

CORNERSTONE RESEARCH

ECONOMIC AND FINANCIAL CONSULTING AND EXPERT TESTIMONY

Securities Class Action Filings

2013 Year in Review



2013 Trends | Class Certification | U.S. Exchange-Listed Companies | IPOs

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EXECUTIVE SUMMARY

NUMBER AND SIZE OF FILINGS

- Plaintiffs filed 166 new federal class action securities cases (filings) in 2013—fourteen more than in 2012. This number is 13 percent below the historical average of 191 filings observed annually between 1997 and 2012. (pages 3–4)
- The total Disclosure Dollar Loss (DDL) of \$104 billion in 2013 increased 7 percent from 2012, but is still 17 percent below the historical average of \$126 billion. (page 5)
- The total Maximum Dollar Loss (MDL) decreased significantly in 2013, falling to its lowest level since 1998. MDL was \$279 billion in 2013—31 percent below the total MDL in 2012 and 57 percent below the historical average MDL. (page 6)

Boosted by a second-half surge, federal securities fraud class action filings increased in 2013.

KEY TRENDS

- Rule 10b-5 claims continued at heightened rates. (page 7)
- In 2013, the median lag time between the end of the alleged class period and the filing date of the lawsuit was among the shortest observed. (page 17)
- For the third consecutive year, the number of filings was low against companies with large market capitalizations, as represented by companies in the S&P 500. (pages 20–21)
- Healthcare, biotechnology, and pharmaceutical companies (included in the Consumer Non-Cyclical sector) together accounted for 21 percent of total filings in 2013. As in 2012, companies in this industry grouping were most commonly the subject of a class action. (page 23)
- Filing activity was more concentrated in the Second and Ninth Circuits in 2013 than in recent years, partially due to relatively few filings in the Fourth, Sixth, Eighth, Tenth, and Eleventh Circuits. (page 25)

FIGURE 1: CLASS ACTION FILINGS SUMMARY

	Average (1997–2012)	2012	2013
Class Action Filings	191	152	166
Disclosure Dollar Loss (\$ Billions)	\$126	\$97	\$104
Maximum Dollar Loss (\$ Billions)	\$652	\$405	\$279

NEW FOR THE 2013 YEAR IN REVIEW

CLASS CERTIFICATION TRENDS

This analysis examines class certification rulings for filings between 2002 and 2010. [\(pages 8–11\)](#)

- Few cases were denied class certification due to a decision based on the merits of the motion.
- Increasing proportions of cases were dismissed between 2002 and 2010 before class certification motions were filed.
- For cases in which class certification motions were filed, 48 percent were granted class certification in part or in full.
- Of the Rule 23(a) and Rule 23(b) reasons for not certifying a class based on the merits of the motion, predominance, typicality, and adequacy were the most commonly cited reasons by the courts.

U.S. EXCHANGE-LISTED COMPANIES

This analysis tracks changes in the number of U.S. exchange-listed companies as one possible explanation for the decline in filings in recent years. [\(pages 12–14\)](#)

- The number of unique companies listed on the NYSE and NASDAQ has declined by 46 percent since 1998.
- Between 1998 and 2012, merger and acquisition (M&A) deals greatly exceeded the number of IPOs each year.

RECENT INITIAL PUBLIC OFFERING TRENDS

This analysis examines the number and size of companies undertaking an initial public offering (IPO) since 2008. [\(pages 15–16\)](#)

- There were 150 IPOs on major U.S. exchanges in 2013—the highest number in the last six years.
- An increased number of larger companies have undertaken IPOs in recent years, particularly in 2013.

NEW DEVELOPMENTS

- *Halliburton Co. v. Erica P. John Fund* [\(page 26\)](#)
- *In re BP p.l.c. Securities Litigation* [\(page 27\)](#)

