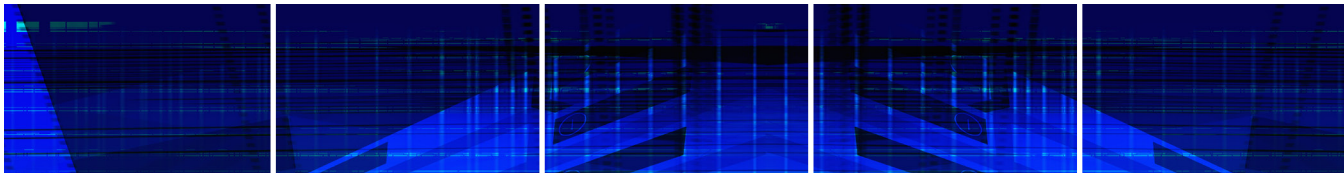


# Securities Class Action Filings

2012 Year in Review





## Research Sample

- The Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research has identified 3,567 federal securities class action filings between January 1, 1996, and December 31, 2012 (<http://securities.stanford.edu/>).
- The sample used in this report is referred to as the “Classic Filings” sample and excludes IPO Allocation, Analyst, and Mutual Fund filings (313, 68, and 25 filings, respectively).<sup>1</sup>
- 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.

1. IPO Allocation, Analyst, and Mutual Fund filings are class actions primarily filed in the early and mid-2000s that alleged improper allocations of stock to institutional customers in initial public offerings, research analyst conflicts of interest, and improper trading in mutual funds, respectively.

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The views expressed in this report are solely those of the authors, who are responsible for the content, and do not necessarily represent the views of Cornerstone Research.

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## OVERVIEW

### Number and Type of Filings

Federal securities fraud class action filing activity slowed sharply in 2012. There were 152 filings in 2012 compared with 188 in 2011. The number of federal securities fraud class actions (also referred to in this report as filings, class actions, or cases) filed was 21 percent below the annual average of 193 filings observed between 1997 and 2011 (Figure 1).

**FIGURE 1: CLASS ACTION FILINGS SUMMARY**

	<b>Average (1997–2011)</b>	<b>2011</b>	<b>2012</b>
Class Action Filings	193	188	152
Disclosure Dollar Loss (\$ Billions)	\$128	\$110	\$98
Maximum Dollar Loss (\$ Billions)	\$669	\$511	\$405

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The following trends are noteworthy for 2012:

- Compared with the past two years, federal filings associated with merger and acquisition (M&A) transactions have fallen sharply. Thirteen cases were filed in 2012 compared with 40 and 43 in 2010 and 2011, respectively. Evidence indicates these actions are now being pursued almost exclusively in state courts after the unusual jump in federal M&A filings in 2010 and 2011.<sup>2</sup>
- The rush of filings against Chinese issuers listed on U.S. exchanges through reverse mergers (Chinese reverse mergers, or CRMs) seen in late 2010 and throughout 2011 has subsided. New CRM cases declined substantially from 31 filings in 2011 to 10 filings in 2012, or only 6.6 percent of all federal securities class actions, compared with 16.5 percent in 2011. The majority of these filings occurred in the first half of 2012, with only four cases recorded in the second half of the year.
- The wave of credit crisis–related filings is over. No new class actions related to the credit crisis were filed in 2012 compared with three such filings in 2011. This marks the first post–credit crisis year with no related filings.
- Filing activity in the second half of 2012 was considerably slower than in the first half of the year, with only 64 filings compared with 88 such filings in the first half of the year. Fourth-quarter activity was particularly slow with only 25 filings, the lowest number of filings in any quarter in the last 16 years.
- There has been an increase over recent years in the percentage of filings in which Rule 10b-5 claims were made. In 2012, 85 percent of filings made Rule 10b-5 claims, whereas only 10 percent and 9 percent made Section 11 or Section 12(2) claims, respectively. The number of filings in which no Rule 10b-5, Section 11, or Section 12(2) claims were made decreased in 2012 to 9 percent, due to the decrease in federal M&A filings.

<sup>2</sup> Cornerstone Research, *Recent Developments in Shareholder Litigation Involving Mergers and Acquisitions, March 2012 Update*, Robert M. Daines and Olga Koumrian.

## OVERVIEW *continued*

### Disclosure Dollar Loss and Maximum Dollar Loss

Consistent with the overall decline in filing activity, the loss of market capitalization associated with filings also decreased in 2012 and remained below the historical averages observed between 1997 and 2011 (Figure 1):

- The total Disclosure Dollar Loss (DDL) of \$98 billion in 2012 represented an 11 percent decrease from 2011 and is 23 percent below the historical average of \$128 billion. There were four “mega DDL” filings in 2012 associated with end-of-class market capitalization losses exceeding \$5 billion, the same number as in 2011. The historical average of such filings is six.
- The total Maximum Dollar Loss (MDL) of \$405 billion in 2012 is 21 percent below the total MDL in 2011 and 39 percent below \$669 billion, the historical average MDL. There were 10 “mega MDL” filings with losses of more than \$10 billion, one more than in 2011. However, the 10 mega MDL filings in 2012 were 43 percent smaller in aggregate than the nine in 2011. Mega MDL filings represented only 55 percent of the MDL Index™ in 2012, while the mega MDL filings in 2011 represented 77 percent of the MDL Index.<sup>3</sup>

### Activity by Industry

Filing activity has continued to be most prevalent against companies in the Consumer Non-Cyclical sector. Of the 49 filings in this sector, the majority were against healthcare, biotechnology, and pharmaceutical companies. Filings against these types of companies have consistently been a sizeable portion of filings in recent years, even as filings in other sectors have declined. There were 33 filings in these three industries in 2012 (22 percent of all filings) compared with 28 in 2011 (15 percent) and 33 in 2010 (19 percent). Overall filings in the Financial sector further decreased in 2012, as financial companies were defendants in 15 filings (10 percent of all filings) compared with 25 (13 percent) in 2011 and 43 (24 percent) in 2010.

An analysis of large public companies listed on the S&P 500 shows that only 3.4 percent were defendants in class actions filed during the year. This is substantially lower than the 2000–2011 average of 6.1 percent and comparable to the 13-year low observed in 2011 (3.2 percent).

### New for the 2012 Year in Review

- **An analysis of the progression and outcome of class actions based on how quickly they were filed.** We have examined the case progression of filings that occurred within 60 days of the alleged class period (faster filings) in comparison to those that took longer than 60 days (slower filings). We observe that the faster filings were more likely to settle early and as a consequence less likely to reach a motion to dismiss. Slower filings were more likely to be dismissed (Figures 6 and 7).
- **Detail on the location of filings against issuers with corporate headquarters outside the United States.** Foreign filings remained high in 2012 even as the number of CRM cases declined (Figure 9).
- **A summary of Dodd-Frank whistleblower tips in comparison to SEC enforcement actions.** We have contrasted the tips received under the whistleblower program in fiscal year 2012 with the SEC’s enforcement actions over the same period (Figures 19 and 20).

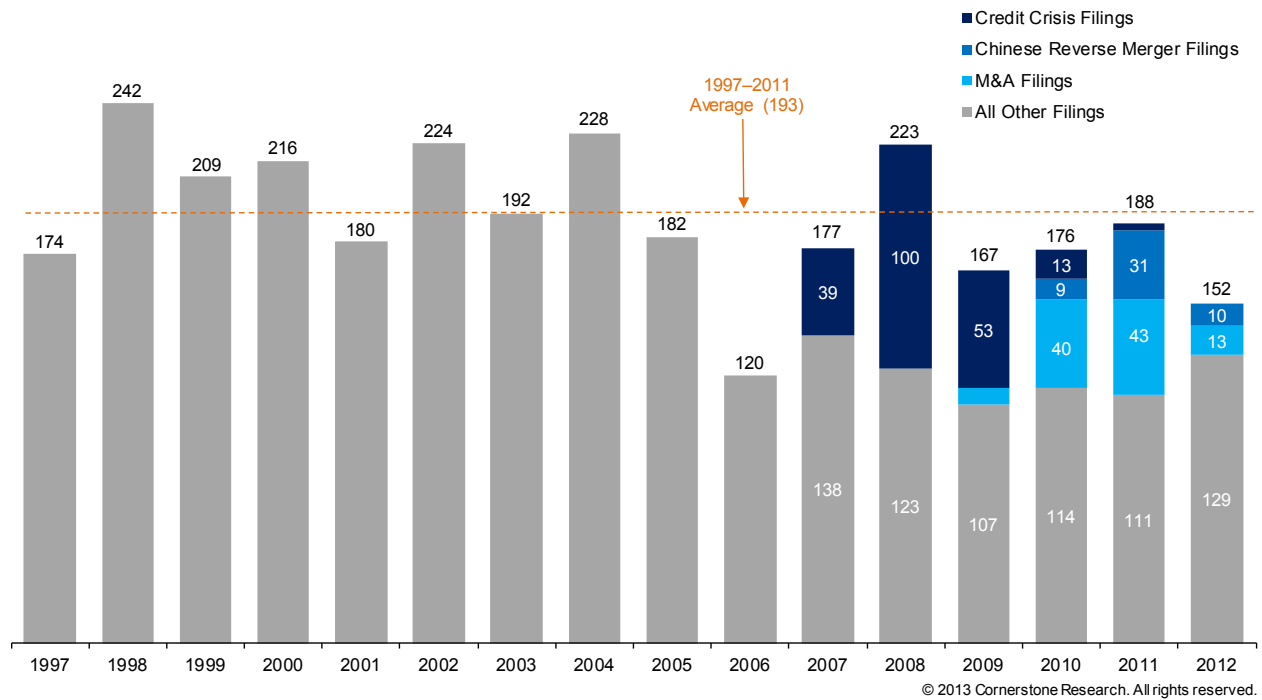
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<sup>3</sup> Disclosure Dollar Loss and Maximum Dollar Loss are defined in the Market Capitalization Losses section of this report.

