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Securities Class Action Filings

2009 Mid-Year Assessment

Research Sample

- The Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research has identified 2,970 federal securities class action filings between January 1, 1996 and June 30, 2009.
- These filings include 313 "IPO Allocation" filings, 67 "Analyst" filings, 25 "Mutual Fund" filings, 40 "Options Backdating" filings, 20 "Ponzi" filings, and 181 "Credit Crisis" filings; the last category includes 20 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

A decline in filings activity, the continued prevalence of financial sector issuer-defendants, and an overall decrease in market capitalization losses at class period ends characterize class action filings for the first six months of 2009. First, the number of federal securities class action filings ("filings" or "class actions") declined in the first half of 2009 from 2008 levels and dropped below the historical average after three consecutive semiannual periods of increased activity. The 87 filings in the first half of 2009 represented a 22.3 percent decrease in activity from the 112 filings in each half of 2008 (Figure 1).[1] The drop off in the filing level was even more pronounced in the second quarter of 2009, as only 35 of the 87 filings occurred in this quarter.

Second, the focus on the financial sector continues as financial companies were defendants in 66.7 percent of the filings in the first half of 2009 (58 filings), an increase from 50 percent in 2008 (112 filings). The S&P 500 Securities Litigation Heat Maps™ show that 12.8 percent of the companies in the S&P 500 classified by *Bloomberg* as financial have been named as defendants in the first half of 2009, representing 41.2 percent of that sector's market capitalization (Figures 7 and 8).[2] The majority of the financial sector filings contained allegations related to the credit crisis, as 40 of the 42 credit crisis filings were against financial companies. The majority of the remaining financial sector filings were related to Madoff and other Ponzi schemes, as discussed in the "New Developments" section of this report.

Finally, analysis of overall market capitalization losses associated with 2009 filings reveals a decrease in losses associated with announcements at the ends of class periods and an increase in overall market capitalization losses for the entire class periods. The combination of lower end-of-class market value losses and higher total class losses reflects the overall decline of the market during the class periods. Disclosure Dollar Losses (DDL) totaled $48 billion in the first half of 2009, a 62.8 percent decrease from the second half of 2008 and 30.4 percent lower than the historical average. Maximum Dollar Losses (MDL) were $429 billion, a 22.2 percent increase from the second half of 2008 and 20.5 percent above the historical average.[3]

Figure 1

Class Action Filings Summary: 6-Month Periods

	Average (1997 H1 – 2008 H2)	2007 H2	2008 H1	2008 H2	2009 H1
Class Action Filings	99	107	112	112	87
Disclosure Dollar Loss ($ Billions)	$69	$116	$97	$129	$48
Maximum Dollar Loss ($ Billions)	$356	$505	$518	$351	$429

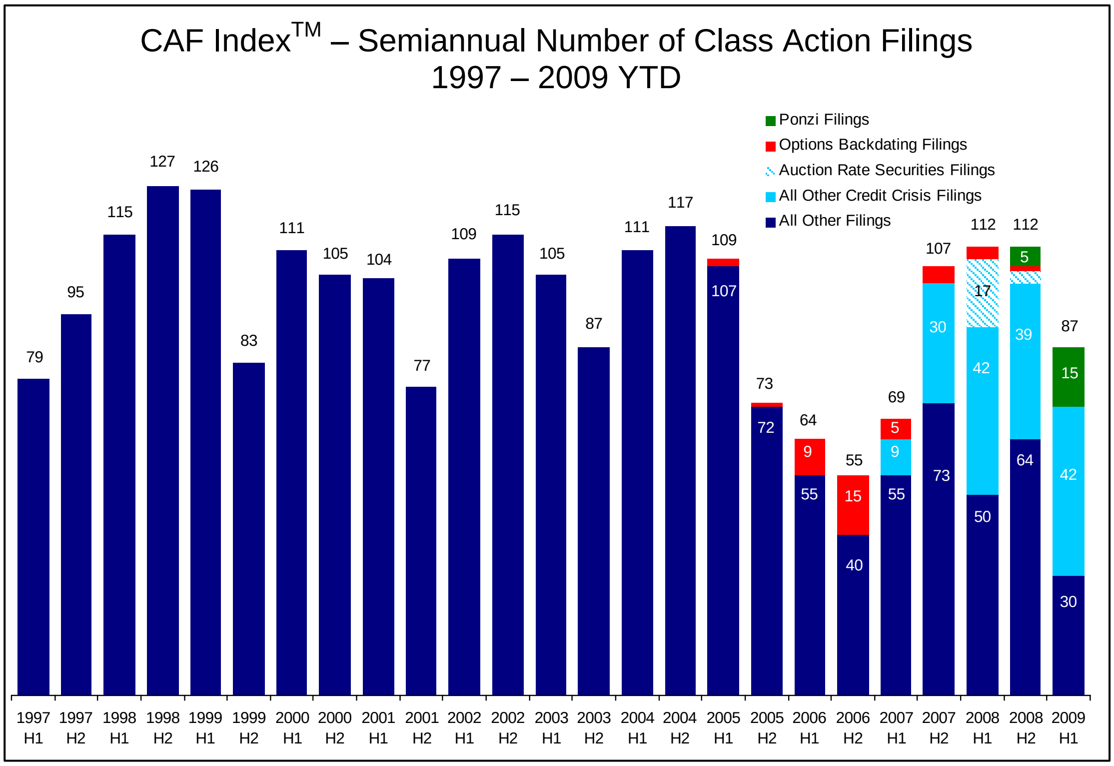
[1] The indices and charts in this report exclude IPO Allocation, Analyst, and Mutual Fund filings. Our filings totals consolidate multiple filings related to the same allegations against the same defendant and therefore represent unique legal actions.

