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# Securities Class Action Case Filings

# 2003: A Year in Review

## Research Sample

- The sample includes 1,517 federal class action filings in calendar years 1996 through 2003.
- The class action filings include 313 “IPO Allocation” filings, 63 “Analyst” filings and 19 “Mutual Fund” filings.
- Filings were identified by the Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research as of 4/15/04.

## Overview



A review of securities class action filings in calendar year 2003 reveals a number of interesting findings. Most notably, the high level of filing activity seen in 2001 and 2002 has not continued into 2003. After removing special cases (described in more detail below), there were 175 “traditional” securities class action suits filed in 2003. The number of suits filed in 2003 was 22 percent lower than the number of cases filed in 2002 [225] and 9 percent lower than the 1996 to 2002 average [192]. In addition, market capitalization losses for the typical (median) filing in 2003 was well below the typical losses incurred in 2001 and 2002. Finally, for the third year in a row there was a new type of “atypical” class action filing, as several mutual fund companies became targets of shareholder lawsuits in the second half of 2003. This *Year in Review* describes these and other findings in more detail. Exhibit 1, the “Complaint Filings Box Score,” provides a general overview.

### Complaint Filings Box Score

| | 2002 | Average (1996-2002) | 2003 |
|---|---|---|---|
| Class Action Filings | 225 | 192 | 175 |
| Maximum Dollar Loss ($ Billions) | $1,948 | $720 | $542 |
| Disclosure Dollar Loss ($ Billions) | $207 | $128 | $58 |

Note: All figures exclude IPO Allocation, Analyst, and Mutual Fund filings.

Exhibit 1

## Classification of Filings



Interestingly, each of the past three years has seen a new type of class action filing. First, in 2001, there were over 300 "IPO Allocation" filings with allegations related to the allocation of shares in the initial public offering. Second, in 2002, there were a number of "Analyst" filings with allegations that investment banks and individual analysts had issued research reports and ratings that were neither independent nor objective. Third, in the second half of 2003, there were a series of "Mutual Fund" filings that contained allegations of market timing, lack of disclosure and breach of fiduciary duty. While it is difficult to predict the next type of filing, it will be interesting to observe whether a new class develops in 2004. As a result of the atypical filings in 2001, 2002, and 2003, we sort filings in this report into four categories: "IPO Allocation," "Analyst," "Mutual Fund," and "Traditional" filings.

The IPO Allocation, Analyst and Mutual Fund filings can be considered different and distinct types of class action lawsuits, having characteristics unlike the Traditional securities class action filings. Therefore, the Traditional litigation is more likely an accurate measure of ongoing activity and is emphasized in the comparisons provided throughout this report.

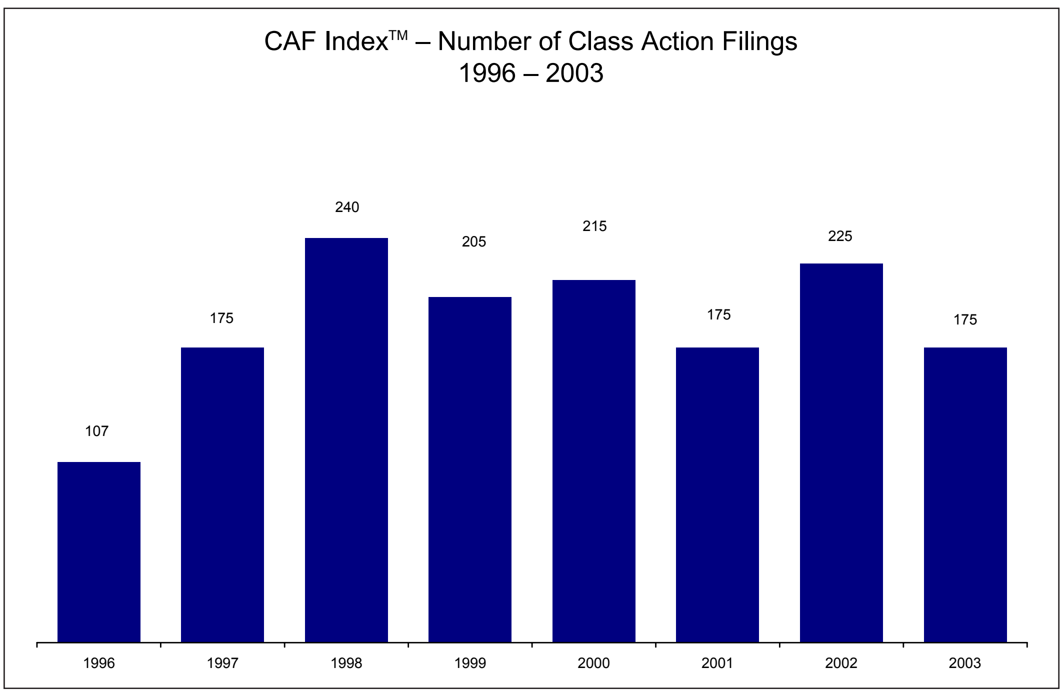



Exhibit 2

## Number of Filings[1]



In order to evaluate trends and events in litigation over time, the Stanford Law School Class Action Clearinghouse in cooperation with Cornerstone Research has originated several litigation activity indices. The first group of indices measures the level of securities class action activity based solely on the count of filings. The Class Action Filings Index (CAF Index™) tracks a simple count of new cases and the Filings per Issuer Index (FPI Index™) tracks filings as a percentage of companies listed on the NYSE, Nasdaq and Amex at the start of the year.

The CAF Index™ tracks the number of filings throughout the calendar year. Excluding the IPO Allocation, Analyst and Mutual Fund filings, the number of Traditional filings decreased by 22 percent from 225 in 2002 to 175 in 2003 (see Exhibit 2). The CAF Index™ shows fluctuations in litigation activity over time, with 1996 showing the lowest activity, possibly responding to the adoption of the Private Securities Litigation Reform Act ["PSLRA"] in 1995, and 1998, 2000 and 2002 showing the highest activity.