## NUMBER OF FILINGS

The Class Action Filings (CAF) Index™ reports 152 filings in 2012, a 19 percent decrease from 2011, and the second-lowest level in 16 years. This decrease was largely due to the decline in M&A<sup>4</sup> and CRM filings. On a year-over-year basis, M&A filings decreased by 70 percent and CRM filings declined by 68 percent. This year is also the first year where there were no new filings related to the credit crisis (Figure 2).

**FIGURE 2: CLASS ACTION FILINGS (CAF) INDEX™  
ANNUAL NUMBER OF CLASS ACTION FILINGS  
1997–2012**



Note: There were two cases in 2011 that involved both M&A and CRM filings. These filings were classified as M&A filings to avoid double counting.

<sup>4</sup> Filings were categorized as M&A if they included claims related to mergers and acquisitions and no Rule 10b-5, Section 11, or Section 12(2) allegations.

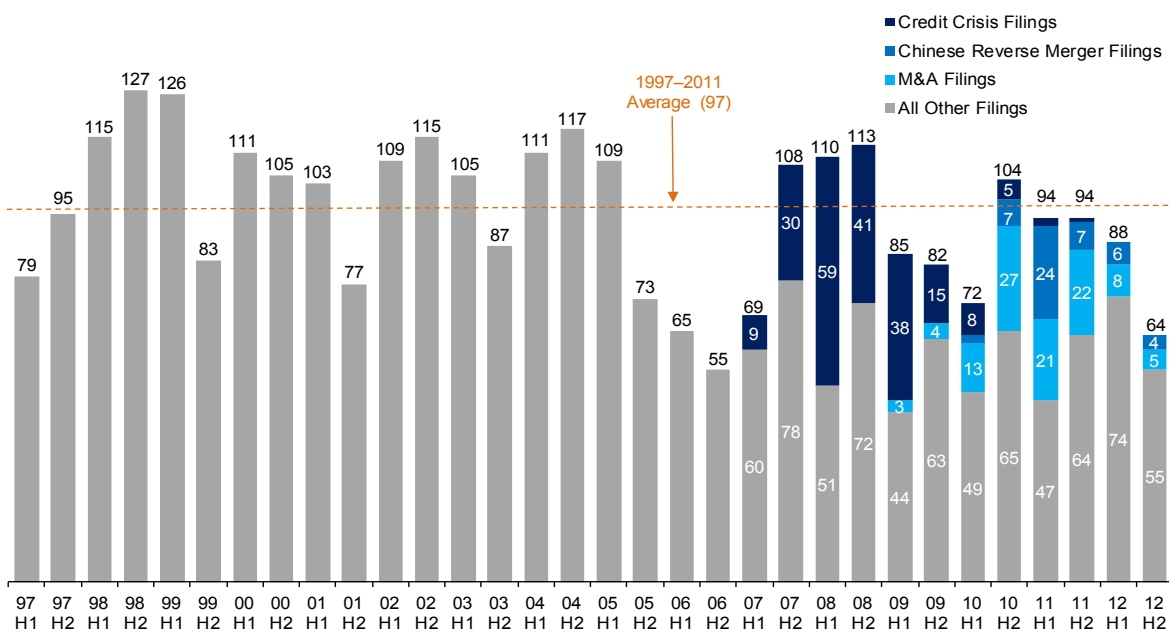
**NUMBER OF FILINGS** *continued*

In the second half of 2012, there was a 27 percent decrease (from 88 to 64) in the number of filings from the first half of 2012. This continues a declining trend since the second half of 2010. Overall filing activity for the second half of the year is lower than all semiannual periods other than the historic low observed in the second half of 2006 (Figure 3).

M&A filings decreased from eight to five between the first and second halves of the year, and CRM filings decreased from six to four. The overall decrease in filings during the second half of 2012 is therefore only partially explained by the drop in M&A and CRM filings, with the balance attributable to the decline in more traditional federal filings from 74 to 55.

There was a substantial reduction in filing activity in the fourth quarter of 2012, in which only 25 filings occurred. In comparison, each of the first three quarters of 2012 had 42, 46, and 39 filings, respectively. The 25 filings in the fourth quarter is the lowest number of filings in any quarter in the last 16 years.

**FIGURE 3: CLASS ACTION FILINGS (CAF) INDEX™  
SEMIANNUAL NUMBER OF CLASS ACTION FILINGS  
1997–2012**



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Note: The CAF Index is a composite index of class action filings, including federal securities class actions, state securities class actions, and federal and state consumer protection class actions. The index is calculated as the sum of the number of filings in each category, weighted by the number of filings in that category relative to the total number of filings. The index is normalized to the 1997-2011 average of 97 filings.



## CLASSIFICATION OF COMPLAINTS

We have tracked allegations contained in class action complaints for the last five years.<sup>5</sup> A comparison of class actions filed in 2012 with those filed since 2008 reveals the following findings (Figure 4):

- The percentage of filings with Rule 10b-5 Claims increased to 85 percent in 2012 from 71 percent in 2011. This is the highest percentage of Rule 10b-5 Claims in the last five years and the second year-over-year increase since 2010.
- The percentage of filings with Section 11 Claims decreased slightly to 10 percent from 11 percent in 2011, and the percentage of filings with Section 12(2) Claims remained unchanged at 9 percent in 2012 from the previous year.
- Underwriter Defendants were named in 8 percent of initial complaints in 2012, a slight decline from 11 percent in 2011 and well below the highs of 17 percent in 2008 and 2009.
- The incidence of initial filings naming an Auditor Defendant decreased slightly to 2 percent in 2012 from 3 percent in 2011.
- The percentage of filings with allegations regarding False Forward-Looking Statements increased to 62 percent from 56 percent last year. This is the highest percentage since 2008.
- The percentage of filings containing allegations of Insider Trading rose from 12 percent in 2011 to 17 percent in 2012.
- The percentage of filings in 2012 alleging violations of generally accepted accounting principles (GAAP) decreased to 23 percent from 37 percent in 2011. This is below the previous five-year low of 26 percent observed in 2010. This decrease is due in part to a decrease in CRM filings from 2011 to 2012. It is notable that SEC enforcement actions related to financial fraud also declined over the same timeframe. Appendix 1 provides more detail on SEC enforcement actions. It is also notable that a sizable portion of tips that the SEC received in 2012 were related to financial disclosure issues (Figure 19).
- In 50 percent of filings in 2012 that contained alleged GAAP Violations, the company had announced that it would restate its financial statements or that its financial statements should not be relied upon.
- In 2012, 20 percent of total filings contained allegations of Internal Control Weaknesses compared with 24 percent in 2011.<sup>6</sup>
- The percentage of filings that contained allegations of Internal Control Weaknesses and referred to an announcement by the company of such weaknesses increased from 6 percent in 2011 to 8 percent in 2012, the highest level in five years.

---

<sup>5</sup> 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.

<sup>6</sup> 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 4: 2012 ALLEGATIONS BOX SCORE**

<b>General Characteristics</b>	<b>Percentage of Total Filings<sup>1</sup></b>				
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Rule 10b-5 Claims	75%	69%	66%	71%	85%
Section 11 Claims	24%	23%	15%	11%	10%
Section 12(2) Claims	18%	25%	10%	9%	9%
No Rule 10b-5, Section 11, or Section 12(2) Claims	3%	1%	23%	23%	9%
Underwriter Defendant	17%	17%	10%	11%	8%
Auditor Defendant	3%	7%	4%	3%	2%
<b>Allegations</b>					
Misrepresentations in Financial Documents	93%	89%	93%	94%	95%
False Forward-Looking Statements	68%	51%	45%	56%	62%
Insider Trading	23%	14%	16%	12%	17%
GAAP Violations <sup>2</sup>	42%	37%	26%	37%	23%
Announced Restatement <sup>3</sup>	10%	10%	7%	11%	11%
Internal Control Weaknesses <sup>4</sup>	13%	14%	23%	24%	20%
Announced Internal Control Weaknesses <sup>5</sup>	4%	4%	3%	6%	8%

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## Note:

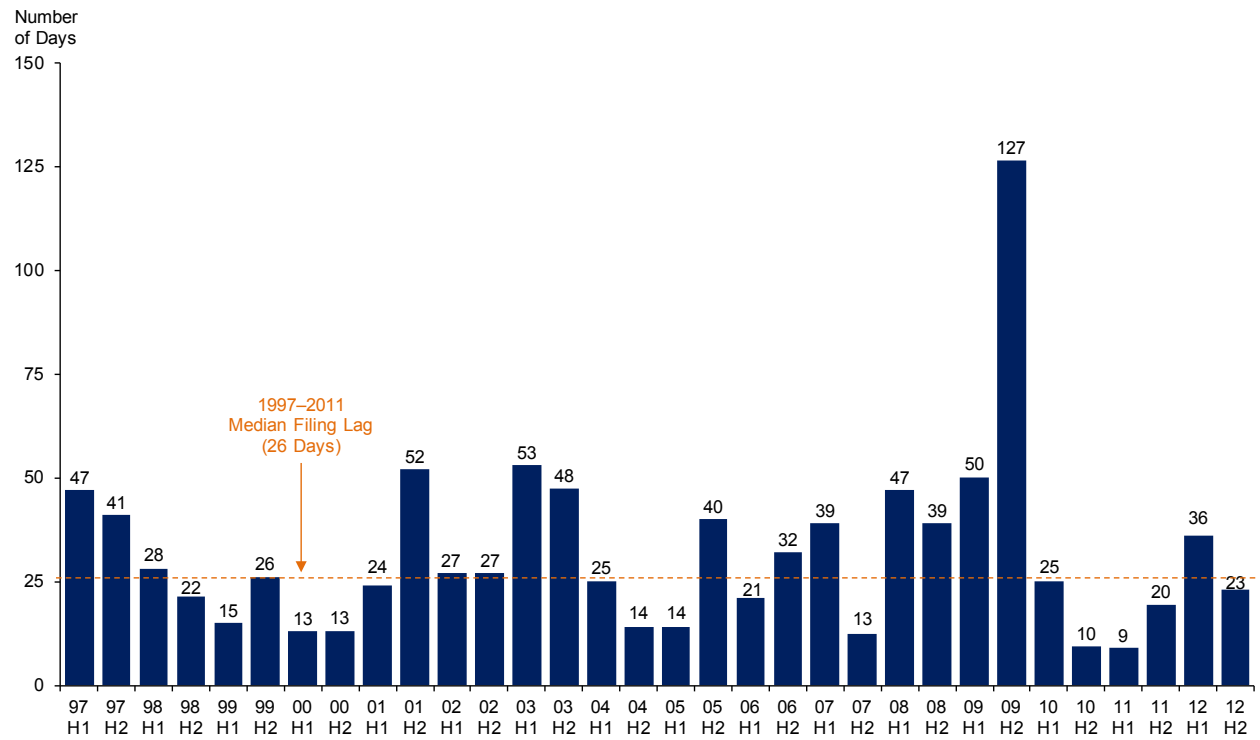
1. The percentages do not add to 100 percent because complaints may include multiple allegations.
2. First identified complaint includes allegations of GAAP Violations. In some cases, plaintiff(s) may not have expressly referenced GAAP; however, the allegations, if true, would represent GAAP Violations.
3. 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 financial statements that should not be relied upon.
4. First identified complaint includes allegations of GAAP Violations and Internal Control Weaknesses over Financial Reporting.
5. 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.

## FILING LAG

In the second half of 2012, the median lag time between the end of the alleged class period and the filing date of the lawsuit fell to 23 days, less than two-thirds of the median lag time of 36 from the first half of the year. This median lag is below the historical median lag time of 26 days (Figure 5).

This decline is partly associated with a decrease in the number of filings with a six-month or longer lag time. There were 10 such filings in the second half of 2012 compared with 17 in the first half of 2012. Historically, there has been an average of 19 such filings per six-month period since 1997.

**FIGURE 5: SEMIANNUAL MEDIAN LAG BETWEEN CLASS-END DATE AND FILING DATE 1997–2012**



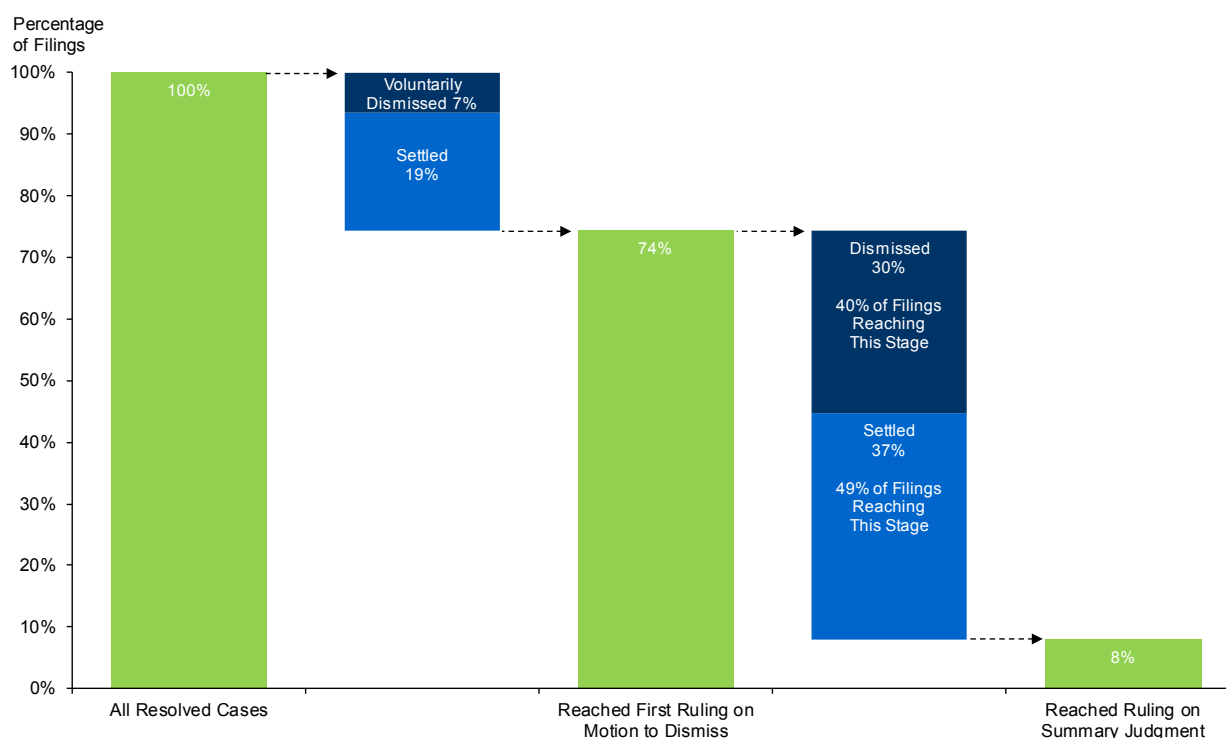
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**FILING LAG** *continued*

Given competition among plaintiff law firms for securities class action business, filings made with a delay are historically less common. One possible explanation of a filing delay is that the filing represents a less attractive business opportunity for plaintiff law firms. To test this hypothesis, we compared the case progression and outcomes of faster filings (those filed 60 days or less after the end of the class period) with slower filings (more than 60 days). We observe that the faster filings were more likely to settle early and as a consequence less likely to reach a motion to dismiss. Overall, slower filings were more likely to be dismissed (i.e., turned out not to be an attractive business opportunity). There was little difference between the groups, however, in the likelihood of reaching a ruling on summary judgment.<sup>7</sup>

The sample included 2,472 filings from 1996 to 2010 with sufficient information to track case progression and resolution.<sup>8</sup> Of these, 1,572 were classified as faster filings and 900 were slower filings. For the faster filings, 26 percent were resolved prior to reaching a first ruling on motion to dismiss with 7 percent voluntarily dismissed and 19 percent settling. Overall, 37 percent of all faster filings were dismissed and 56 percent settled prior to a ruling on summary judgment. Conditional on reaching a first ruling on motion to dismiss, 40 percent of all faster filings reaching this stage were dismissed and 49 percent settled. Only 8 percent of faster filings reached a ruling on summary judgment (Figure 6).

**FIGURE 6: PROGRESSION AND RESOLUTION OF FILINGS OCCURRING 60 DAYS OR LESS AFTER CLASS END (FASTER FILINGS) 1996–2010**



Note: Figures may not add due to rounding.

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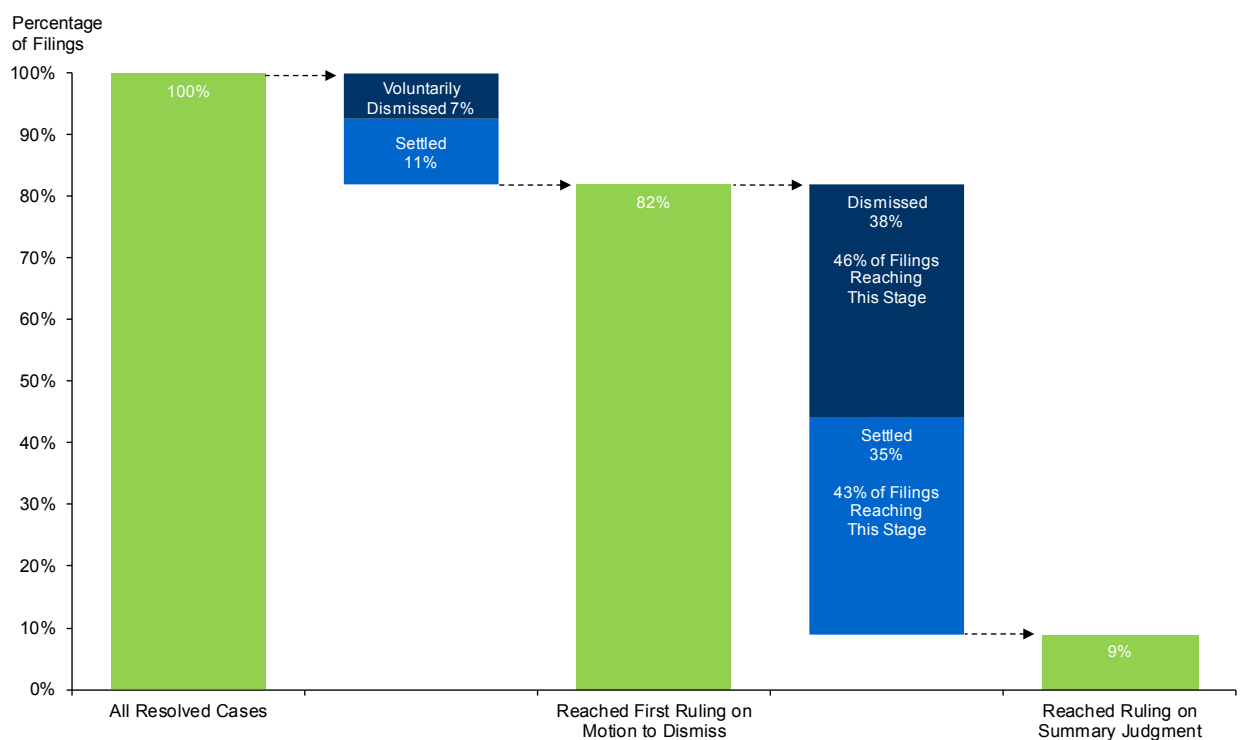
<sup>7</sup> We have found similar results if faster and slower filings are defined based on a 90- or 180-day threshold.