[2] This analysis uses the *Bloomberg* sector classifications. 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.

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

Number of Filings

Figure 2

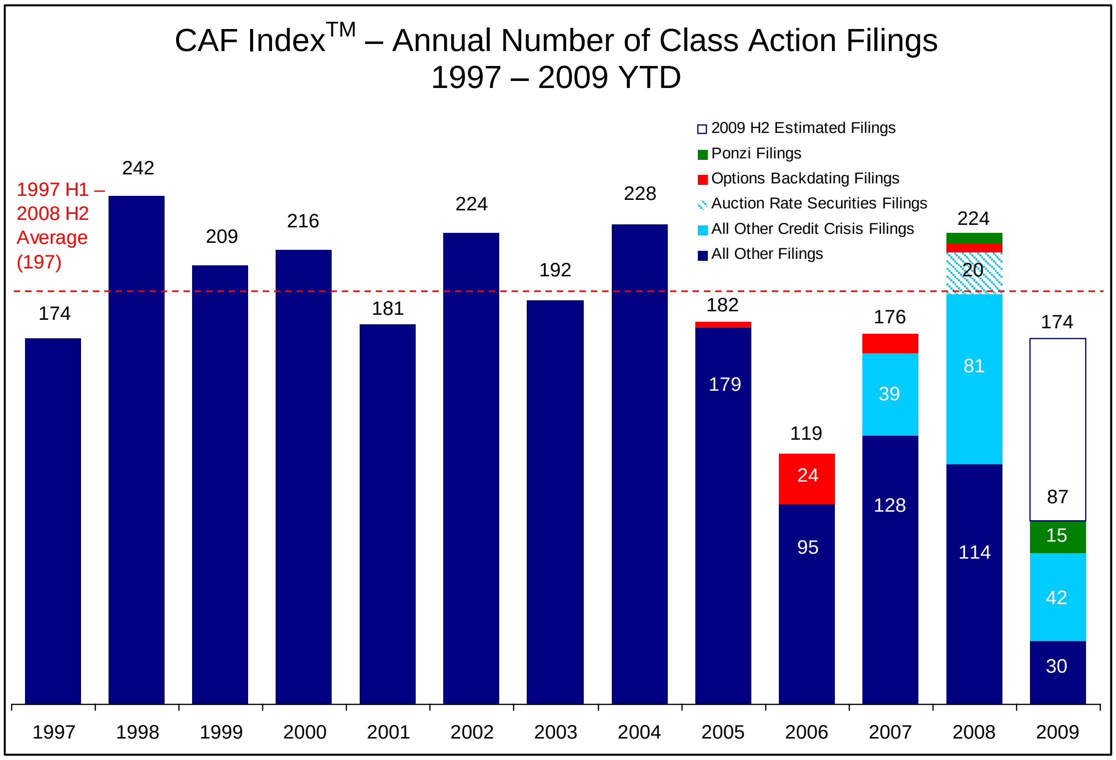


The Class Action Filings Index (CAF Index™) reports 87 filings in the first half of 2009 (Figure 2). The filings in the first half of 2009 continue to include a substantial portion that is related to the credit crisis with 42 such filings between January 1 and June 30. Beginning in December 2008, there were 20 filings related to Ponzi schemes as discussed in the “New Developments” section of this report.

Number of Filings *continued*

If the filing frequency from the first half of 2009 continues, there will be a total of 174 filings in 2009. This total would represent a 22.3 percent decrease from 2008 and an 11.7 percent decrease from the annual average for the 12 years ending December 2008 (Figure 3). The credit crisis filings in the first half of 2009 represent 48.3 percent of total filings in the same period, an increase from 36.2 percent in 2008 (excluding Auction Rate Securities filings) and 22.2 percent in 2007.

