmented by volatile markets.[17]

In the second half of 2009, 11 filings were related to ETFs.[18] Ten of these class actions were filed against ProShares Funds, and one class action was filed against Direxion Shares ETF Trust. Allegations included failure to disclose risks related to ETFs, i.e., the likelihood of losses if shares were held for longer than one day, as well as the likelihood that performance of some of these funds might diverge from the performance of their benchmarks.

Bond mutual funds also came under fire in class action litigation in 2009; eight class actions were filed against Oppenheimer bond mutual funds in the first half of the year.[19]

Defendants' Motion to Dismiss Granted in Several Auction Rate Securities Class Actions

In auction rate securities class actions against UBS, Northern Trust, and Citigroup, the courts granted defendants' motion to dismiss. In the *UBS* case, the court ruled in March 2009 that plaintiffs could not allege out-of-pocket damages given that they had already availed themselves of the relief provided by the SEC's $20 billion ARS buyback settlement arranged in August 2008. Similarly, in the *Northern Trust* case, the defendant's motion to dismiss was granted with prejudice as the court ruled that plaintiffs could not both rescind the contract (which they did in December 2008 when they obtained par value for the securities under the SEC's settlement program) and seek benefit-of-the-bargain damages. Lastly, in the *Citigroup* case, defendant's motion to dismiss was granted in September 2009 without prejudice on the grounds that the plaintiffs had insufficiently alleged fraud, scienter, reliance, and loss causation.

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15 Sheri Qualters, "Securities fraud suits resurface; Plaintiffs' firms diverted by downturn are now back to suing public companies," *The National Law Journal*, November 21, 2009.

16 Tara Siegel Bernard, "Exchange-Traded Funds: What You Need to Know," *The New York Times*, December 16, 2008.

17 "Leveraged and Inverse ETFs: Specialized Products with Extra Risks for Buy-and-Hold Investors," U.S. Securities and Exchange Commission, August 18, 2009, http://www.sec.gov/investor/pubs/leveragedetfs-alert.htm.

18 Filings related to ETFs were classified by *Bloomberg* in the "Funds" sector and "Equity Fund" subsector. There were no ETF filings between 2005 and 2008.

19 Filings related to bond funds were classified by *Bloomberg* in the "Funds" sector and "Debt Fund" subsector. Bond mutual funds were also the subject of litigation in five filings in 2008, but none between 2005 and 2007.

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