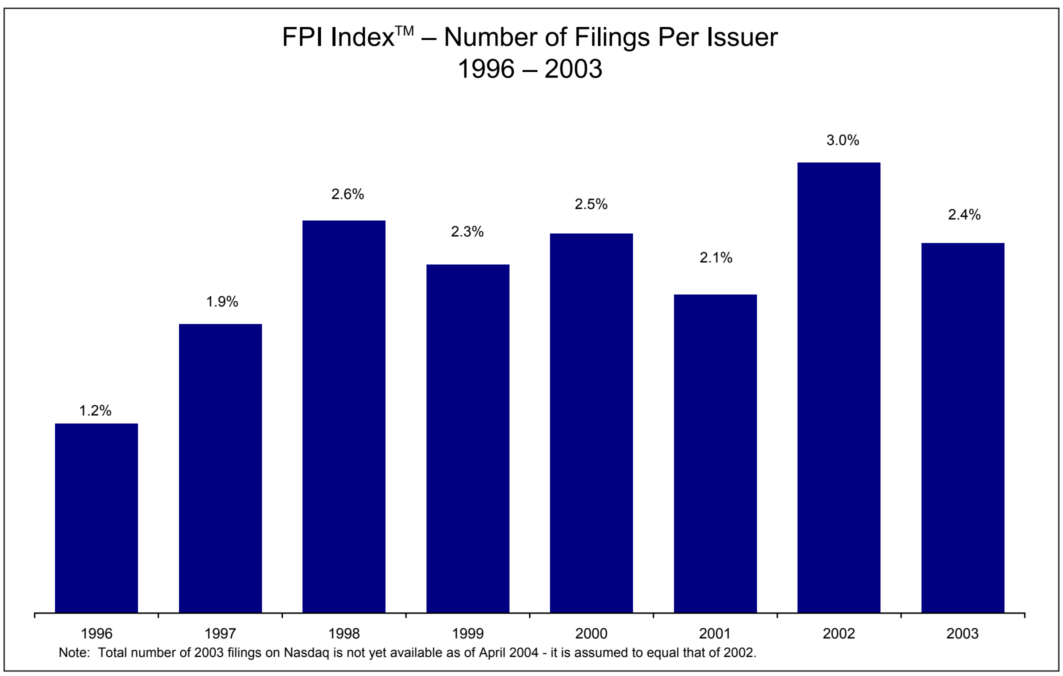



Exhibit 3

The FPI Index™ also shows a decrease in litigation activity in 2003 relative to 2002 (see Exhibit 3). 2.4 percent of companies were defendants in Traditional class action lawsuits filed in 2003 compared to 3.0 percent in 2002. The 2.4 percent filings per issuer was in line with the post-PSLRA annual average.

[1] Please visit securities.cornerstone.com for up-to-date information on the indices of litigation activity presented in this report.

## Market Capitalization Declines

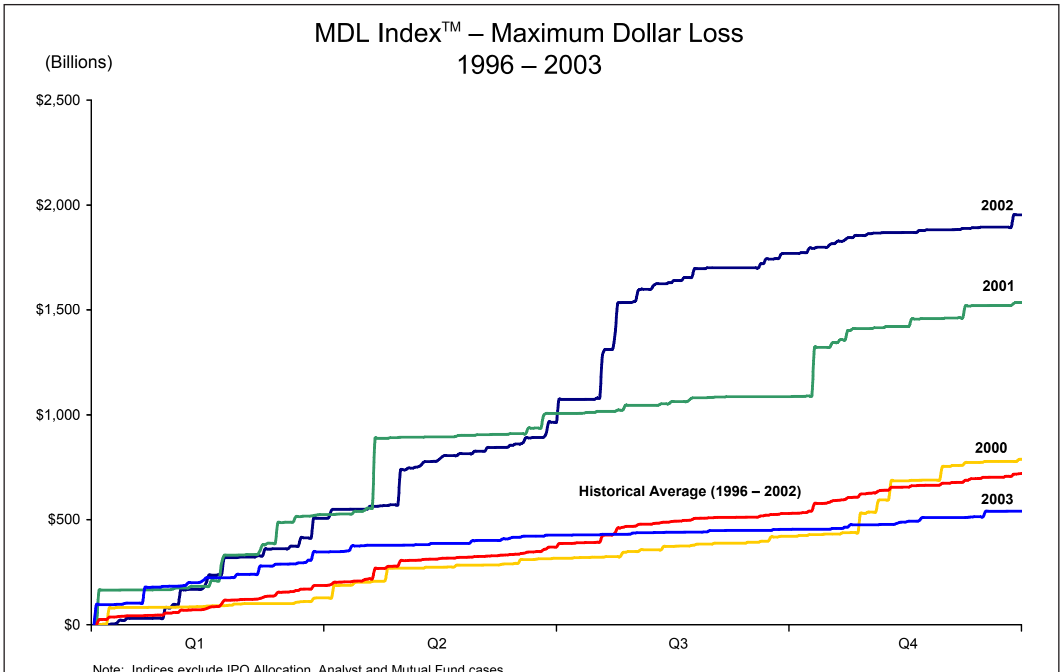


The second group of indices tracks market capitalization declines during class periods to measure the relative size of class action filings. By assigning values that distinguish between multi-billion dollar market value loss filings (e.g. WorldCom) and much smaller market value loss filings, we develop a more comprehensive understanding of class action activity. Specifically, for each filing we calculate two measures of decline in the market capitalization of the defendant firm: "maximum dollar loss" and "disclosure dollar loss." These measures reveal a dramatic fall off in securities class action activity in 2003 market capitalization.