Figure 3



Number of Filings
continued

On a quarterly basis, the CAF Index shows a dramatic drop in the number of filings in the second quarter of 2009, as the number of filings decreased 42.6 percent from the fourth quarter of 2008 (Figure 4). Over the same period, there was a similarly dramatic decrease in stock market volatility as measured by the Chicago Board Options Exchange Volatility Index (VIX).[4] On November 20, 2008, the VIX reached its highest level since its 1990 inception. After reaching historically high levels, the VIX index declined 43.7 percent from the fourth quarter of 2008 to the second quarter of 2009.

Despite the unprecedented spike in market volatility in late 2008 and early 2009, quarterly filings remained below peaks achieved in the 1990s and early 2000s when market volatility was considerably lower. The recent decline in market volatility raises the possibility of a return to the subdued levels of filing activity observed from the third quarter of 2005 to the second quarter of 2007.

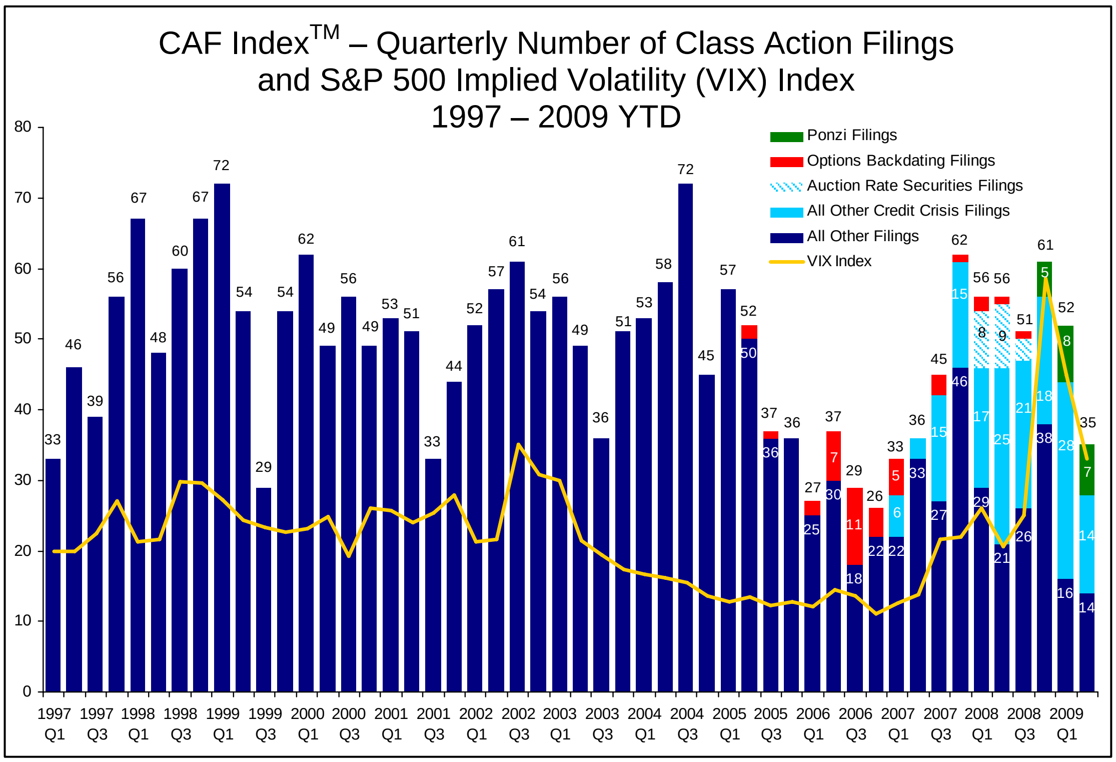


Figure 4

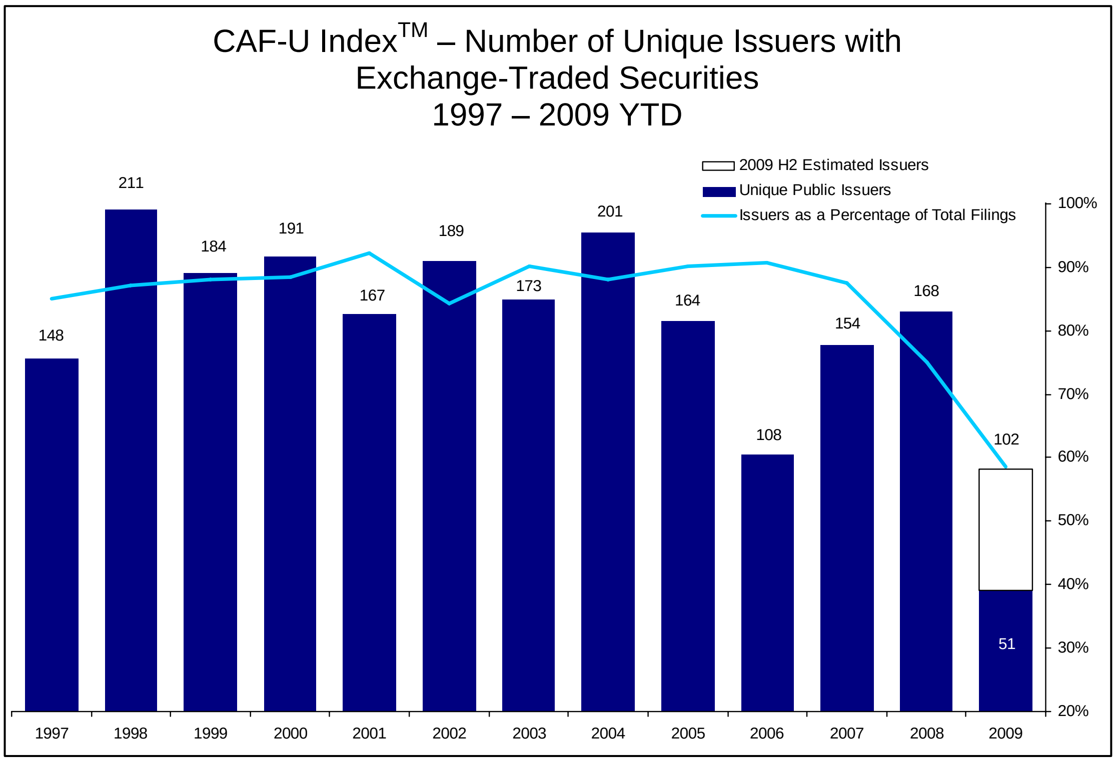
[4] The VIX is a measure of market expectations of near-term volatility conveyed by S&P 500 stock index option prices. See http://www.cboe.com/micro/vix/introduction.aspx.

Number of Filings *continued*

The Class Action Filings-Unique Issuers Index (CAF-U Index™) is a new metric in this report that tracks the number of unique issuers whose exchange-traded securities were involved in class action lawsuits.[5] In the first half of 2009, we observed a decrease in the number of unique issuers targeted by filings (Figure 5). While the total number of filings in 2009 would fall 22.3 percent from 2008 if the filing frequency from the first half continues, the total number of issuers would decrease by 39.3 percent. In addition, as a percentage of the total number of filings, the number of issuers has declined dramatically in the past two years. From 1997 to 2007, this percentage held steady at an average of 88.4 percent. That number has since dropped to 75.0 percent in 2008 and to 58.6 percent in the first half of 2009.

The decrease in the percentage of issuers targeted by class actions was driven by a large number of filings related to non-exchange-traded securities and private companies in the first half of 2009. In addition to the Ponzi filings, which were all against privately held financial institutions, there were a number of other filings related to mortgage-backed securities, preferred stock, and open-ended mutual funds. We also observed a higher number of lawsuits that targeted securities issued by the same company.