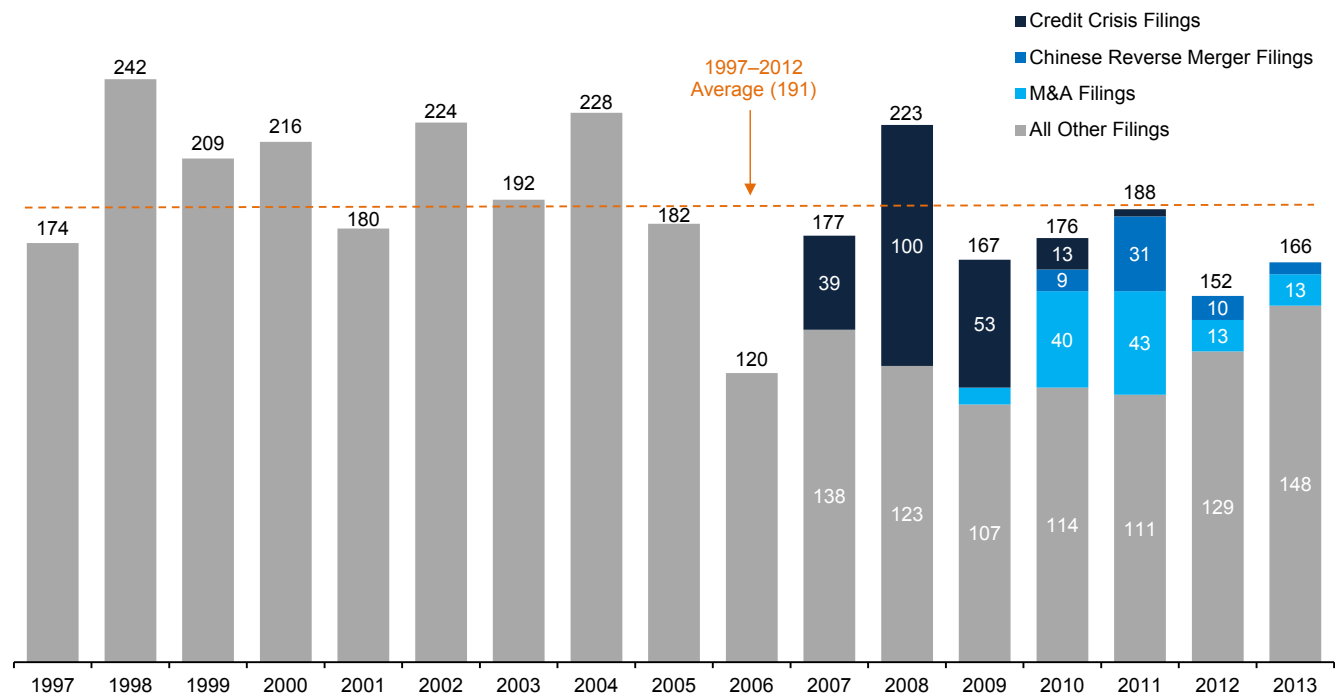
NUMBER OF FILINGS

KEY FINDINGS

- The 166 reported filings in 2013 represented a 9 percent increase over 2012.
- Since 2008, the number of annual filings has not exceeded the 1997–2012 historical average of 191 filings.
- M&A filings in federal courts have subsided in the last two years but have not completely ceased.
- Recent years have seen various waves of new types of class action filings, such as auction-rate security cases, M&A cases, and Chinese reverse merger (CRM) cases; as well as numerous filings related to the financial crisis. These waves have subsided or ended and the past two years have been characterized by the absence of any new types of filings.

2013 marked the third lowest annual number of filings in the past seventeen years.

FIGURE 2: CLASS ACTION FILINGS (CAF) INDEX™
ANNUAL NUMBER OF CLASS ACTION FILINGS
1997–2013



Note: There were two cases in 2011 that were both an M&A filing and a Chinese reverse merger company. These filings were classified as M&A filings in order to avoid double counting.