The first measure, maximum dollar loss, is calculated as the dollar value decrease in the market capitalization of the defendant firm from the trading day on which the defendant firm's market capitalization reached its maximum during the class period to the trading day immediately following the end of the class period. Maximum dollar loss does not measure potential liability, but gives an indication of the loss in market value irrespective of the cause. The second measure, disclosure dollar loss, is calculated as the decrease in the market capitalization of the defendant firm from the trading day immediately preceding the end of class period to the trading day immediately following the end of the class period. As with the maximum dollar loss, the disclosure dollar loss should not be considered a measure of liability, but only represents a rough estimate of the impact of market, industry and firm specific information that was revealed at the end of the class period, including information unrelated to the litigation.

We track maximum dollar losses and disclosure dollar losses using both simple dollar totals and totals relative to the size of the overall stock market. The Maximum Dollar Loss Index (MDL Index™) tracks the sum of maximum dollar loss for all class action lawsuits filed year-to-date. The Maximum Percent Loss Index (MPL Index™) tracks the maximum dollar loss as a percentage of the Wilshire 5000.[2]

Exhibit 4




Note: Indices exclude IPO Allocation, Analyst and Mutual Fund cases.

[2] Please see securities.cornerstone.com for complete details on the MPL Index™ calculation.

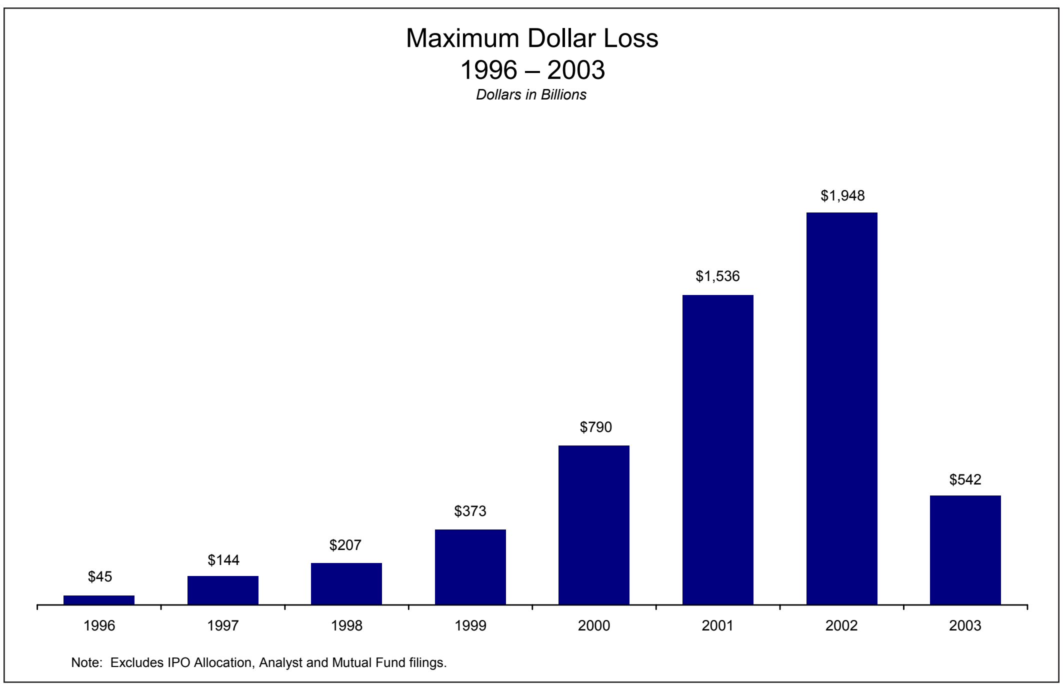
## Market Capitalization Declines *continued*



The MDL Index™ shows a dramatic fall off in the market value declines for companies subject to class action filings in 2003 when compared to 2002 and historical averages (see Exhibit 4). Excluding the atypical cases, the total maximum dollar loss decreased 72 percent in 2003 relative to 2002 and 25 percent relative to the 1996 to 2002 average. While a portion of the fall off can be attributed to the lower number of filings in 2003, the majority of the decrease is attributable to a lower market capitalization loss for the typical 2003 filing. Specifically, the average filing in 2003 had a maximum dollar loss of $3.3 billion, compared to an average of $9.4 billion in 2002. Further the maximum dollar loss for the median (or midpoint) filing in 2003 was $0.5 billion, approximately one-third of the median maximum dollar loss for 2002 filings.

A closer look at annual data reveals that the MDL Index™ was significantly higher in 2001 and 2002 than in previous years (Exhibit 5). Many of the cases filed between 2000 and 2002 were related to the spectacular boom and bust of U.S. equities in late 1990s–early 2000s. It is probably the case that by the end of 2002, most high profile securities class action cases related to the boom and bust had already been filed. Not surprisingly, the number of case filings and the losses of market capitalization underlying filings went down in 2003.