<sup>8</sup> M&A filings were excluded from the sample given the different nature of the allegations.

**FILING LAG** *continued*

For the slower filings in the period 1996 to 2010, 18 percent were resolved prior to reaching a first ruling on motion to dismiss with 7 percent voluntarily dismissed and 11 percent settling. Overall, 45 percent of all slower filings were dismissed and 46 percent settled prior to a ruling on summary judgment. Conditional on reaching a first ruling on motion to dismiss, 46 percent of all slower filings reaching this stage were dismissed and 43 percent settled. Only 9 percent of all slower filings reached a ruling on summary judgment (Figure 7).

**FIGURE 7: PROGRESSION AND RESOLUTION OF FILINGS OCCURRING MORE THAN 60 DAYS AFTER CLASS END (SLOWER FILINGS)  
1996–2010**



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Note: Figures may not add due to rounding.

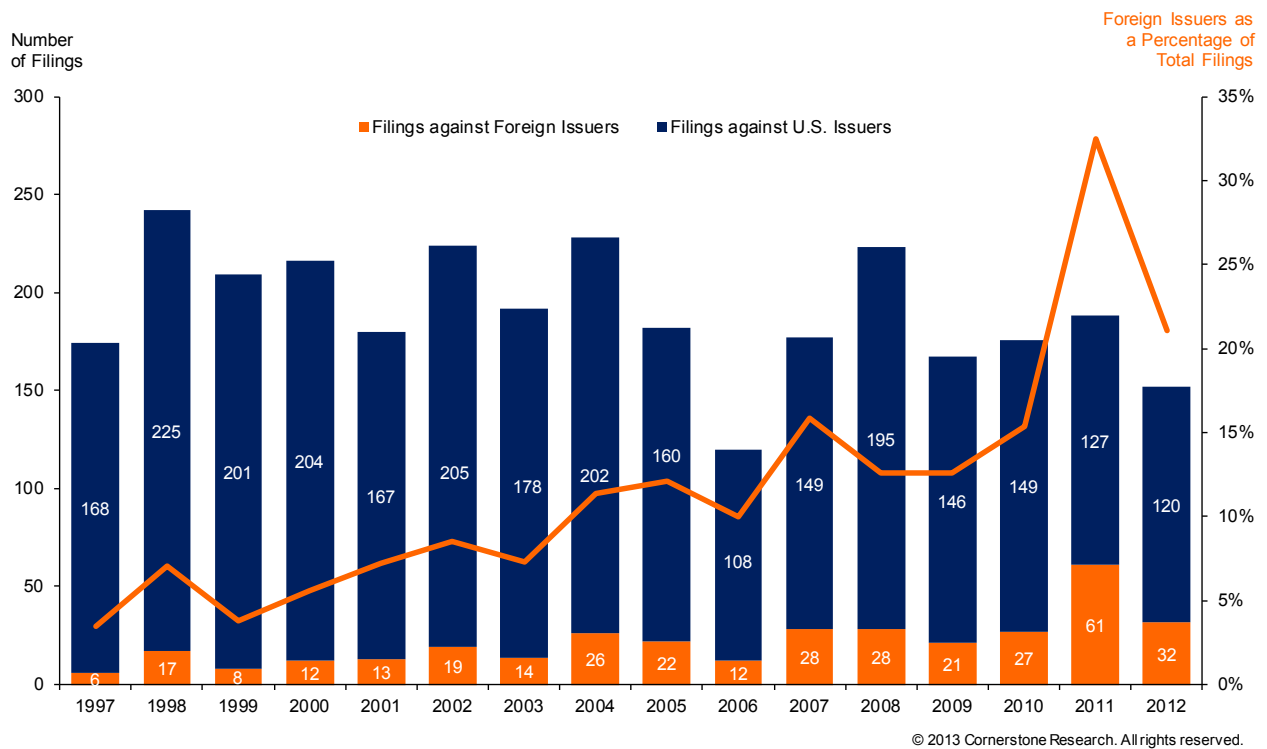
In summary, there was a statistically significant difference in the likelihood of early settlement for faster filings (19 percent) in comparison to the likelihood of early settlement for slower filings (11 percent). The 37 percent cumulative dismissal rate for faster filings was also statistically different from the 45 percent cumulative dismissal rates for slower filings. Moreover, for slower filings that reached a first ruling on motion to dismiss, they were more likely than faster filings at that stage to be dismissed. For each, the differences were statistically significant at a 1 percent level, meaning that there is less than a 1 percent chance that no differences exist between faster and slower filings.

## FOREIGN FILINGS

The Class Action Filings-Foreign (CAF-F) Index™ tracks the number of filings against foreign issuers (companies headquartered outside the United States) relative to total filings. Filings against foreign issuers experienced a 48 percent drop, from 61 such filings in 2011 to 32 in 2012 (Figure 8). The decrease in filings against foreign issuers can be attributed largely to the decrease in the number of CRM filings.

Filings against foreign issuers were 21 percent of total filings in 2012 compared with 32 percent in 2011. While the percentage of foreign filings has declined since last year, it still reflects a level that is greater than all prior years other than 2011.

**FIGURE 8: CLASS ACTION FILINGS-FOREIGN (CAF-F) INDEX™**  
**ANNUAL NUMBER OF CLASS ACTION FILINGS**  
**BY LOCATION OF HEADQUARTERS**  
**1997–2012**



**FOREIGN FILINGS** *continued*

Foreign filings as a percent of total filings in 2012 were higher than the historical average due primarily to filings related to Chinese firms. While the previously discussed CRM filings declined substantially in 2012, non-CRM filings against Chinese firms increased slightly to 5.3 percent of 2012 filings from 4.8 percent in 2011 and remained above the historical average from 1997 to 2009 of 1.1 percent. Filings against European and Canadian companies were each 3.9 percent of 2012 filings. These percentages are slightly higher than the historical averages of 3.3 percent and 2.1 percent, respectively (Figure 9).

**FIGURE 9: FOREIGN FILINGS BY LOCATION OF HEADQUARTERS  
1997–2012**

Region	Number of Filings				Percentage of Total Filings			
	Average 1997–2009	2010	2011	2012	Average 1997–2009	2010	2011	2012
Europe	6	8	11	6	3.3%	4.5%	5.9%	3.9%
Asia	3	13	41	18	1.6%	7.4%	21.8%	11.8%
Chinese Reverse Merger Filings	N/A	9	31	10	N/A	5.1%	16.5%	6.6%
Other Chinese Filings	2	3	9	8	1.1%	1.7%	4.8%	5.3%
Other Asian Filings	1	1	1	0	0.4%	0.6%	0.5%	0.0%
Canada	4	5	5	6	2.1%	2.8%	2.7%	3.9%
Other	4	1	4	2	2.0%	0.6%	2.1%	1.3%
<b>Total Foreign Filings</b>	<b>17</b>	<b>27</b>	<b>61</b>	<b>32</b>	<b>9.0%</b>	<b>15.3%</b>	<b>32.4%</b>	<b>21.1%</b>

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Note: Chinese Reverse Merger Filings and Other Chinese Filings include filings for companies headquartered in Hong Kong.

## HEAT MAPS

The Heat Maps of S&P 500 Securities Litigation™ analyze securities class action activity by industry sector. The analysis focuses on companies in the Standard & Poor’s 500 Index (S&P 500), which comprises 500 large, publicly traded companies in all major sectors. Starting with the composition of the S&P 500 at the beginning of each year, the Heat Maps examine two questions for each sector.

- What percentage of these companies were subject to new securities class actions in federal court during the year?
- What percentage of the total market capitalization of the companies in the S&P 500 was accounted for by companies named in new securities class actions?

Overall, only about one out of every 29 companies (3.4 percent) in the S&P 500 at the beginning of 2012 was a defendant in a class action filed during the year compared with an average of about one out of every 16 companies (6.1 percent) between 2000 and 2011 (Figure 10).<sup>9</sup> The percentage of S&P 500 companies that were defendants in new filings in 2012 is comparable to the 13-year low observed in 2011 (3.2 percent).