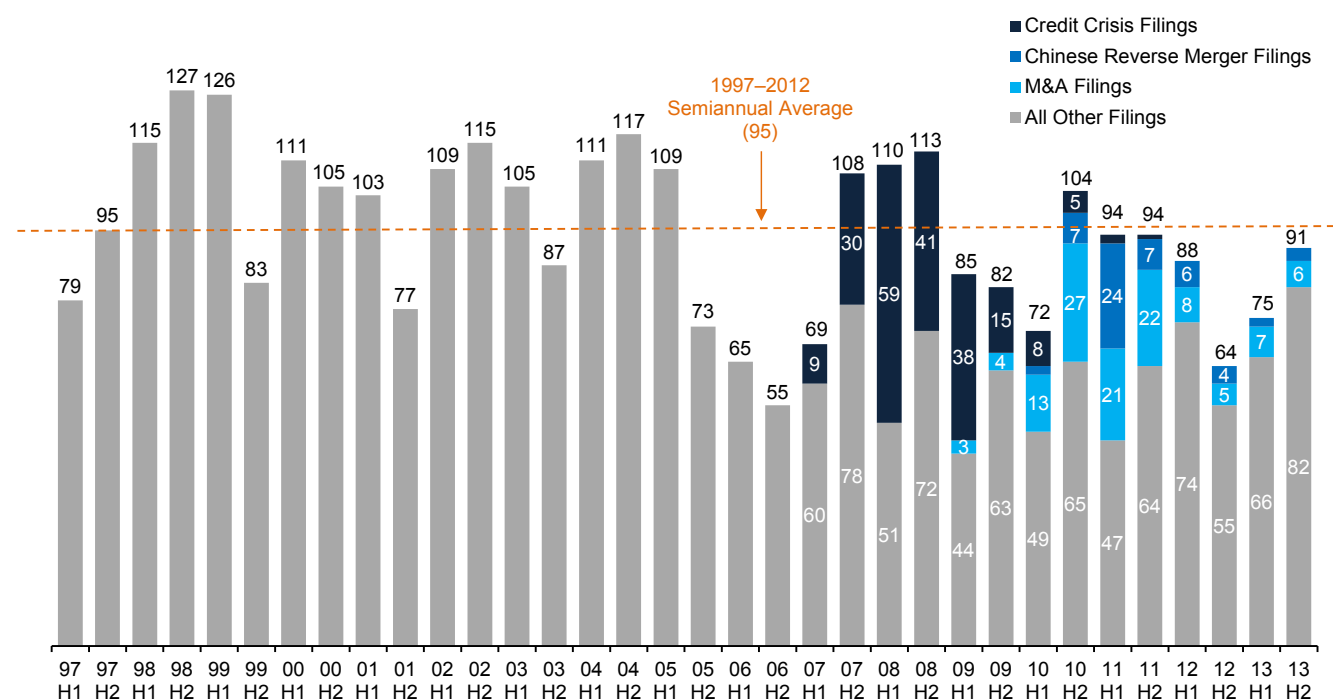
NUMBER OF FILINGS *continued*

KEY FINDINGS

- In the second half of 2013, there was a 21 percent increase in the number of filings from the first half of 2013.
- Filings excluding M&A and CRM cases increased by 24 percent from sixty-six filings in the first half of 2013 to eighty-two in the second half of 2013.
- The total number of filings in the second half of 2013 remained below the 1997–2012 historical semiannual average of ninety-five.
- Activity was the highest in the third quarter, with forty-eight class action filings.
- The number of both M&A and CRM filings was similar in the first and second halves of 2013.

Filing activity picked up in the second half of 2013, with the largest number of non-M&A filings in recent years.

FIGURE 3: CLASS ACTION FILINGS (CAF) INDEX™
SEMIANNUAL NUMBER OF CLASS ACTION FILINGS
1997–2013



Note: There were two cases in 2011 that were both an M&A filing and a Chinese reverse merger company. These filings were classified as M&A filings in order to avoid double counting.

MARKET CAPITALIZATION LOSSES

Disclosure Dollar Loss (DDL) Index™

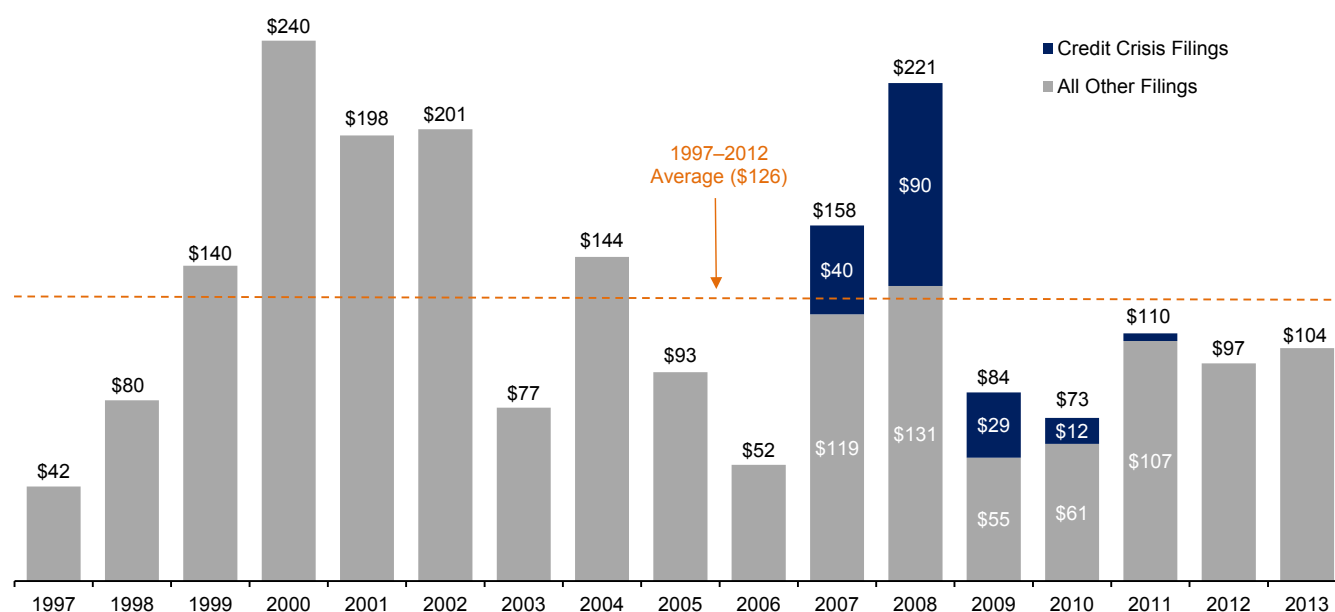
This index measures the aggregate DDL for all filings over a period of time. DDL is the dollar value change in the defendant firm's market capitalization between the trading day immediately preceding the end of the class period and the trading day immediately following the end of the class period. DDL should not be considered an indicator of liability or measure of potential damages. See the glossary for additional discussion on market capitalization losses and DDL.

In the last five years, the DDL Index has not exceeded the historical average.