Exhibit 5

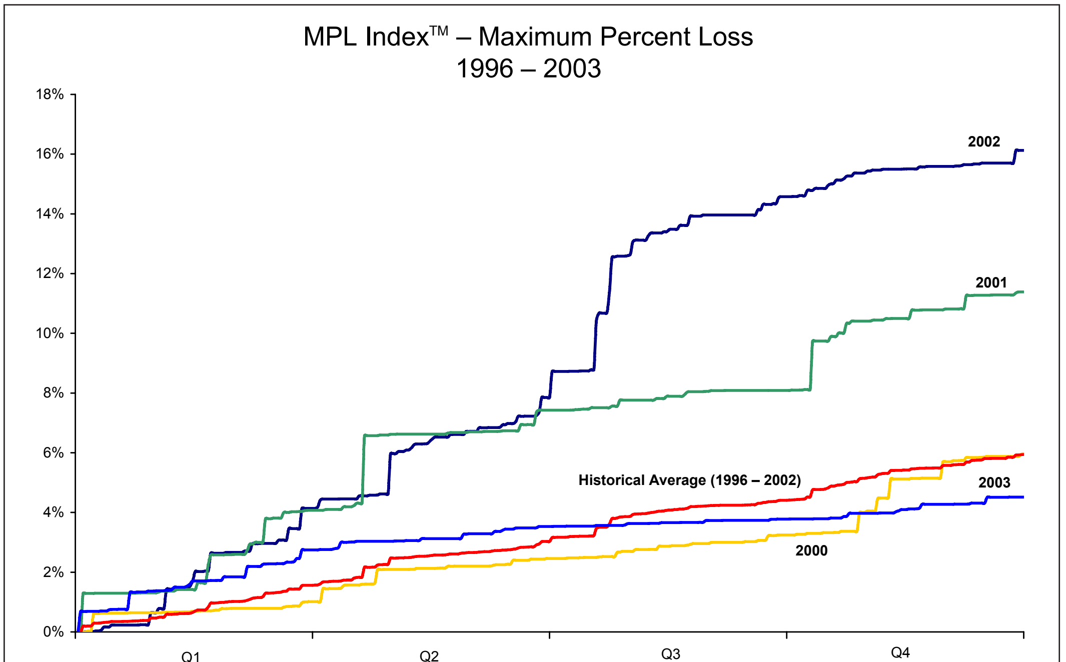


## Market Capitalization Declines *continued*



The MPL Index™ shows a similar decline. The maximum dollar loss for all filings in 2003 represented 4.5 percent of the Wilshire 5000 during the class periods (see Exhibit 6). This compares to 16 percent for filings in 2002 and 6 percent for cases filed between 1996 and 2002.

Exhibit 6




Note: Indices exclude IPO Allocation, Analyst and Mutual Fund cases.

Clearly, market capitalization declines over extended periods of time may be driven by market and industry factors. To the extent that these declines are unrelated to specific allegations in class action complaints, indices based on aggregate losses during class periods would not be representative of potential defendant exposure to class action activity.

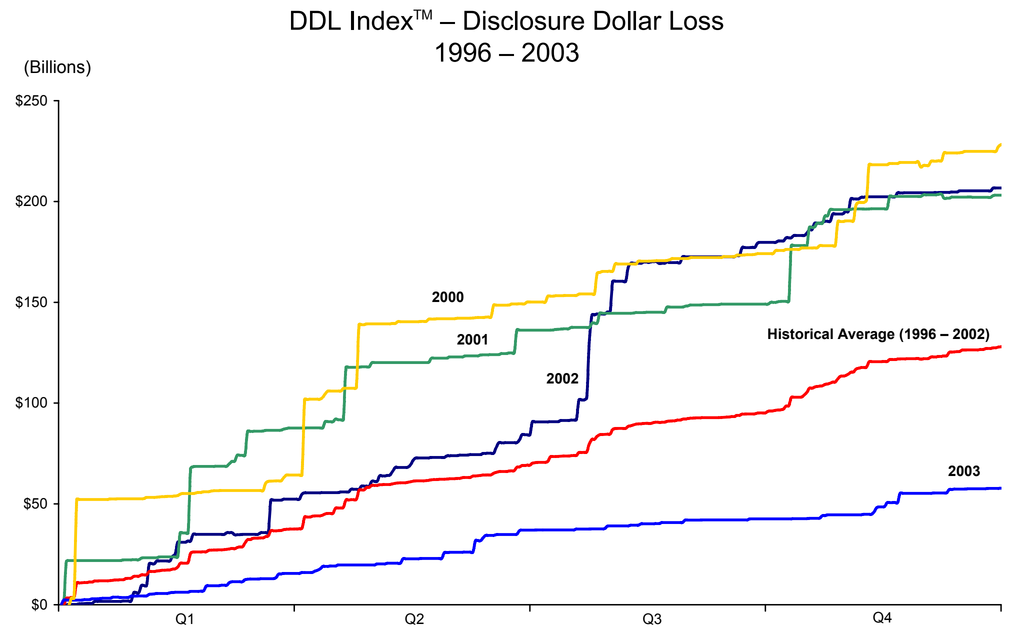
In addition to measuring the maximum market capitalization decrease that occurred in each class period, we also track the market capitalization decrease at the end of each class period using disclosure dollar loss. We track disclosure dollar losses using both simple dollar totals and totals relative to the size of the overall stock market.

The Disclosure Dollar Loss Index (DDL Index™) tracks the running sum of disclosure dollar loss for all class action lawsuits filed year-to-date. Similarly, the Disclosure Percent Loss Index (DPL Index™) tracks the running sum of disclosure dollar loss as a percentage of the Wilshire 5000.[3]

[3] Please see securities.cornerstone.com for complete details on the DPL Index™ calculation.

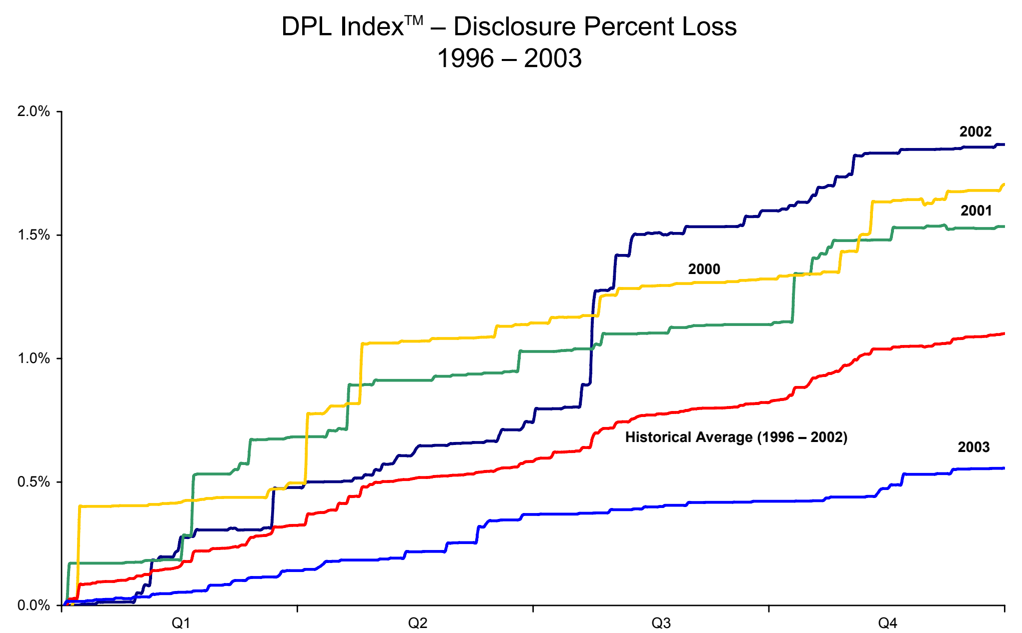
## Market Capitalization Declines *continued*






Note: Indices exclude IPO Allocation, Analyst and Mutual Fund cases.