Figure 5



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

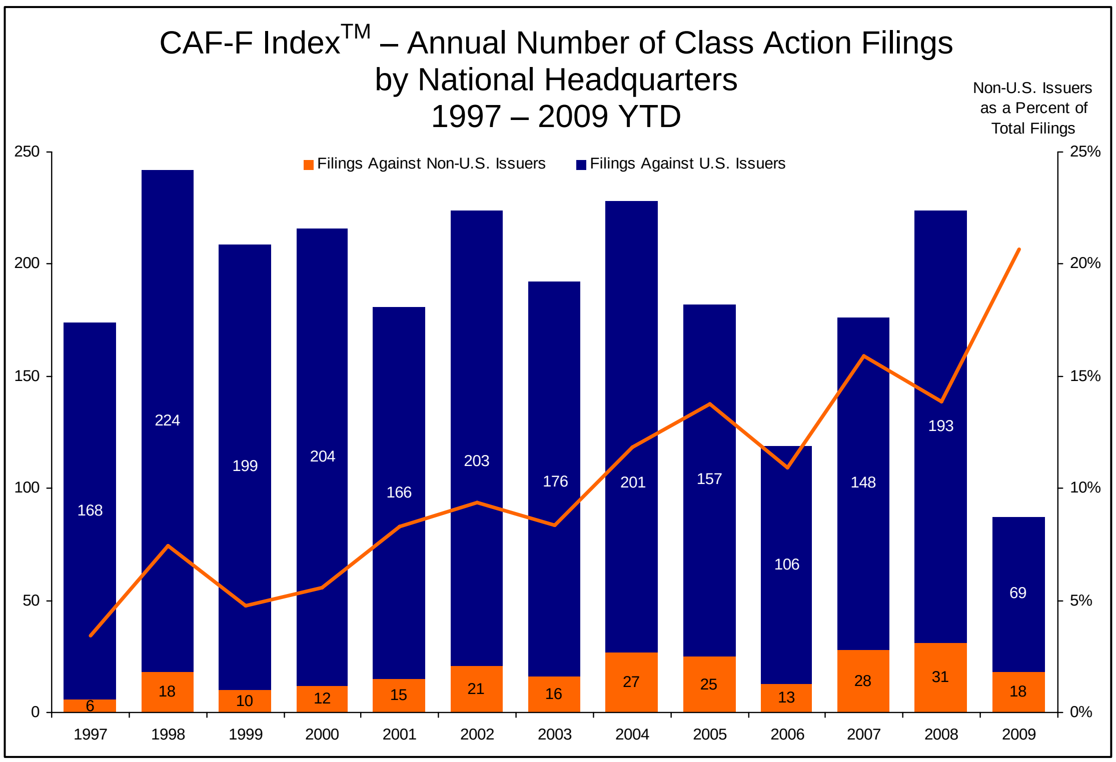
Number of Filings ***continued***

The Class Action Filings-Foreign Index (CAF-F Index™), a second new metric introduced in this report, tracks the number of filings against defendant corporations headquartered outside the United States relative to total filings (Figure 6). The frequency of filings against issuers with non-U.S. headquarters has increased in recent years; during the period 1997 through 2003, 6.8 percent of filings were against issuers with non-U.S. headquarters, while during the period 2004 through 2008, the frequency increased to 13.3 percent of filings. In 2008, there were 31 filings (13.8 percent) associated with issuers with non-U.S. headquarters, the highest annual total in the database. This upward trend has continued in the first half of 2009 with 18 filings against issuers with non-U.S. headquarters, or 20.7 percent of the total.

During this period of increased litigation activity against issuers with non-U.S. headquarters, the share of foreign companies listed on the major U.S. exchanges has actually decreased. Between 2002 and 2008, the percentage of foreign companies on the NYSE and NASDAQ has dropped from 13.3 percent to 10.7 percent.[6]

The filings against issuers with non-U.S. headquarters are concentrated in the financial sector, as 41.9 percent of the filings in 2008 and 77.7 percent of the filings in the first half of 2009 were against financial companies. Prior to 2008, only 13.7 percent of these filings were in the financial sector.

Figure 6



[6] NYSE facts and figures from 2002 through 2008 and NASDAQ foreign listing information from 2002 through June 2008.

Number of Filings *continued*

In the *2008 Year in Review* we introduced the S&P 500 Securities Litigation Heat Maps, a tool for analyzing securities class action activity by industry. We focus on companies in the S&P 500 index, which measures the aggregate stock market value of 500 large companies representing all major industries. We obtain the composition of the S&P 500 index at the start of each year and examine two factors for each industry. First, what share of the companies in the index at the beginning of the year was subject to securities class actions filings in federal courts during the year? Second, of the total market capitalization of the companies in the index at the beginning of the year, what share was accounted for by companies named in securities class action filings?

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

	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%	1.6%
Consumer Non-Cyclical	4.5%	5.6%	9.7%	7.4%	8.4%	9.6%	7.1%	9.3%	7.4%	0.0%
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%	6.3%	13.6%	5.0%	0.0%	9.4%	32.6%	12.8%
Industrial	2.9%	0.0%	6.1%	4.5%	4.5%	4.6%	1.6%	1.6%	3.2%	1.5%
Technology	11.4%	14.8%	5.3%	3.6%	3.6%	5.4%	9.3%	0.0%	6.0%	0.0%
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%**	**4.8%**	**6.0%**	**6.0%**	**3.2%**	**5.2%**	**9.2%**	**2.8%**

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.

Figure 7

Overall, 2.8 percent of companies in the S&P 500 index at the beginning of 2009 were defendants in a federal securities class action filed in the first half of 2009, compared to 9.2 percent in 2008 (Figure 7).[7] The 2.8 percent of S&P 500 companies involved in securities class action lawsuits in 2009 accounted for 7.5 percent of the market capitalization of the S&P 500 index (Figure 8).