KEY FINDINGS

- The DDL Index increased 7 percent from 2012 to 2013.
- DDL levels have remained relatively flat for three consecutive years.
- Despite the relatively large number of CRM filings in the last four years, these filings have accounted for less than 1 percent of the DDL Index over this period. CRM filings tend to involve smaller issuers.

FIGURE 4: DISCLOSURE DOLLAR LOSS (DDL) INDEX™
1997–2013
 (Dollars in Billions)



MARKET CAPITALIZATION LOSSES *continued*

Maximum Dollar Loss (MDL) Index™

This index measures the aggregate MDL for all filings over a period of time. 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. MDL should not be considered an indicator of liability or measure of potential damages. See the glossary for additional discussion on market capitalization losses and MDL.

The MDL Index
fell to its lowest
level since 1998.

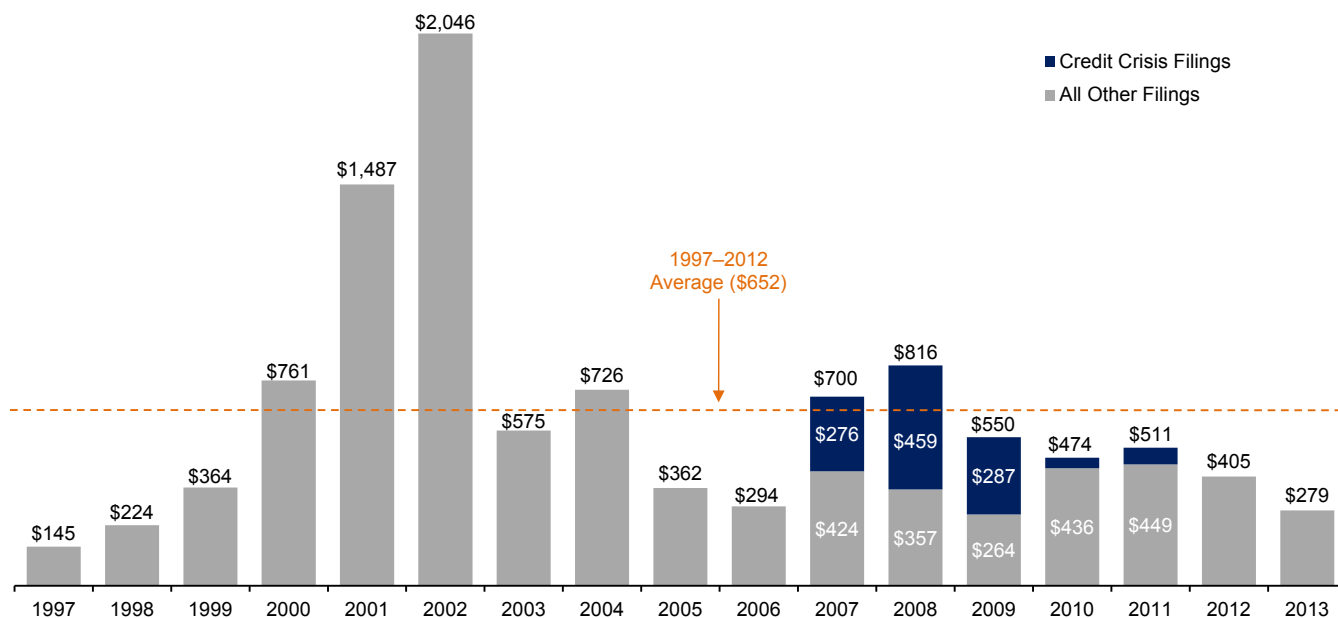
KEY FINDINGS

- The MDL Index of \$279 billion in 2013 represents a 31 percent decline from \$405 billion in 2012. This low level is perhaps not surprising given the widespread, large positive returns in the U.S. equity markets in 2013.
- MDL levels have remained below the 1997–2012 historical average for the fifth consecutive year.

FIGURE 5: MAXIMUM DOLLAR LOSS (MDL) INDEX™

1997–2013

(Dollars in Billions)



Note: Numbers may not add due to rounding.

CLASSIFICATION OF COMPLAINTS

KEY FINDINGS¹

- The percentage of filings with Rule 10b-5 claims remained essentially unchanged in 2013 at 84 percent.
- The percentage of filings with Section 11 and/or Section 12(2) claims continued a five-year decline.
- Since 2009, underwriters and auditors have been less frequently named as defendants.²
- Allegations of misrepresentations in financial documents were nearly universally included in filings in 2013. Allegations regarding false forward-looking statements were made in the majority of class actions filed over the last three years.
- In 46 percent of filings in 2013 that contained alleged GAAP violations, the company announced that it would restate its financial statements or that its financial statements should not be relied upon.

Rule 10b-5 claims have been more prevalent in the past two years compared with the previous three years.