Exhibit 7




Note: Indices exclude IPO Allocation, Analyst and Mutual Fund cases.

Exhibit 8

## Market Capitalization Declines *continued*

Similar to the MDL indices, the DDL Index™ and the DPL Index™ also show a dramatic fall off in disclosure losses in 2003 relative to the levels reached in 2002 and historical averages (see Exhibits 7 and 8). The total disclosure dollar loss decreased 72 percent in 2003 relative to 2002. The total disclosure dollar loss in 2003 was $58 billion, or 0.6 percent of the capitalization of the Wilshire 5000 index. The total disclosure dollar loss represented 1.9 percent of the capitalization of the Wilshire 5000 index in 2002 and 1.1 percent of the capitalization of the Wilshire 5000 index from 1996 to 2002. As shown in Exhibit 9, disclosure dollar losses in 2003 fell sharply below levels reached in 2000 to 2002. As with the maximum dollar losses, this decline may be related to declining influence of filings related to the boom and bust of the turn of the century in the mix of cases filed in 2003.



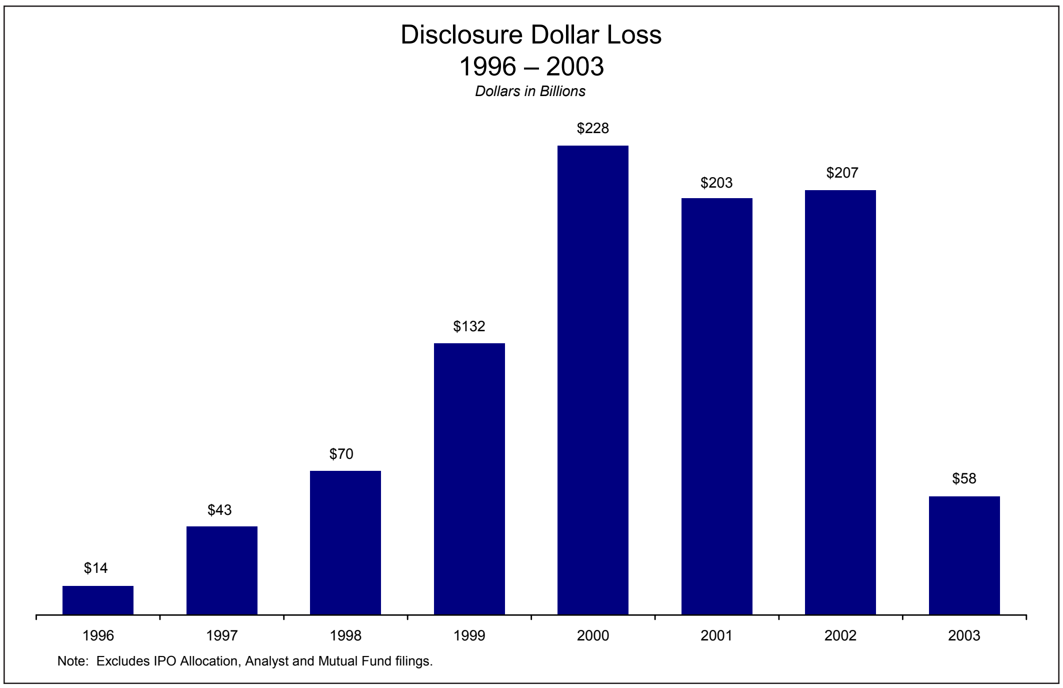



Exhibit 9

## Market Capitalization Declines *continued*



Exhibit 10 provides a more detailed look at the "average" or "median" filing. The more detailed analysis reveals that the size of market capitalization losses of the median (midpoint) filing in 2003 was roughly a third of that of 2002 and slightly below historical averages. The median maximum dollar loss of $538 million in 2003 was a 63 percent decrease from the $1.46 billion median in 2002 and a 9 percent decrease from the historical average of $588 million during 1996 to 2002. The median disclosure dollar loss of $106 million for 2003 represented a 28 percent decrease from the $148 million median for 2002 and a 14 percent increase relative to the historical average of $93 million.

Exhibit 10 makes it clear that litigation activity slowed down significantly in 2003 both in terms of the number of filings and in terms of the size of a typical filing measured by declines of market capitalization.

Exhibit 10

### Filings Comparison

| | 2002 | Average (1996-2002) | 2003 |
|---|---|---|---|
| Class Action Filings | 225 | 192 | 175 |
| Maximum Dollar Loss | | | |
| Total ($ Billions) | $1,948 | $720 | $542 |
| Average ($ Billions) | $9.4 | $3.9 | $3.3 |
| Median ($ Billions) | $1.5 | $0.6 | $0.5 |
| Disclosure Dollar Loss | | | |
| Total ($ Millions) | $206,734 | $128,164 | $57,773 |
| Average ($ Millions) | $999 | $700 | $354 |
| Median ($ Millions) | $148 | $93 | $106 |

Note: All figures exclude IPO Allocation, Analyst, and Mutual Fund filings.

## Mega Filings



Analysis of mega filings offers additional evidence of a slow down in litigation activity from 2002 to 2003.