**FIGURE 10: HEAT MAPS OF S&P 500 SECURITIES LITIGATION™  
PERCENTAGE OF COMPANIES SUBJECT TO NEW FILINGS  
2000–2012**

	Average 2000–2011	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Consumer Discretionary	5.2%	3.3%	2.4%	10.2%	4.6%	3.4%	10.3%	4.4%	5.7%	4.5%	3.8%	5.1%	3.8%	4.9%
Consumer Staples	3.7%	7.3%	8.3%	2.9%	2.9%	2.7%	8.6%	2.8%	0.0%	2.6%	4.9%	0.0%	2.4%	2.4%
Energy	1.9%	0.0%	0.0%	8.0%	0.0%	4.2%	0.0%	0.0%	0.0%	0.0%	2.6%	7.7%	0.0%	4.5%
Financials	10.8%	4.2%	1.4%	16.7%	8.6%	19.3%	7.3%	2.4%	10.3%	31.2%	13.1%	10.3%	1.2%	3.7%
Health Care	9.4%	2.6%	7.1%	15.2%	10.4%	10.6%	10.7%	6.9%	12.7%	13.7%	3.7%	15.4%	2.0%	3.8%
Industrials	3.3%	2.8%	0.0%	6.0%	3.0%	8.5%	1.8%	0.0%	5.8%	3.6%	6.9%	0.0%	1.7%	1.6%
Information Technology	6.6%	9.7%	18.2%	10.3%	5.2%	3.6%	7.5%	9.0%	2.6%	2.9%	0.0%	3.9%	6.6%	4.3%
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%	0.0%	0.0%
Telecommunication Services	7.9%	23.1%	16.7%	15.4%	8.3%	0.0%	0.0%	0.0%	0.0%	0.0%	11.1%	0.0%	11.1%	0.0%
Utilities	7.0%	5.0%	7.9%	40.5%	2.8%	5.7%	3.0%	0.0%	3.1%	3.2%	0.0%	0.0%	8.8%	3.1%
<b>All S&amp;P 500 Companies</b>	<b>6.1%</b>	<b>5.0%</b>	<b>5.6%</b>	<b>12.0%</b>	<b>5.2%</b>	<b>7.2%</b>	<b>6.6%</b>	<b>3.6%</b>	<b>5.4%</b>	<b>9.2%</b>	<b>4.8%</b>	<b>5.4%</b>	<b>3.2%</b>	<b>3.4%</b>

Legend 0% 0%–5% 5%–15% 15%–25% 25%+

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Note:

1. The chart is based on the composition of the S&P 500 as of the last trading day of the previous year.
2. Sectors are based on the Global Industry Classification Standard.
3. Percentage 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.

<sup>9</sup> In Figures 10 and 11, filings against the same company in the same year were consolidated so that the number and market capitalization of companies involved in new securities litigation reflect unique companies.



**HEAT MAPS** *continued*

Analysis based on market capitalizations also shows 2012 to be well below historical averages—only 4.9 percent of the S&P 500 market capitalization was subject to new filings compared with an average of 11.1 percent between 2000 and 2011 (Figure 11). The 2012 percentage is the lowest observed in the last 13 years. Historically, the larger companies in the S&P 500 have been more likely to be targets of class actions. This pattern continued to a lesser degree in 2012; the percentage of S&P 500 companies subject to filings was less than their share of the S&P 500 market capitalization.

One large firm in the Consumer Staples sector was sued in 2012, representing 14 percent of that sector’s market capitalization. The Financials and Health Care sectors were the second and third most active sectors in 2012, but both sectors saw 2012 filing activity well below their historical averages. There was no filing activity in the Materials or Telecommunication Services sectors in 2012.

**FIGURE 11: HEAT MAPS OF S&P 500 SECURITIES LITIGATION™  
PERCENTAGE OF MARKET CAPITALIZATION SUBJECT TO NEW FILINGS  
2000–2012**

	Average 2000–2011	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Consumer Discretionary	7.1%	6.5%	1.3%	24.7%	2.0%	7.9%	5.7%	8.9%	4.4%	7.2%	1.9%	4.9%	4.6%	1.6%
Consumer Staples	4.6%	34.5%	6.3%	0.3%	2.3%	0.1%	11.4%	0.8%	0.0%	2.6%	3.9%	0.0%	0.8%	14.0%
Energy	2.8%	0.0%	0.0%	1.7%	0.0%	44.9%	0.0%	0.0%	0.0%	0.0%	0.9%	3.3%	0.0%	1.2%
Financials	22.9%	3.3%	0.8%	29.2%	19.9%	46.1%	22.2%	8.2%	18.1%	55.0%	38.3%	31.1%	6.9%	11.0%
Health Care	16.9%	11.0%	5.4%	35.2%	16.3%	24.1%	10.1%	18.1%	22.5%	20.0%	1.7%	33.7%	0.7%	3.8%
Industrials	7.5%	3.9%	0.0%	13.3%	4.6%	8.8%	5.6%	0.0%	2.2%	26.4%	23.2%	0.0%	2.1%	1.2%
Information Technology	9.4%	8.5%	37.6%	5.7%	1.0%	1.5%	12.4%	9.9%	4.2%	1.7%	0.0%	6.8%	11.1%	2.5%
Materials	2.4%	8.6%	0.0%	0.0%	1.4%	0.0%	5.1%	0.0%	0.0%	0.0%	0.0%	12.5%	0.0%	0.0%
Telecommunication Services	12.8%	39.5%	13.3%	19.9%	4.0%	0.0%	0.0%	0.0%	0.0%	0.0%	1.7%	0.0%	28.4%	0.0%
Utilities	8.5%	5.6%	17.4%	51.0%	4.3%	4.8%	5.6%	0.0%	5.5%	4.0%	0.0%	0.0%	5.6%	6.8%
<b>All S&amp;P 500 Companies</b>	<b>11.1%</b>	<b>11.1%</b>	<b>10.9%</b>	<b>18.8%</b>	<b>8.0%</b>	<b>17.7%</b>	<b>10.7%</b>	<b>6.7%</b>	<b>8.2%</b>	<b>16.2%</b>	<b>8.6%</b>	<b>11.2%</b>	<b>5.1%</b>	<b>4.9%</b>

Legend 0% 0%–5% 5%–15% 15%–25% 25%+

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**Note:**

1. 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.
2. Sectors are based on the Global Industry Classification Standard.
3. Percentage 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.

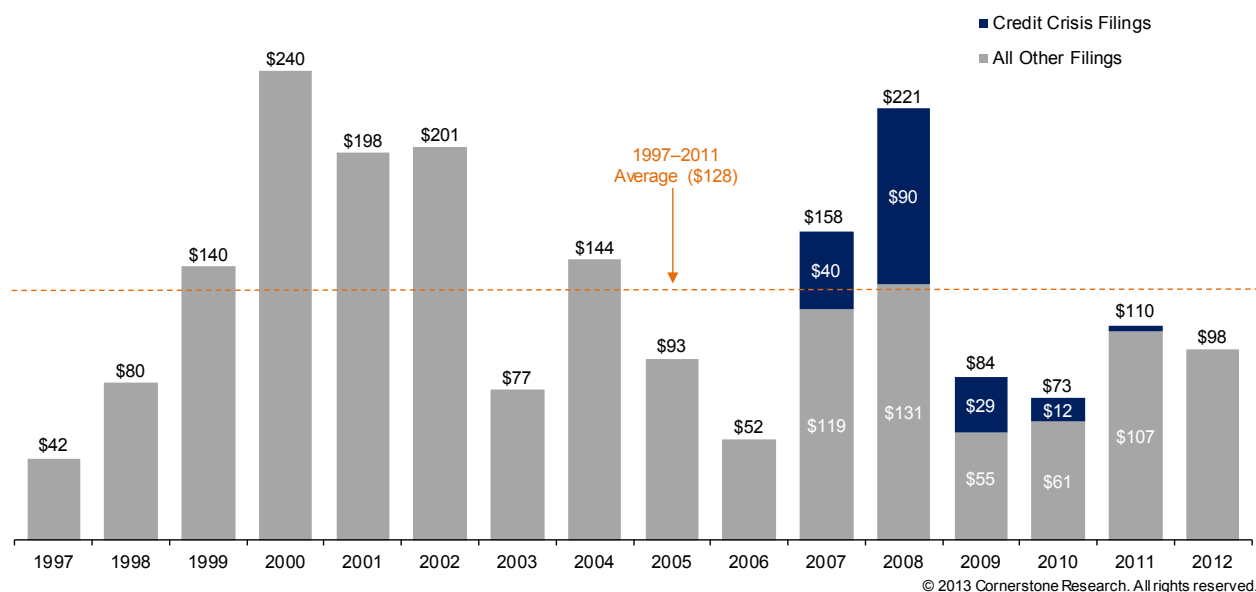
## MARKET CAPITALIZATION LOSSES

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.<sup>10</sup> Declines in market capitalization may be driven by market, industry, and/or firm-specific factors. To the extent that the observed losses reflect factors unrelated to the allegations in class action complaints, indexes 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.<sup>11</sup> 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 information revealed during or at the end of the class period, including information unrelated to the litigation.

The Disclosure Dollar Loss (DDL) Index™ measures the aggregate DDL for all filings over a period of time. There was an 11 percent decrease in the Disclosure Dollar Loss (DDL) Index™ from 2011 to 2012 compared with a 19 percent decrease in the total number of filings. In 2012, the DDL Index™ of \$98 billion remained below the historical annual average of \$128 billion (Figure 12).