FIGURE 6: 2013 ALLEGATIONS BOX SCORE

General Characteristics	Percentage of Total Filings ¹				
	2009	2010	2011	2012	2013
Rule 10b-5 Claims	69%	66%	71%	85%	84%
Section 11 Claims	23%	15%	11%	10%	9%
Section 12(2) Claims	25%	10%	9%	9%	7%
No Rule 10b-5, Section 11, or Section 12(2) Claims	1%	23%	23%	9%	11%
Underwriter Defendant	17%	10%	11%	8%	9%
Auditor Defendant	7%	4%	3%	2%	2%
Allegations					
Misrepresentations in Financial Documents	89%	93%	94%	95%	97%
False Forward-Looking Statements	51%	45%	56%	62%	54%
Insider Trading	14%	16%	12%	17%	17%
GAAP Violations ²	37%	26%	37%	23%	24%
Announced Restatement ³	10%	7%	11%	11%	11%
Internal Control Weaknesses ⁴	14%	23%	24%	20%	20%
Announced Internal Control Weaknesses ⁵	4%	3%	6%	8%	8%

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 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.

NEW ANALYSIS: CLASS CERTIFICATION TRENDS

This analysis examines class certification rulings in securities lawsuits filed between 2002 and 2010, using the last known ruling by the court in each case that has not been vacated or reversed on appeal.³ This section addresses the following questions:

What is the current litigation status of class actions filed in each year as it relates to class certification? [\(page 9\)](#)

The analysis shows the percentage of cases in which the court ruled on a class certification motion versus the cases where it did not (e.g., pending motions or cases in which no class certification motion was filed). The courts' rulings on class certification are grouped into three categories:

- (1) Cases in which the court granted class certification in whole or in part.
- (2) Cases in which the court denied class certification for reasons other than an assessment of the merits of the motion (labeled as being denied for procedural reasons). This includes circumstances when the case may have settled or been dismissed prior to the court's class certification ruling, when the court viewed it premature to assess the merits of the class certification motion, or when the class certification motion was withdrawn.⁴
- (3) Cases in which the court denied class certification based on the merits of the motion. This encompasses the Rule 23(a) and Rule 23(b) reasons why the putative class was not certified. A court may deny class certification if the plaintiffs fail to demonstrate that all of the Rule 23(a) requirements and at least one of the Rule 23(b) requirements are met. These cases are labeled as denied for merits-based reasons.

What are the outcomes of courts' rulings on class certification motions? [\(page 10\)](#)

The analysis presents trends over time in the outcomes of courts' class certification rulings (i.e., granted, denied for procedural reasons, denied for merits-based reasons) as a percentage of the cases that involved class certification motions.

What are the Rule 23(a) and Rule 23(b) reasons cited by courts when denying class certification? [\(page 11\)](#)

This analysis is focused solely on cases in which class certification was denied for reasons related to the merits of the motion. The data show the frequency with which Rule 23(a) and Rule 23(b) reasons were cited as the basis for the why the putative class was not certified. A court may cite multiple reasons for not certifying the putative class; each reason is accounted for in this summary.

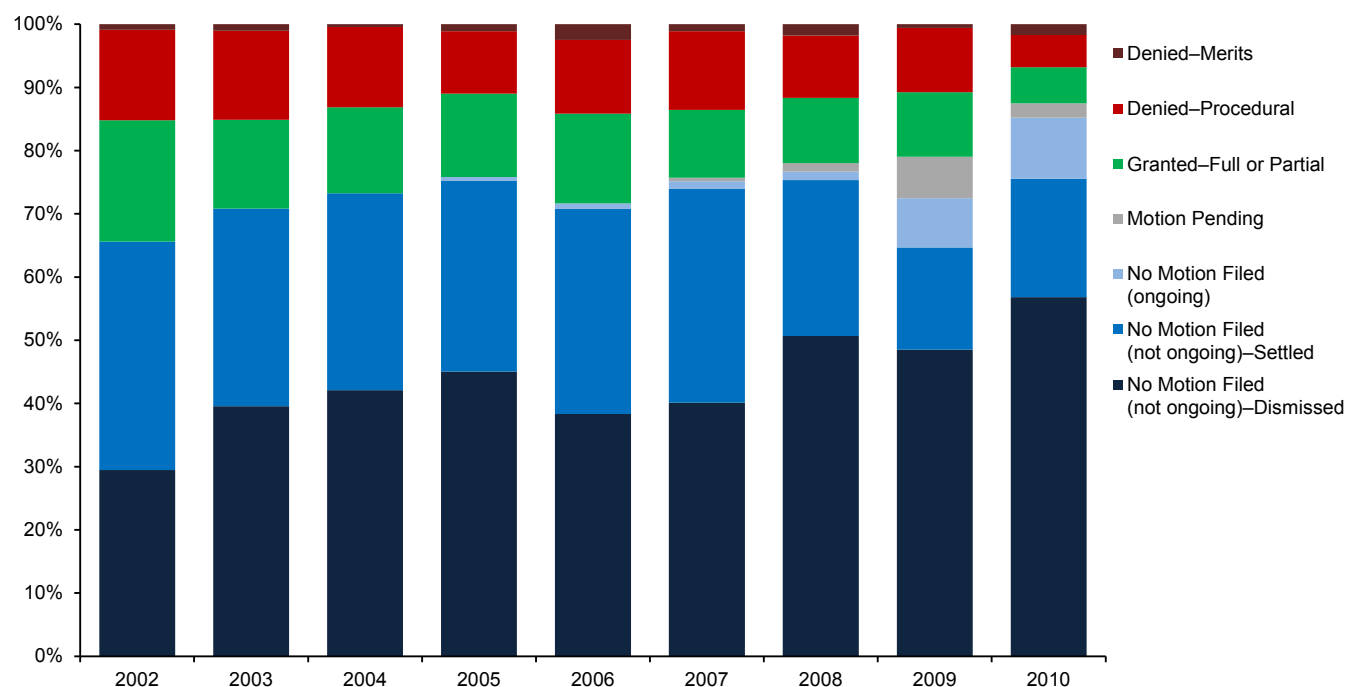
NEW ANALYSIS: CLASS CERTIFICATION TRENDS *continued*