**Maximum Dollar Loss**

The maximum dollar loss totals in both 2002 and 2003 were dominated by a number of "mega" filings. For example,

- There were 14 filings in 2003 with a maximum dollar loss of $10 billion or more. These 14 filings were responsible for 67 percent of total maximum dollar loss in 2003.
- There were 40 filings in 2002 with a maximum dollar loss of $10 billion or more. These 40 filings were responsible for 82 percent of total maximum dollar loss in 2002.
- The maximum dollar loss represented more than 50 percent loss in market capitalization for most of the "mega" filings in both years.

**Disclosure Dollar Loss**

Unlike 2002, disclosure dollar loss figures for 2003 filings were less dominated by "mega" filings. For example,

- There was only one filing in 2003 with a disclosure dollar loss of $5 billion or more. This filing accounted for only 10 percent of total disclosure dollar loss in 2003.
- In contrast, there were 10 filings in 2002 with a disclosure dollar loss of $5 billion or more. These filings accounted for 52 percent of total disclosure dollar loss in 2002

There were 97 maximum dollar loss "mega" filings and 36 disclosure dollar loss "mega" filings from 1996 to 2003. 72 and 27 of these filings were concentrated in 2000 to 2002. This is consistent with our earlier observation that these were the years of securities lawsuits related to the boom and bust of U.S. equities at the turn of the century.

## Exchange Listing



2003 was characterized by a relative parity in terms of the number of securities class action filings for companies listed on Nasdaq relative the NYSE and Amex (See Exhibit 11). In 2003, cases were filed against 76 firms whose stocks traded on the NYSE/Amex compared to 87 firms whose stocks traded on Nasdaq.[4] In 2002, cases were filed against 112 firms whose stocks traded on the NYSE/Amex compared to 86 firms whose stocks traded on Nasdaq. From 1996 to 2003, with the exception of 2002, there have been more class action filings against Nasdaq firms than against NYSE/Amex firms.

Similar to prior periods, the median maximum dollar loss and disclosure dollar loss for NYSE and Amex firms were significantly higher than the medians for Nasdaq firms in 2003. This finding is not surprising since the typical firm listed on NYSE is bigger than the typical firm listed on Nasdaq.

Specifically,

- The total maximum dollar loss for NYSE/Amex firms in 2003 was $293 billion compared to $239 billion for Nasdaq firms.
- The midpoint (median) maximum dollar loss for NYSE/Amex firms in 2003 was $1.2 billion compared to $0.4 billion for Nasdaq firms. These numbers are close to average values for the 1996 to 2002 period.
- The total disclosure dollar loss for NYSE/Amex firms in 2003 was $38 billion compared to $19 billion for Nasdaq firms.
- The midpoint (median) disclosure dollar loss for NYSE/Amex firms in 2003 was $150 million compared to $97 million for Nasdaq firms. Compared to historical averages for the typical disclosure dollar losses, NYSE/Amex cases were smaller while Nasdaq cases were bigger in 2003.

Exhibit 11

### Filings by Exchange Listing

| | 2002 | | Average (1996-2002) | | 2003 | |
|---|---|---|---|---|---|---|
| | NYSE/Amex | Nasdaq | NYSE/Amex | Nasdaq | NYSE/Amex | Nasdaq |
| Class Action Filings | 112 | 86 | 67 | 98 | 76 | 87 |
| Maximum Dollar Loss | | | | | | |
| Total ($ Billions) | $1,380 | $544 | $406 | $303 | $293 | $239 |
| Average ($ Billions) | $13.3 | $6.6 | $5.6 | $3.1 | $4.3 | $2.8 |
| Median ($ Billions) | $3.8 | $0.8 | $1.2 | $0.4 | $1.2 | $0.4 |
| Disclosure Dollar Loss | | | | | | |
| Total ($ Millions) | $170,422 | $29,845 | $86,044 | $39,540 | $38,493 | $19,021 |
| Average ($ Millions) | $1,639 | $360 | $1,316 | $389 | $566 | $226 |
| Median ($ Millions) | $463 | $104 | $220 | $70 | $150 | $97 |

Note: All figures exclude IPO Allocation, Analyst, and Mutual Fund filings.

[4] 12 case filings in 2003 were for companies not listed on the NYSE, Amex, or Nasdaq.

## Circuit[5]



The top three circuits in number of filings in 2003 were the Second Circuit (NY, CT, VT) with 37 filings, the Ninth Circuit (CA, AK, AZ, HI, ID, MT, NV, OR, WA) with 34 filings, and the Eleventh Circuit (AL, FL, GA) with 21 filings (see Exhibit 12). This is, however, the Ninth Circuit's lowest number of class action filings since 1997. The top circuits in number of filings in 2002 were the Second Circuit with 53 filings, the Ninth Circuit with 43 filings, and the Third Circuit (DE, NJ, PA) and the Eleventh Circuit with 21 filings.

From 1996 to 2002, the Ninth Circuit had the greatest average number of class action filings with 51 per year. This is 38 percent more than the next highest average number of class action filings (the Second Circuit with 37). Many filings in the Ninth Circuit were against Internet-related companies that were most affected by the boom and the bust of the Nasdaq stock market.