**FIGURE 12: DISCLOSURE DOLLAR LOSS (DDL) INDEX™**  
**1997–2012**  
*Dollars in Billions*



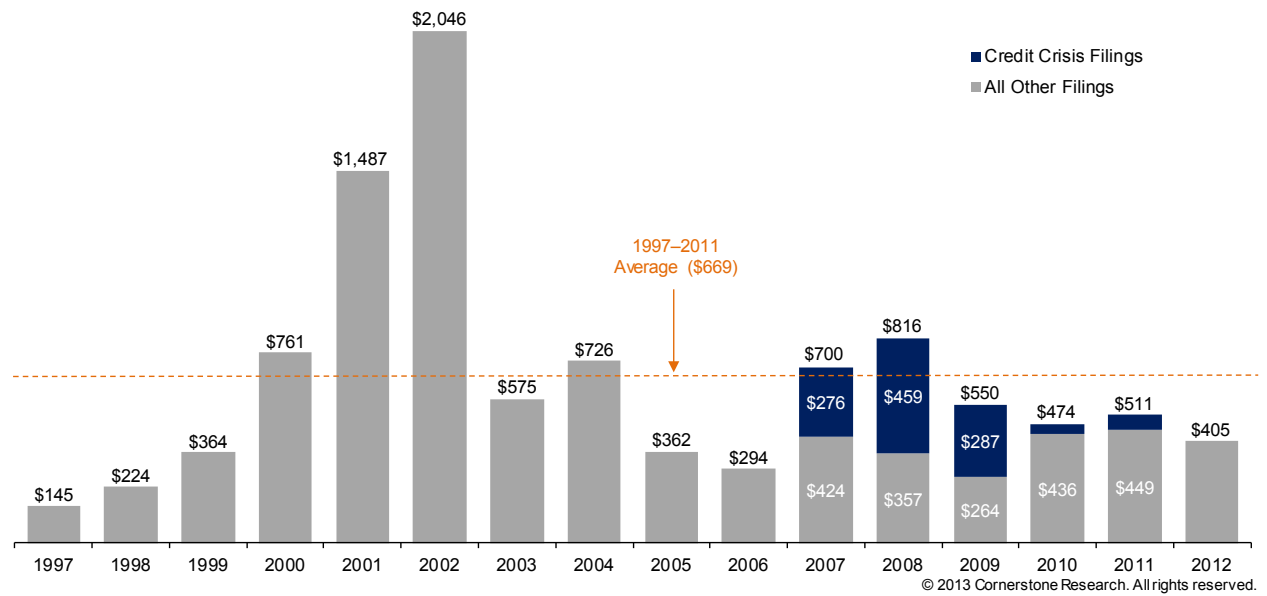
<sup>10</sup> Market capitalization measures are calculated for publicly traded common equity securities, closed-ended mutual funds, and exchange-traded funds where data are available.

<sup>11</sup> 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*

The Maximum Dollar Loss (MDL) Index™ measures the aggregate MDL for all filings over a period of time. The MDL Index of \$405 billion in 2012 was a 21 percent decline from 2011 and was also well below the historical annual average of \$669 billion. It was the fourth consecutive year below the historical average (Figure 13).

**FIGURE 13: MAXIMUM DOLLAR LOSS (MDL) INDEX™**  
**1997–2012**  
*Dollars in Billions*



**MARKET CAPITALIZATION LOSSES** *continued*

The 2012 average DDL per filing of \$769 million was lower than the 2011 average DDL of \$821 million, and lower than the 1997–2011 average of \$800 million. The 2012 average MDL per filing of \$3,162 million was also lower than the 2011 average MDL of \$3,815 million, and lower than the 1997–2011 average of \$4,212 million. Median values for DDL and MDL, however, increased in 2012. The median DDL and median MDL in 2012 (\$150 million and \$653 million, respectively) were greater than the 2011 median DDL and median MDL (\$89 million and \$422 million, respectively). While the typical filing became larger, as evidenced by the increase in the medians, the MDL and DDL of the extremely large filings were smaller, which affected the averages (Figure 14).

**FIGURE 14: FILINGS COMPARISON**

	<b>Average (1997–2011)</b>	<b>2011</b>	<b>2012</b>
Class Action Filings	193	188	152
DDL Total (\$ Billions)	\$128	\$110	\$98
MDL Total (\$ Billions)	\$669	\$511	\$405
<b>Disclosure Dollar Loss</b>			
Average (\$ Millions)	\$800	\$821	\$769
Median (\$ Millions)	\$118	\$89	\$150
Median DDL % Decline	23.0%	22.1%	22.9%
<b>Maximum Dollar Loss</b>			
Average (\$ Millions)	\$4,212	\$3,815	\$3,162
Median (\$ Millions)	\$653	\$422	\$653

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Note: Average and median numbers are calculated only for filings with MDL and DDL data.

From 1997 to 2012, the average DDL for the largest quartile of companies was 17 percent of total market capitalization. The average DDL for the remainder of the sample was 27 percent, indicating that filings for larger companies were more likely to result from smaller stock price declines.

## MEGA FILINGS

An analysis of mega filings, as measured by DDL and MDL, shows that a few mega filings account for a large proportion of total market capitalization losses associated with class actions. In 2012, there were fewer mega filings compared with historical averages, and they were not as large a component of the DDL and MDL Indexes.

### Disclosure Dollar Loss

In 2012, there were four mega DDL filings—filings with a DDL of \$5 billion or more. These accounted for \$43 billion, or 44 percent of the DDL Index, the lowest percentage since 2009. While 2011 had the same number of mega DDL filings, these made up 57 percent of the DDL Index. The decrease in the percentage of the DDL Index accounted for by mega filings is the result of a 31 percent decrease in the value of the average mega DDL filing from \$16 billion in 2011 to \$11 billion in 2012. Mega DDL filings between 1997 and 2011 represented 56 percent of the total DDL Index in that period (Figure 15).

### Maximum Dollar Loss

Mega MDL filings—filings with an MDL of \$10 billion or more—made up more than half of the MDL Index in 2012. There were 10 mega MDL filings in 2012 with a total value of \$224 billion. These accounted for 55 percent of the MDL Index. In 2011, there were nine mega MDL filings, although the value of these was higher at \$396 billion, or 77 percent of the 2011 MDL Index. As above, this decline reflects a decrease in the value of the average mega filing. The average mega MDL filing in 2012 had a value of \$22 billion, a 50 percent decrease from the 2011 average value of \$44 billion. Mega MDL filings between 1997 and 2011 represented 74 percent of the total MDL Index.

**FIGURE 15: MEGA FILINGS**

	Disclosure Dollar Loss (DDL) Mega Filings <sup>1</sup>			Maximum Dollar Loss (MDL) Mega Filings <sup>2</sup>		
	Mega Filings	DDL (\$ Billions)	Percentage of Total DDL	Mega Filings	MDL (\$ Billions)	Percentage of Total MDL
1997–2011 (Average)	6	\$72	56%	14	\$495	74%
2011	4	\$63	57%	9	\$396	77%
2012	4	\$43	44%	10	\$224	55%

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Note:

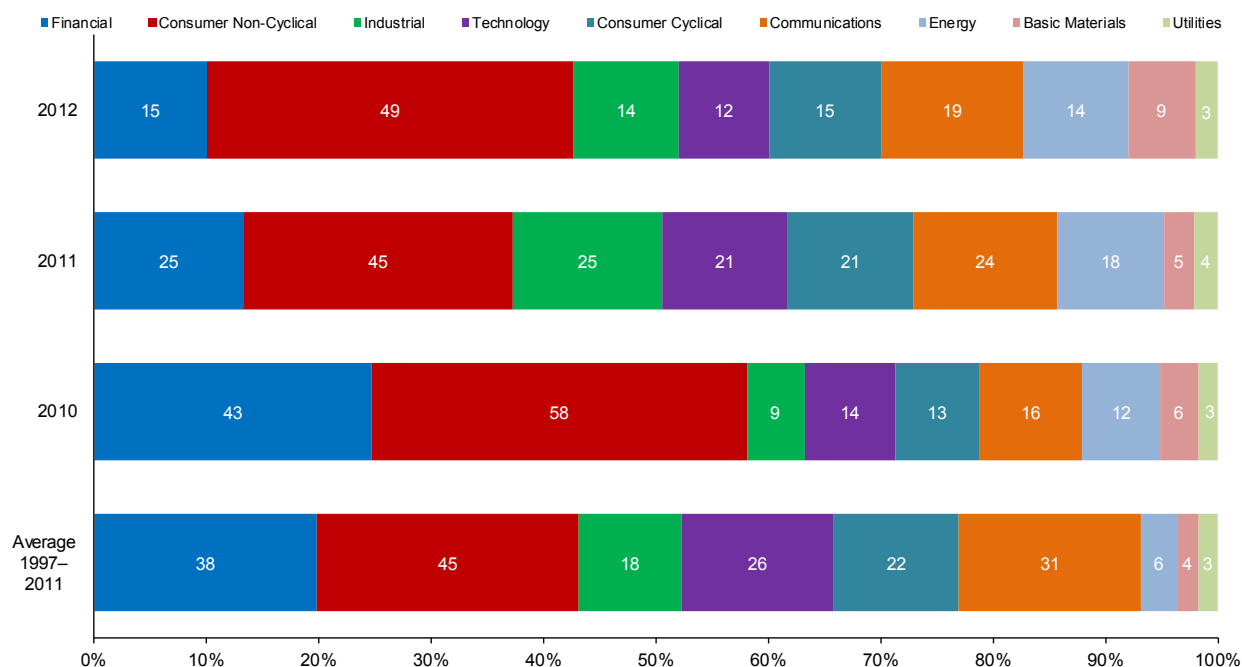
1. DDL Mega Filings have a disclosure dollar loss of \$5 billion or greater.
2. MDL Mega Filings have a maximum dollar loss of \$10 billion or greater.

## INDUSTRY

We provide summary statistics on class actions by industry as defined by the *Bloomberg Industry Classification System*. Filings in the Financial sector continued a decreasing trend with 15 filings in 2012 compared with 43 in 2010 and 25 in 2011 (Figure 16). Filings in the Financial sector were fewer in number than historical averages and a smaller portion of overall filings. In 2012, DDL and MDL for Financial sector filings experienced large drops of 30 percent and 61 percent, respectively, compared with 2011 (Appendix 2).

The Consumer Non-Cyclical sector continued to be the most targeted sector in 2012, with 32 percent of all filings. Healthcare, biotechnology, and pharmaceutical companies comprised 67 percent of all Consumer Non-Cyclical filings, or 33 filings, in 2012 compared with 62 percent, or 28 filings, in 2011. As noted earlier, few companies in the S&P 500 Health Care sector were sued (Figure 10), implying that many smaller firms in the healthcare industry were targets for class actions in 2012. Filing activity in the Industrial, Technology, Consumer Cyclical, and Communications industries declined noticeably from 2011. Only the Basic Materials sector showed an increase in filing activity from 2011. Appendix 2 provides more detail on DDL and MDL for the industry sectors.