KEY FINDINGS

- In a great majority of cases, a class certification motion was never filed. This percentage was 66 percent for 2002 cases, increasing to approximately 76 percent for 2005 cases before leveling out in more recent years. Such high percentages are not surprising given that many cases are dismissed or settle before a class certification motion is filed.
- When there was a final ruling on class certification, cases filed between 2002 and 2010 were equally likely to be granted or denied class certification. Procedural reasons, rather than a ruling based on the merits of the motion, were the overwhelming rationale for denying class certification.
- Of the cases in which no class certification motion was filed, an increasing number and proportion were dismissed. For class actions filed in 2002, 29 percent of cases were dismissed before a class certification motion was filed. For 2010 class actions, the corresponding percentage was 57 percent.

Less than
2 percent of cases
were denied class
certification due to
a decision based
on the merits of
the motion.

FIGURE 7: STATUS OF FILINGS WITH REGARD TO MOTIONS FOR CLASS CERTIFICATION BY YEAR OF CLASS ACTION 2002–2010



Note:

1. Of the cases in which class certification was denied on merits-based or procedural reasons, nine are ongoing.

2. No court opinion was found for six class actions in which case records indicate class certification was denied. They are included in the category "Denied-Procedural."

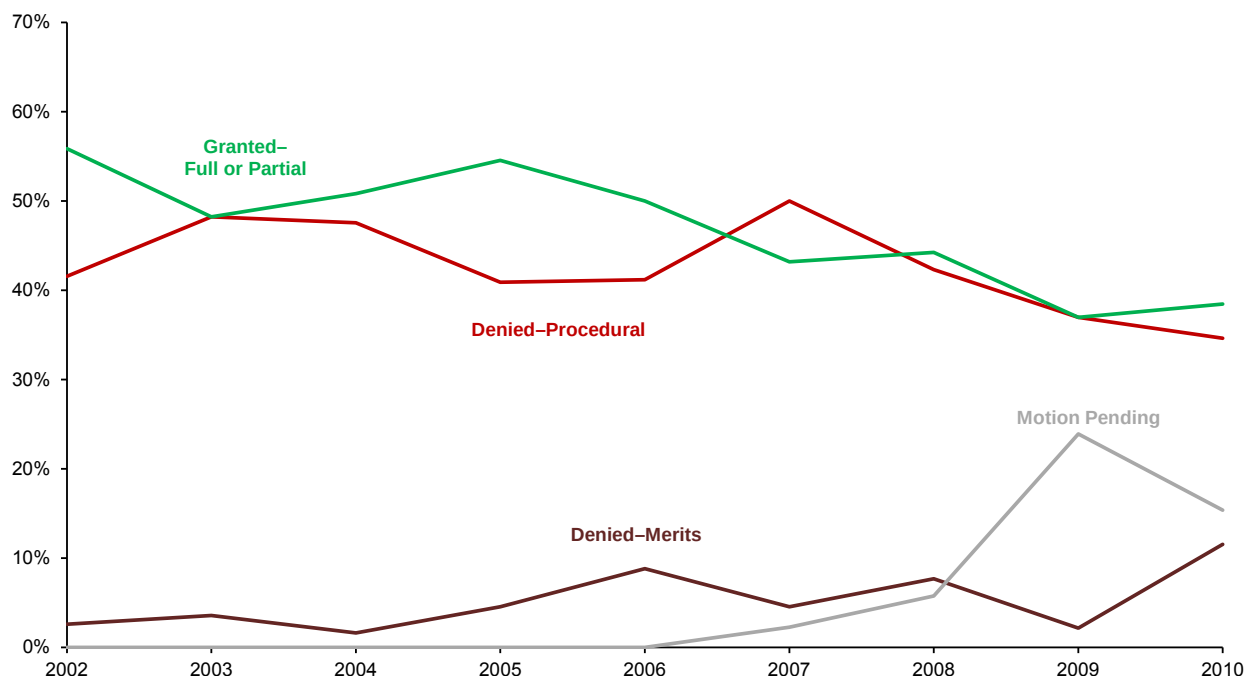
NEW ANALYSIS: CLASS CERTIFICATION TRENDS *continued*