### Filings by Court Circuit

*Dollars in Billions*

| | Class Action Filings | | | Maximum Dollar Loss | | | Disclosure Dollar Loss | | |
|---|---|---|---|---|---|---|---|---|---|
| Circuit | 2002 | Average | 2003 | 2002 | Average | 2003 | 2002 | Average | 2003 |
| 1 | 9 | 10 | 13 | $30 | $23 | $20 | $6.1 | $6.8 | $1.6 |
| 2 | 53 | 37 | 37 | $845 | $173 | $167 | $61.4 | $18.7 | $16.2 |
| 3 | 21 | 17 | 14 | $214 | $98 | $30 | $42.7 | $28.8 | $4.6 |
| 4 | 6 | 7 | 4 | $89 | $22 | $10 | $8.8 | $3.5 | $2.7 |
| 5 | 20 | 16 | 16 | $156 | $48 | $52 | $17.9 | $10.2 | $2.8 |
| 6 | 16 | 10 | 12 | $53 | $47 | $42 | $7.3 | $11.0 | $5.0 |
| 7 | 16 | 9 | 8 | $87 | $27 | $12 | $17.0 | $5.8 | $5.6 |
| 8 | 15 | 7 | 8 | $32 | $9 | $28 | $5.5 | $2.3 | $6.8 |
| 9 | 43 | 51 | 34 | $281 | $199 | $148 | $16.2 | $26.1 | $8.0 |
| 10 | 4 | 6 | 7 | $91 | $27 | $13 | $6.3 | $4.0 | $0.3 |
| 11 | 21 | 20 | 21 | $69 | $34 | $20 | $17.5 | $8.1 | $4.3 |
| 12 | 1 | 1 | 1 | $0 | $14 | $0 | $0.0 | $3.0 | $0.0 |

Note: All figures exclude IPO Allocation, Analyst, and Mutual Fund filings.

Exhibit 12

It is also interesting to rank the Circuits by maximum dollar loss and disclosure dollar loss. The top three circuits in maximum dollar loss in 2003 were the Second Circuit (NY, CT, VT) with $167 billion, the Ninth Circuit (CA, AK, AZ, HI, ID, MT, NV, OR, WA) with $148 billion, and the Fifth Circuit (LA, MS, TX) with $52 billion. The Second and Ninth Circuits each contributed 2 cases to the list of top 5 maximum dollar loss "mega" filings in 2003. The top three circuits in maximum dollar loss in 2002 were the Second Circuit (NY, CT, VT) with $845 billion, the Ninth Circuit (CA, AK, AZ, HI, ID, MT, NV, OR, WA) with $281 billion, and the Third Circuit (DE, NJ, PA) with $214 billion. The Second Circuit filings in 2002 were dominated by three of the top five maximum dollar loss "mega " filings. Historically, the Ninth, Second, and Third Circuits have been the biggest in terms of maximum dollar loss.

[5] Circuit information corresponds to first identified complaint.

## Circuit *continued* and Industry[6]



The top circuits in disclosure dollar loss in 2003 were the Second Circuit (NY, CT, VT) with $16 billion, the Ninth Circuit (CA, AK, AZ, HI, ID, MT, NV, OR, WA) with $8 billion and the Eighth Circuit (AR, IA, MN, MO, NE, ND, SD) with $7 billion. The only disclosure dollar loss "mega" filing in 2003 was made in the Second Circuit. The top circuits in disclosure dollar loss in 2002 were the Second Circuit (NY, CT, VT) with $61 billion, the Third Circuit (DE, NJ, PA) with $43 billion and the Fifth Circuit (LA, MS, TX) with $18 billion. The Second Circuit filings in 2002 were dominated by three of the top five disclosure dollar loss "mega" filings. Historically, the Third, Ninth, and Second Circuits have been the biggest in terms of disclosure dollar loss.

Exhibit 13 shows the breakdown of various measures of the intensity of litigation activity by sector. The top three sectors in 2003 in terms of number of filings were Consumer Non-Cyclical, Communications and Finance/Consumer Cyclical/Industrial. From 1996 to 2002, Communications and Consumer Non-Cyclical had the highest average number of filings with 42 and 41 filings per year, respectively. The lowest numbers of filings were in Basic Materials, Utilities, and Energy sectors during the same period.

Communications, Technology, and Consumer Non-Cyclical sectors had the highest maximum dollar losses in 2003. From 1996 to 2002, the Communications sector (which includes, under Bloomberg's classification, most Internet-related companies) was the biggest contributor to the MDL Index™. Filings in Technology and Consumer Non-Cyclical sectors were second and third in terms of maximum dollar losses.

Consumer Non-Cyclical, Finance and Communications sectors had the highest disclosure dollar losses in 2003. As in 2002, the Consumer Non-Cyclical sector was the biggest contributor to the DDL Index™ in 2003 with $19 billion in disclosure dollar loss. Interestingly, this sector also had the biggest contribution to the disclosure dollar loss in five out of eight years since the adoption of PSLRA. Filings in Consumer Non-Cyclical and Communications sectors represented the greatest disclosure dollar losses from 1996 to 2002. Filings in Technology sector were distant third in terms of disclosure dollar losses.

### Filings by Industry

*Dollars in Billions*

| | 2002 | | | Average (1996-2002) | | | 2003 | | |
|---|---|---|---|---|---|---|---|---|---|
| Industry | Class Actions Filings | Maximum Dollar Loss | Disclosure Dollar Loss | Class Actions Filings | Maximum Dollar Loss | Disclosure Dollar Loss | Class Actions Filings | Maximum Dollar Loss | Disclosure Dollar Loss |
| Consumer Non-Cyclical | 47 | $299 | $80 | 41 | $109 | $38 | 49 | $85 | $19 |
| Communications | 58 | $937 | $41 | 42 | $303 | $36 | 25 | $239 | $8 |
| Finance | 31 | $281 | $33 | 22 | $59 | $10 | 23 | $39 | $10 |
| Consumer Cyclical | 17 | $59 | $7 | 24 | $59 | $8 | 23 | $29 | $6 |
| Industrial | 16 | $97 | $15 | 17 | $36 | $11 | 23 | $39 | $5 |
| Technology | 21 | $81 | $5 | 34 | $114 | $21 | 19 | $66 | $4 |
| Basic Materials | 4 | $3 | $0 | 3 | $2 | $0 | 5 | $39 | $3 |
| Utilities | 19 | $126 | $15 | 4 | $21 | $2 | 5 | $5 | $2 |
| Energy | 12 | $66 | $12 | 5 | $18 | $3 | 3 | $2 | $1 |

Note: All figures exclude IPO Allocation, Analyst and Mutual Fund filings.