The financial industry was again the sector most heavily affected by new securities litigation in the first half of 2009. Of the companies in the S&P 500 index that *Bloomberg* classifies as financial, 12.8 percent were defendants in 2009 filings compared to 32.6 percent in 2008. In terms of market capitalization, these issuer defendants in the first half of 2009 accounted for 41.2 percent of the market capitalization of all financial companies in the S&P 500 index.

[7] In Figures 7 and 8 when we refer to the number and market capitalization of companies involved in litigation, we have consolidated all filings against the same company so that the totals reflect unique companies.

Number of Filings
continued

Figure 8

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

	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%	0.9%
Consumer Non-Cyclical	20.6%	4.7%	22.2%	11.0%	15.3%	11.5%	12.0%	13.9%	11.2%	0.0%
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%	6.5%	22.3%	7.0%	0.0%	18.7%	54.9%	41.2%
Industrial	4.3%	0.0%	12.1%	4.7%	5.7%	6.5%	0.6%	0.3%	24.9%	18.9%
Technology	3.3%	29.5%	2.9%	0.7%	1.6%	13.7%	12.6%	0.0%	13.7%	0.0%
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%**	**5.2%**	**12.5%**	**7.3%**	**5.0%**	**8.3%**	**17.1%**	**7.5%**

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.

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.[8] 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.[9] 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 during or at the end of the class period, including information unrelated to the litigation.

The Disclosure Dollar Loss Index (DDL Index™) tracks the running sum of DDL for all class actions filed in a given half year (Figure 9). The DDL Index shows disclosure losses for the first half of 2009 totaled $48 billion, well below the semiannual average of $69 billion for the 12 years ending December 2008. If this level of disclosure losses continues throughout 2009, DDL for the year will be 57.5 percent lower than in 2008 and 30.4 percent lower than the annual average for the 12 years ending December 2008. This decrease in DDL in 2009 relative to 2008 does not only reflect the lower number of total filings, since the average DDL per filing also decreased by 26.7 percent from 2008 to 2009 (Figure 11).