KEY FINDINGS

- Class certification was granted less often for 2007 and 2008 cases than cases filed in prior years. Whether the decline in the granting of class certification will continue for cases filed in 2009 and 2010 will depend on the resolution of ongoing cases and pending motions.
- The percentage of cases filed in a given year in which class certification was denied for procedural reasons has hovered between 35 and 50 percent. For cases filed since 2007, denying class certification for procedural reasons has been as common as granting class certification.
- Cases in which the court denied class certification for reasons related to the merits of the motion have been infrequent for most years. Only for cases filed in 2010 have denials, based on Rule 23(a) or Rule 23(b), comprised 10 percent or more of the outcomes of motions for class certification.

For cases filed between 2002 and 2010, 48 percent were granted class certification in part or in full.

FIGURE 8: OUTCOMES OF MOTIONS FOR CLASS CERTIFICATION AS A PERCENTAGE OF FILINGS WITH CLASS CERTIFICATION MOTIONS BY YEAR OF CLASS ACTION 2002–2010



Note:

1. Of the cases in which class certification was denied on merits-based or procedural reasons, nine are ongoing.
2. No court opinion was found for six class actions in which case records indicate class certification was denied. They are included in the category "Denied-Procedural."

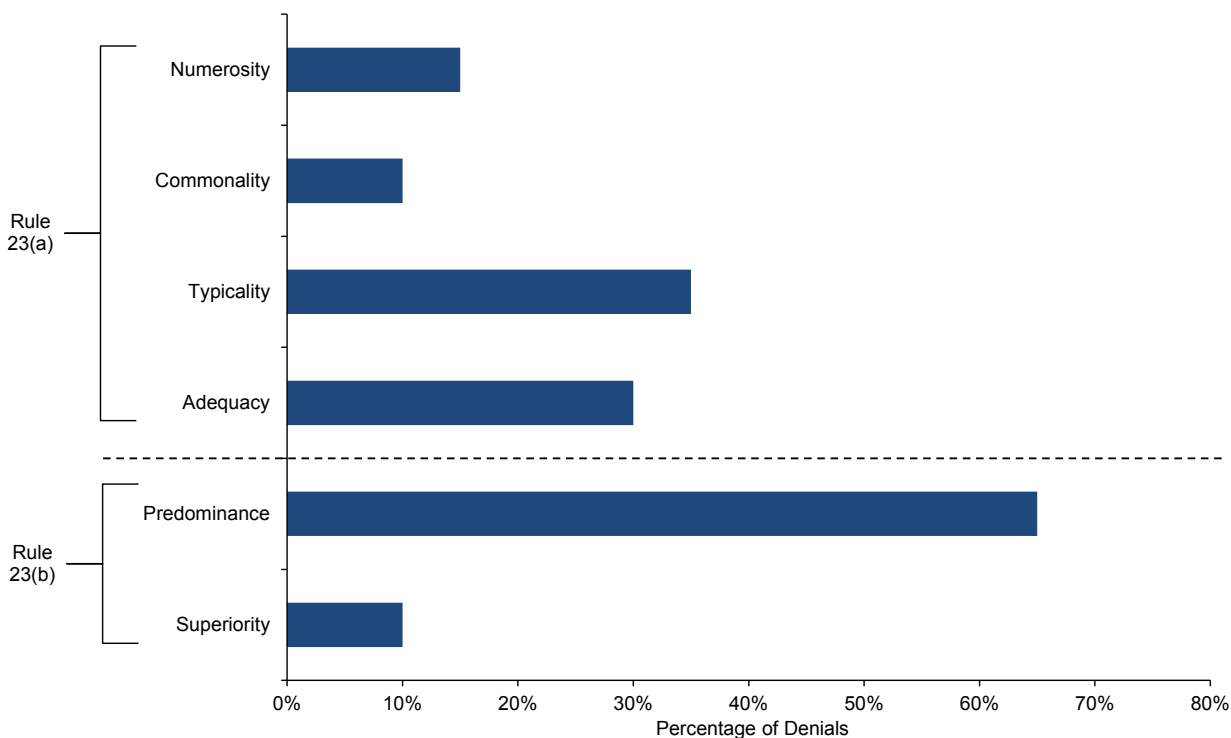
NEW ANALYSIS: CLASS CERTIFICATION TRENDS *continued*

KEY FINDINGS

- Between 2002 and 2010, class certification was denied for reasons based on the merits of the motion in less than two dozen cases.
- Predominance concerns were cited in nearly two-thirds of the courts' rulings denying class certification. Typicality and adequacy were the most common Rule 23(a) reasons cited for denying class certification.
- Common stock or American Depositary Shares (ADSs) were the underlying security at issue in approximately two-thirds of these cases.
- The class actions involving common stock or ADSs include examples in which the court ruled that the market for the underlying security was not efficient, that the allegedly misleading information was not publicly disclosed, or that the allegedly misleading information was not material either because of the lack of a stock price effect or because of the operation of the "truth on the market" doctrine.