Exhibit 13

[6] For the purposes of this analysis, we use the sector classifications provided by Bloomberg. According to Bloomberg, "sector" is the broadest classification that represents 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.

## Classification of Complaints



In addition to filing activity, the Stanford Law School Class Action Clearinghouse in Cooperation with Cornerstone Research also tracks the content of class action complaints. A comparison of Traditional class action case filings in 2003 and those in 2002 suggests that the allegations in class action complaints in 2003 were similar to those in 2002.

- As in 2002, the majority of cases filed in 2003—161 cases or 92 percent—involved Section 10b-5 claims. Section 11 claims (18 cases or 10 percent) and Section 12(2) claims (10 cases or 6 percent) were less common.[7]
- Misrepresentations in financial documents (155 cases or 89 percent) remained the most common allegation in 2003 as in 2002. Also as in 2002, false forward-looking statements (143 cases or 82 percent), and GAAP violations (105 cases or 60 percent) followed as the second and third most common allegations.
- Auditors and underwriters were named as defendants in only a small percentage of all filings both in 2002 and 2003. In 2002, auditors were named as defendants in 14 cases (6 percent). Underwriters were named as defendants in 13 cases (6 percent) in 2002. In 2003, auditors were named as defendants in 9 cases (5 percent). Underwriters were named as defendants in 4 cases (2 percent).
- Plaintiffs alleged that defendants used their "insider" information to benefit from trades of the company's common stock in 58 cases (33 percent) filed in 2003, compared to 59 cases (26 percent) in 2002.
- To the extent that we could identify specific accounting allegations based on information contained in the complaints and/or press releases, those allegations varied greatly from case to case in 2003 as they did in 2002. As in 2002, allegations of overstatement in accounts receivable and improper revenue recognition remained the most common in 2003. 59 cases, or 56 percent of all cases with alleged GAAP violations, had allegations of overstatement in accounts receivable, while 49 cases, or 47 percent of all cases with alleged GAAP violations, had allegations of improper revenue recognition.
- More lawsuits were filed subsequent to bankruptcies in 2003 than in 2002. In 2002, the companies sued had filed for bankruptcy by the time the lawsuits were filed in 10 out of 225 filings (4 percent). In 2003, this number went up to 14 out of 175 filings (8 percent). On the other hand, in an additional 10 lawsuits that were filed in 2002, the companies sued filed for bankruptcy between the time the lawsuits were filed and year-end 2002. In 2003, there were only 5 additional filings in which the companies sued filed for bankruptcy between the time the lawsuits were filed and year-end 2003.

[7] Some filings are included in multiple classifications.

## Allegations



### Allegations Box Score

| | 2002 | | 2003 | |
|---|---|---|---|---|
| | **Number** | **Percentage of total filings** | **Number** | **Percentage of total filings** |
| **General Characteristics** | | | | |
| *10b-5 claims* | 193 | 86% | 161 | 92% |
| *Section 11 claims* | 26 | 12% | 18 | 10% |
| *Section 12(2) claims* | 20 | 9% | 10 | 6% |
| *Auditor Defendant* | 14 | 6% | 9 | 5% |
| *Underwriter Defendant* | 13 | 6% | 4 | 2% |
| **Allegations** | | | | |
| *Misrepresentations in financial documents* | 184 | 82% | 155 | 89% |
| *False forward looking statements* | 152 | 68% | 143 | 82% |
| *GAAP violations* | 131 | 58% | 105 | 60% |
| *Insider Trading* | 59 | 26% | 58 | 33% |
| | **Number** | **Percentage of cases with alleged GAAP violations** | **Number** | **Percentage of cases with alleged GAAP violations** |
| **Specifics of Accounting Allegations** | | | | |
| *Overstatement of accounts receivable* | 73 | 56% | 59 | 56% |
| *Revenue recognition* | 66 | 50% | 49 | 47% |
| *Overstatement of other assets [1]* | 29 | 22% | 24 | 23% |
| *Overstatement of inventory* | 14 | 11% | 13 | 12% |
| *Understatement of liabilities* | 19 | 15% | 10 | 10% |
| *Non-recurring items* | 13 | 10% | 9 | 9% |
| *Estimates* | 8 | 6% | 7 | 7% |
| *Acquisition accounting* | 9 | 7% | 6 | 6% |
| *Derivatives/hedging* | 6 | 5% | 3 | 3% |
| *Other* | 4 | 3% | 12 | 11% |

[1] Defined as all assets other than accounts receivable and inventory.

Exhibit 14

## New Developments The Analyst Cases and The Mutual Fund Cases



### The Analyst Cases

In last year's review of federal securities class action filings, we described the emergence of a new type of cases related to sell-side analyst research. These filings included allegations that analysts issued recommendations and price targets without any "reasonable factual basis" and that they did not disclose "significant material conflicts of interest."

In 2003, Judge Pollack of the S.D.N.Y. dismissed several "Analyst" cases against Merrill Lynch with prejudice.[8] The Judge argued that "the harm suffered by the plaintiffs was not caused by any alleged fraud of the defendants; rather, it was caused by the direct intervention of the crash of the internet bubble in the market for which the defendants were not responsible." We will be updating our readers on developments in the ongoing analyst-related litigation.

### The Mutual Fund Cases

Finally, in 2003 there were a number of filings related to mutual funds. The mutual fund securities lawsuits are related to the ongoing SEC investigations in business practices of mutual fund companies and financial intermediaries. Many of the filings included allegations that mutual fund companies failed to disclose that they allowed "market timing" by selected groups of customers. We will also be updating our readers on developments in the ongoing mutual fund-related litigation.

[8] See http://slw.issproxy.com/securities_litigation_blo/2003/10/judge_pollack_d.html

## Cornerstone Research Publications

The following publications are also available from our offices:

Post-Reform Act Securities Lawsuits: Settlements Reported Through December 2003
*by Laura E. Simmons and Ellen M. Ryan*

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