**FIGURE 16: FILINGS BY INDUSTRY**



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**Note:**

1. Analysis excludes two filings in the Government and Service sectors in 2010 and two in an unknown sector in 2012. Filings with missing sector information or infrequently used sectors may be excluded in prior years.
2. Sectors are based on the *Bloomberg Industry Classification System*.

## EXCHANGE

More class actions were filed against issuers listed on NYSE or Amex than issuers listed on NASDAQ, a reversal from 2011 and the historical average. In 2012, 73 class actions were filed against firms listed on NYSE or Amex, while 60 class actions were filed against firms listed on NASDAQ (Figure 17). While the number of 2012 filings against issuers on NYSE or Amex increased by 18 percent from 2011, the number of 2012 filings against NASDAQ issuers decreased 43 percent.

**FIGURE 17: FILINGS BY EXCHANGE LISTING**

	Average (1997–2011)		2011		2012	
	NYSE/Amex	NASDAQ	NYSE/Amex	NASDAQ	NYSE/Amex	NASDAQ
Class Action Filings	78	99	62	105	73	60
DDL Total (\$ Billions)	\$93	\$34	\$65	\$45	\$72	\$25
MDL Total (\$ Billions)	\$449	\$218	\$385	\$125	\$298	\$100
Disclosure Dollar Loss						
Average (\$ Millions)	\$1,407	\$369	\$1,345	\$593	\$1,167	\$464
Median (\$ Millions)	\$256	\$84	\$99	\$90	\$239	\$144
Maximum Dollar Loss						
Average (\$ Millions)	\$6,706	\$2,344	\$8,015	\$1,639	\$4,737	\$1,890
Median (\$ Millions)	\$1,306	\$442	\$975	\$410	\$1,404	\$427

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Note: Average and median numbers are calculated only for filings with MDL and DDL data.

The number of filings against issuers not listed on an exchange decreased from 21 to 19 between 2011 and 2012, although such filings were a greater portion of total filings than in previous years. In 2012, 13 percent of filings were against issuers not listed on an exchange compared with 11 percent in 2011 and 8 percent historically.

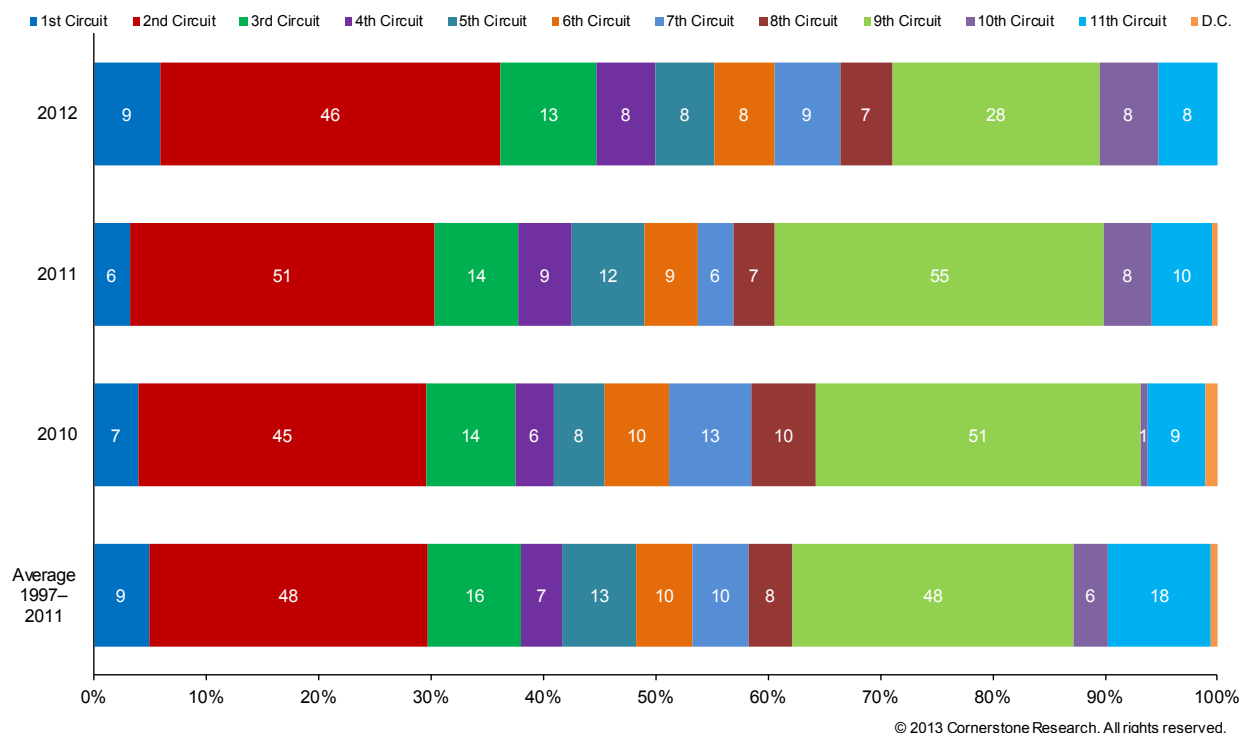
## CIRCUIT

Continuing a long-term trend, the three circuits with the highest number of filings in 2012 were the Second Circuit, the Ninth Circuit, and the Third Circuit, with 46, 28, and 13 filings, respectively (Figure 18). While the Second Circuit and the Ninth Circuit have been the most active circuits in each year since 1996, the number of cases filed in the Ninth Circuit decreased by 49 percent in 2012. The Ninth Circuit was the most active circuit in 2010 and 2011, and the 2012 decline was largely the result of the decline in M&A and CRM filings. Compared with 2011, 22 fewer M&A and CRM class actions were filed in the Ninth Circuit in 2012.

The circuits with the highest total DDL in 2012 were the Second Circuit with \$42 billion, the Ninth Circuit with \$24 billion, and the Sixth Circuit with \$14 billion. The Second Circuit had two of the four mega DDL filings that occurred in 2012, with the Ninth Circuit and Sixth Circuit each having one. The Sixth Circuit, which historically has had a low total DDL, was especially affected by the inclusion of one mega DDL filing.

The four circuits with the highest total MDL in 2012 were the Second Circuit with \$167 billion, the Ninth Circuit with \$132 billion, and the Sixth and Tenth Circuits with \$23 billion each. Of the ten mega MDL filings that were filed in 2012, four originated from the Second Circuit, four from the Ninth Circuit, and one each from the Sixth and Tenth Circuits. Appendix 3 provides more detail on DDL and MDL by circuit.

**FIGURE 18: FILINGS BY COURT CIRCUIT**





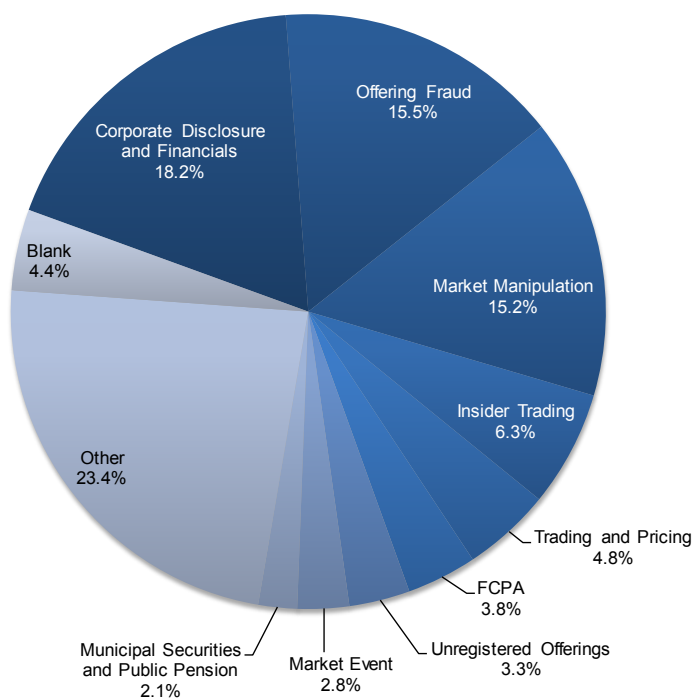
## NEW DEVELOPMENTS

### Dodd-Frank Whistleblower Program

The SEC published its second annual report on the Dodd-Frank whistleblower program in November 2012. This was the first report published that contained a full year of data since the SEC implemented the Securities Whistleblower Incentives and Protection rule, which specifies the terms of the whistleblower program and establishes procedures for submitting tips and applying for awards.<sup>12</sup>

There were 3,001 whistleblower tips received from October 1, 2011, through September 30, 2012. On August 21, 2012, the SEC made its first and only award to date for a whistleblower tip. Whistleblower incentive awards are made in the amount of 10 to 30 percent of the sanctions collected by the SEC. The most common tip categories were Corporate Disclosure and Financials, Offering Fraud, and Market Manipulation (Figure 19). Together, these three categories accounted for nearly 49 percent of the tips received. The SEC received whistleblower tips from all 50 states, the District of Columbia, Puerto Rico, and 49 foreign countries. Tips were most prolific in California, followed by New York, Florida, and Texas. Foreign tips accounted for almost 11 percent of the tips received. The United Kingdom led the foreign countries in whistleblower submissions with 74 tips, followed by Canada with 46 tips.<sup>13</sup>

**FIGURE 19: WHISTLEBLOWER TIPS BY ALLEGATION TYPE  
FISCAL YEAR 2012**



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Note: Figures may not add to 100 percent due to rounding.