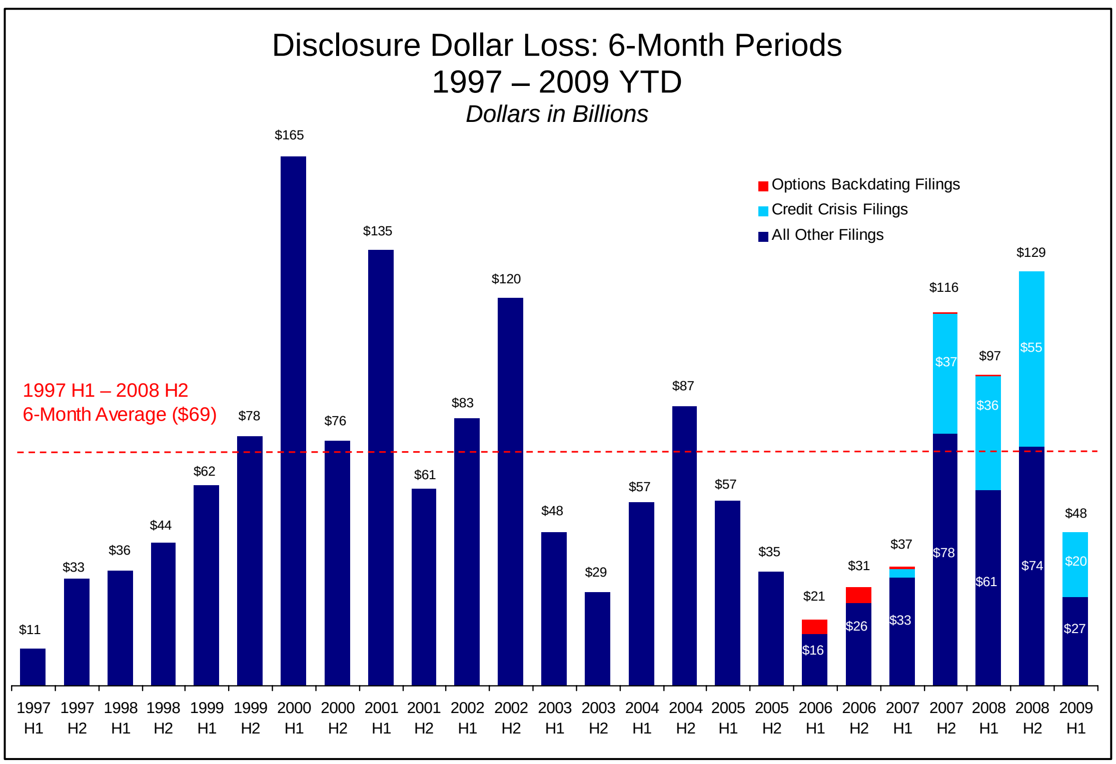


Figure 9

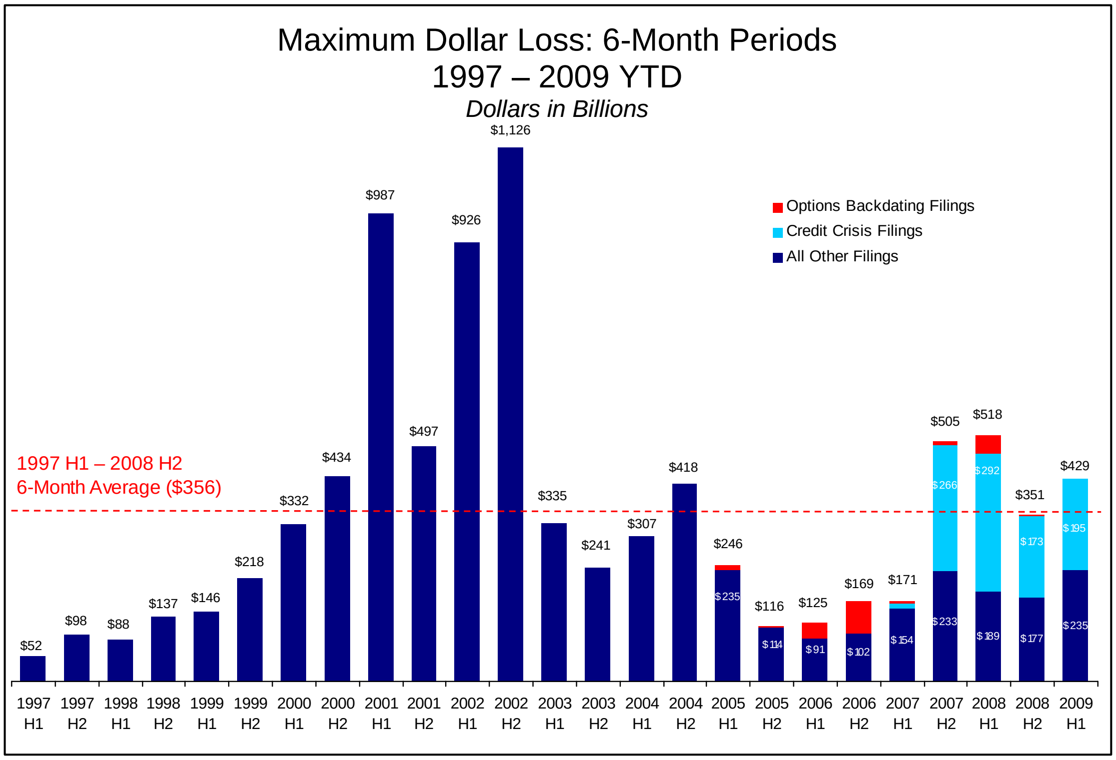
[8] Market capitalization measures are calculated for publicly traded common equity securities only.

[9] 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*

In contrast to the DDL Index, the Maximum Dollar Loss Index (MDL Index™) shows large market value losses for filings in the first half of 2009 (Figure 10). MDL in the first half of 2009 totaled $429 billion, 22.2 percent higher than the second half of 2008 and 20.5 percent higher than the semiannual average for the 12 years ending December 2008. As discussed in the "Mega Filings" section of this report, a small number of filings accounted for the majority of MDL and led to an increase in MDL in the first half of 2009 despite a large decrease in the number of filings.

Figure 10



Market Capitalization Losses *continued*

Figure 11 provides summary statistics for 2009 filings compared to the previous three six-month periods and the historical average over the 1997 through 2008 period. Both average and median DDL were lower in the first half of 2009 from the second half of 2008, but were still higher than the semiannual average for the 12 years ending December 2008. The median MDL of $1.19 billion in the first half of 2009 was 80.3 percent higher than the semiannual average for the 12 years ending December 2008, and the average MDL for the first half of 2009 was 168.3 percent higher than the semiannual average over the same period.