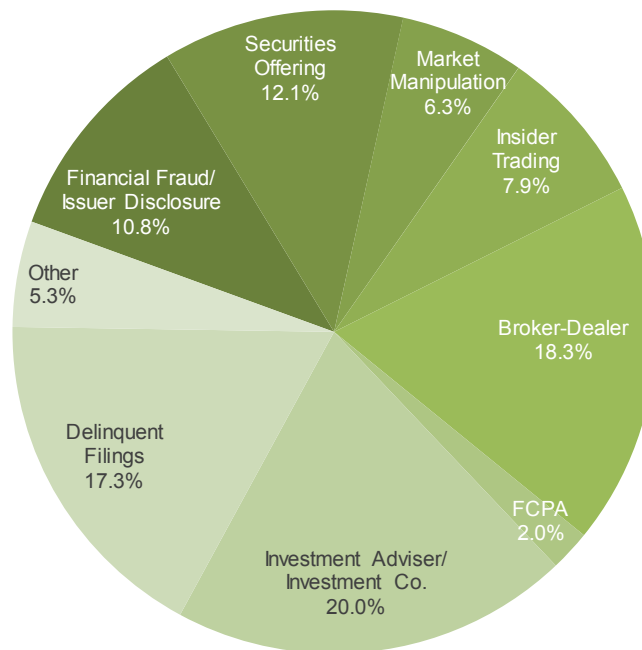
<sup>12</sup> Section 21F of the Securities Exchange Act of 1934, titled “Securities Whistleblower Incentives and Protection,” became effective on August 12, 2011. See <http://www.sec.gov/rules/final/2011/34-64545.pdf>.

<sup>13</sup> “Annual Report on the Dodd-Frank Whistleblower Program, Fiscal Year 2012,” U.S. Securities and Exchange Commission, <http://www.sec.gov/about/offices/owb/annual-report-2012.pdf>.

**NEW DEVELOPMENTS** *continued*

An analysis of the categories of SEC enforcement actions over the same period provides contrast with the categorization of tip allegations (Figure 20). For example, 18.2 percent of all whistleblower tips related to Corporate Disclosure and Financials, while only 10.8 percent of SEC enforcement actions focused on Financial Fraud or Issuer Disclosure. There was also a difference in the tips related to Market Manipulation (15.2 percent) in comparison to enforcement actions (6.3 percent). The inconsistencies may be due to the poor quality of whistleblower tips or it may suggest a future uptick in enforcement actions in these areas. If the latter occurs, we are likely to see an uptick in private securities litigation as well. It is also possible that the differences may be a consequence of different classification systems. Unlike the classifications in Figure 19, which are self-identified by the tipster, classifications in Figure 20 are determined by the SEC's staff.

**FIGURE 20: SEC ENFORCEMENT ACTIONS  
FISCAL YEAR 2012**

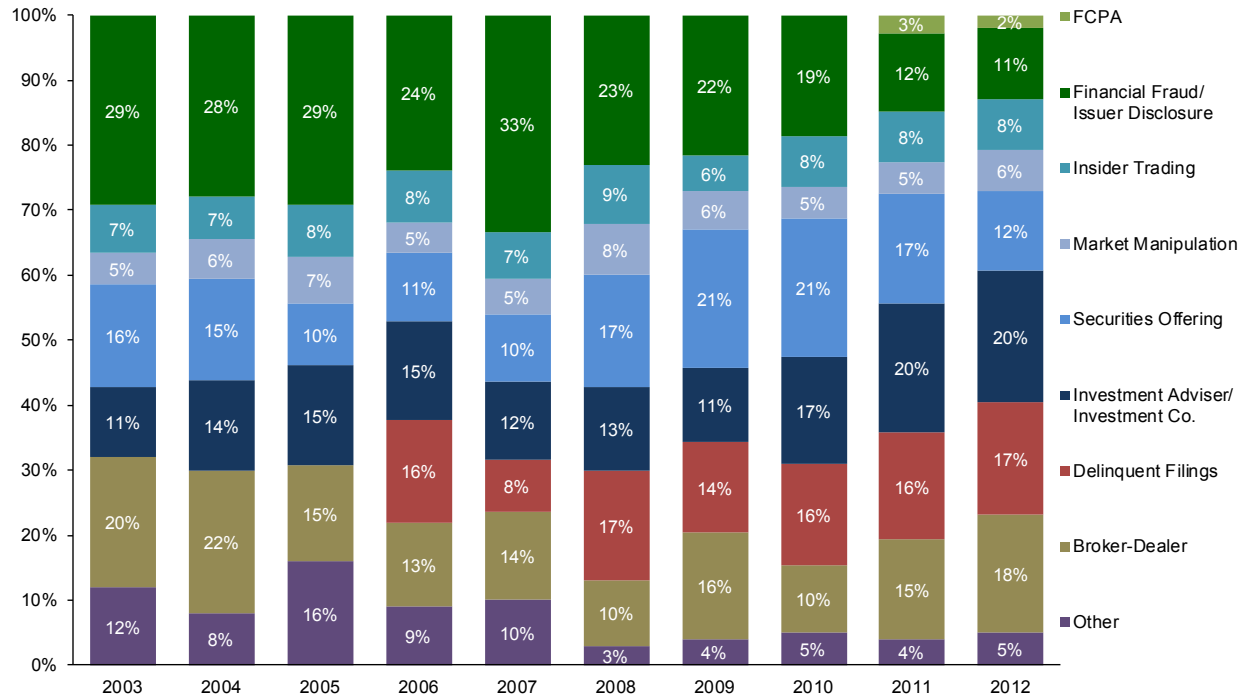


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Source: <http://www.sec.gov/news/newsroom/images/enfstats.pdf>

APPENDIXES

APPENDIX 1: SEC ENFORCEMENT ACTIONS  
FISCAL YEARS 2003–2012



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Note: Figures may not add to 100 percent due to rounding.

APPENDIXES *continued*

## APPENDIX 2: FILINGS BY INDUSTRY

*(Dollars in Billions)*

Industry	Class Action Filings				Disclosure Dollar Loss				Maximum Dollar Loss			
	Average 1997–2011	2010	2011	2012	Average 1997–2011	2010	2011	2012	Average 1997–2011	2010	2011	2012
Financial	38	43	25	15	\$21	\$15	\$33	\$23	\$130	\$65	\$255	\$99
Consumer Non-Cyclical	45	58	45	49	\$37	\$37	\$10	\$25	\$136	\$233	\$40	\$57
Industrial	18	9	25	14	\$14	\$0	\$4	\$2	\$40	\$2	\$15	\$12
Technology	26	14	21	12	\$16	\$1	\$22	\$13	\$81	\$4	\$78	\$98
Consumer Cyclical	22	13	21	15	\$8	\$4	\$7	\$17	\$53	\$79	\$15	\$46
Communications	31	16	24	19	\$26	\$11	\$29	\$10	\$190	\$40	\$76	\$42
Energy	6	12	18	14	\$3	\$2	\$3	\$5	\$19	\$28	\$24	\$33
Basic Materials	4	6	5	9	\$1	\$1	\$3	\$4	\$8	\$23	\$9	\$18
Utilities	3	3	4	3	\$1	\$0	\$0	\$0	\$11	\$1	\$1	\$1
Unknown/Unclassified	-	2	0	2	-	-	-	-	-	-	-	-
<b>Total</b>	<b>193</b>	<b>176</b>	<b>188</b>	<b>152</b>	<b>\$128</b>	<b>\$73</b>	<b>\$110</b>	<b>\$98</b>	<b>\$669</b>	<b>\$474</b>	<b>\$511</b>	<b>\$405</b>

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Note: Average totals may not add due to rounding.

## APPENDIX 3: FILINGS BY COURT CIRCUIT

*(Dollars in Billions)*

Circuit	Class Action Filings				Disclosure Dollar Loss				Maximum Dollar Loss			
	Average 1997–2011	2010	2011	2012	Average 1997–2011	2010	2011	2012	Average 1997–2011	2010	2011	2012
1st	9	7	6	9	\$6	\$2	\$1	\$1	\$22	\$8	\$3	\$4
2nd	48	45	51	46	\$43	\$31	\$47	\$42	\$241	\$198	\$301	\$167
3rd	16	14	14	13	\$20	\$12	\$2	\$0	\$69	\$54	\$3	\$9
4th	7	6	9	8	\$3	\$1	\$1	\$1	\$14	\$4	\$6	\$4
5th	13	8	12	8	\$8	\$1	\$0	\$0	\$44	\$10	\$3	\$2
6th	10	10	9	8	\$7	\$1	\$2	\$14	\$31	\$6	\$13	\$23
7th	10	13	6	9	\$7	\$11	\$2	\$6	\$29	\$43	\$7	\$21
8th	8	10	7	7	\$4	\$3	\$3	\$3	\$15	\$26	\$5	\$12
9th	48	51	55	28	\$21	\$9	\$50	\$24	\$161	\$102	\$162	\$132
10th	6	1	8	8	\$2	\$0	\$0	\$4	\$13	\$0	\$3	\$23
11th	18	9	10	8	\$6	\$3	\$2	\$2	\$27	\$19	\$5	\$7
D.C.	1	2	1	0	\$1	\$0	\$0	\$0	\$4	\$2	\$0	\$0
<b>Total</b>	<b>193</b>	<b>176</b>	<b>188</b>	<b>152</b>	<b>\$128</b>	<b>\$73</b>	<b>\$110</b>	<b>\$98</b>	<b>\$669</b>	<b>\$474</b>	<b>\$511</b>	<b>\$405</b>

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Note: Average totals may not add due to rounding.

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Alexander Aganin  
650.853.1660 or [aaganin@cornerstone.com](mailto:aaganin@cornerstone.com)

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