Figure 11

Filings Comparison: 6-Month Periods

	Average (1997 H1 – 2008 H2)	2007 H2	2008 H1	2008 H2	2009 H1
Class Action Filings	99	107	112	112	87
Disclosure Dollar Loss					
Total ($ Millions)	$68,711	$115,822	$96,576	$128,835	$47,823
Average ($ Millions)	$797	$1,182	$1,360	$1,673	$1,226
Median ($ Millions)	$117	$157	$224	$163	$142
Median % DDL Decline	23.5%	20.0%	17.6%	26.2%	27.3%
Maximum Dollar Loss					
Total ($ Billions)	$356	$505	$518	$351	$429
Average ($ Billions)	$4.10	$5.16	$7.30	$4.56	$11.00
Median ($ Billions)	$0.66	$0.65	$1.39	$1.04	$1.19

Mega Filings

An analysis of “mega” filings, as measured by MDL and DDL, shows that most of the total market capitalization losses associated with securities class action filings are accounted for by relatively few filings.

Disclosure Dollar Loss

In the first half of 2009 there were two mega DDL filings—filings with a DDL of $5 billion or more. These two filings accounted for $32 billion of DDL in the first half of 2009 and represented 66.7 percent of DDL in that period. One of the two mega DDL filings was related to the credit crisis. In 2008 there were 12 mega DDL filings, accounting for 72.2 percent of DDL that year, and four of those filings were related to the credit crisis.

Maximum Dollar Loss

In the first half of 2009 there were seven mega MDL filings—filings with an MDL of $10 billion or more. These seven filings accounted for $376 billion of MDL in the first half of 2009 and represented 87.6 percent of MDL in the first half of 2009, the largest share in the previous 12 years. Three of the seven mega MDL filings were related to the credit crisis. By comparison, in 2008 there were 26 mega MDL filings, accounting for 78.4 percent of MDL that year, and 12 of those filings were related to the credit crisis. Some of the recent mega MDL filings were especially large, with eight filings in 2008 and five filings in the first half of 2009 exceeding $25 billion.

Ponzi Filings

On December 11, 2008, Bernard Madoff, founder and president of an investment firm that had billions of dollars under management, was arrested by the FBI for allegedly orchestrating the largest securities fraud in history.[10] Madoff had been running what he described as "a giant Ponzi scheme" through the investment advisory division of his firm, Bernard L. Madoff Investment Securities LLC. Prosecutors estimate that investor losses may be as high as $65 billion.[11] On March 12, 2009, Madoff pled guilty to 11 counts of fraud, money laundering, perjury, and theft.[12] On June 29, 2009, Madoff was sentenced to a maximum sentence of 150 years in prison.[13]

The scrutiny of Madoff and Ponzi schemes resulted in five filings in the second half of 2008 and 15 in the first half of 2009. The majority of these filings are on behalf of investors in Madoff funds, with most lawsuits targeting so-called feeder funds, hedge funds, and other financial intermediaries that invested their clients' money with Madoff. In addition, there were four filings against Ponzi schemes unrelated to Madoff in the first half of 2009. In previous years there have been a small number of filings related to Ponzi schemes, though the concentration of such filings starting in December 2008 is unprecedented.

Bank Failures

In the first half of 2009, banks continued to fail at a greater rate than in past years due to the economic downturn and the credit crisis. By June 30, 2009, 45 U.S. banks had failed and been taken over by the FDIC. Bank failures began to increase dramatically in the second half of 2008 as the economy worsened, and 21 out of 25 bank failures for the year occurred between July and December. By comparison, there were three bank failures in 2007, and none in 2006 or 2005.[14]

While most of the 8,200 U.S. banks are still stable, the number of financial institutions on the FDIC's "problem list" had risen from 76 at the beginning of 2008 to 305 at the end of the first quarter in 2009, the highest total since 1994.[15] Increased bank failures have put a strain on the FDIC, which insures individual deposits up to $250,000; over the next five years, the FDIC expects that losses due to bank failures will reach $70 billion.[16] Only one failed bank was named in a federal securities class action in the first half of 2009, and only 21 of the 45 failed banks were publicly traded.

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[10] David Glovin and David Scheer, "Madoff Charged in $50 Billion Fraud at Advisory Firm (Update3)," *Bloomberg*, December 11, 2008.

[11] Joanna Chung, "Madoff Investigation Is Far from Over," *Financial Times*, March 22, 2009.

[12] Diana B. Henriques and Jack Healy, "Madoff Goes to Jail After Guilty Pleas," *The New York Times*, March 12, 2009.

[13] Jack Healey, "Madoff Sentenced to 150 Years for Ponzi Scheme," *The New York Times*, June 29, 2009.

[14] "Failed Bank List," *Federal Deposit Insurance Corporation*, updated June 30, 2009. http://www.fdic.gov/bank/individual/failed/banklist.html.

[15] "QBP Statistics at a Glance," *Federal Deposit Insurance Corporation*, updated May 27, 2009.

[16] Ben Rooney, "Bank Failure List Tops 45," *CNNMoney.com*, June 26, 2009.

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