Predominance has been the most common merits-based reason for courts not certifying a putative class.

FIGURE 9: REASONS FOR DENIAL OF CLASS CERTIFICATION BASED ON THE MERITS OF THE MOTION
2002–2010



Note: To the extent that a ruling cites multiple reasons for denying the class certification motion, each is reflected in the percentages above.

NEW ANALYSIS: U.S. EXCHANGE-LISTED COMPANIES

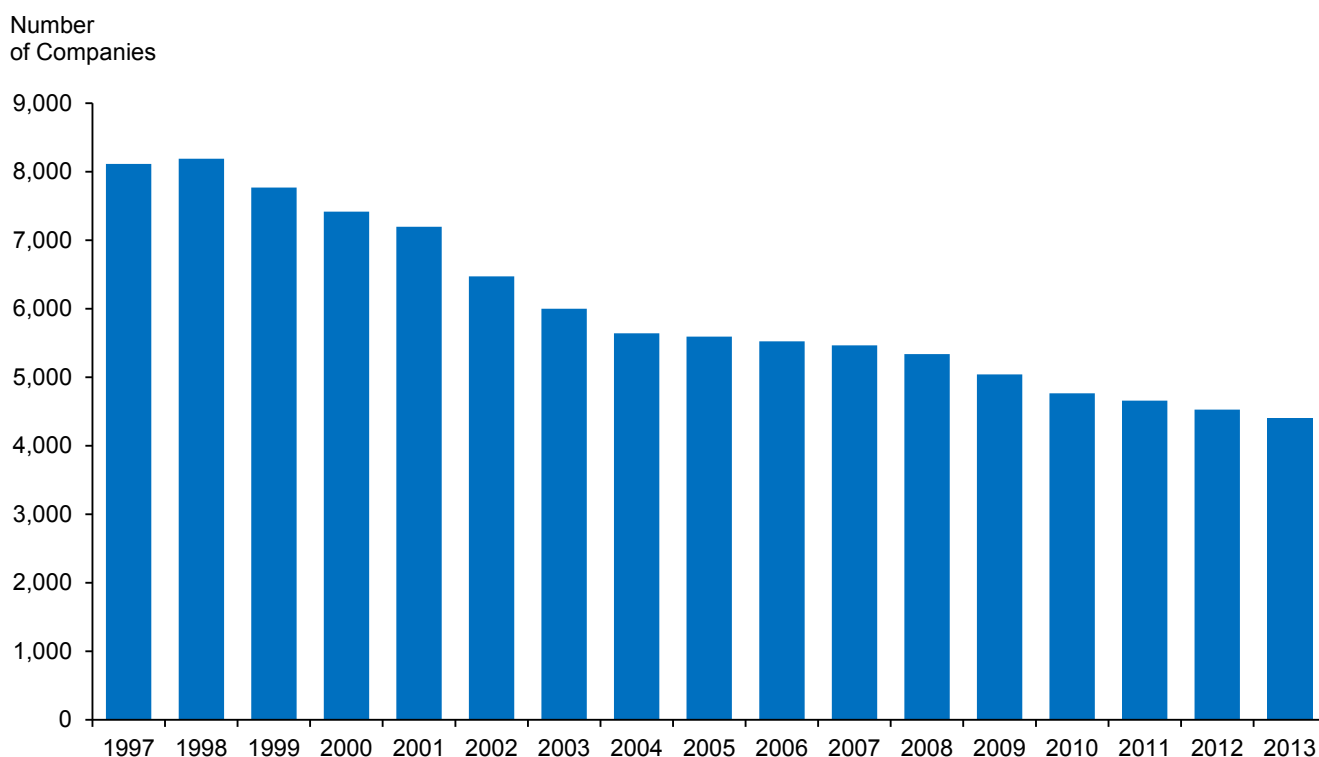
In this analysis, the number of U.S. exchange-listed companies for each year was identified by counting listed securities at the beginning of each year and accounting for cross-listed companies or companies with more than one security traded on a given exchange. Companies were counted if they were listed on the NYSE or NASDAQ.⁵

KEY FINDINGS

- The number of U.S. exchange-listed companies has declined 46 percent since 1998.
- After falling at an average annual rate of approximately 6 percent between 1999 and 2004, the rate since then has slowed to 3 percent.
- The decline in listed companies is one explanation for the recent relatively low levels of filing activity compared with historical averages.

The number of companies listed on U.S. exchanges has decreased in each year since 1998.

FIGURE 10: NUMBER OF COMPANIES LISTED ON U.S. EXCHANGES 1997–2013



Source: Center for Research in Security Prices (CRSP)

Note: The number of companies for each year was identified by taking the count of listed securities at the beginning of each year and accounting for cross-listed companies or companies with more than one security traded on a given exchange. Securities were counted if they were classified as common stock or ADSs and listed on the NYSE or NASDAQ.

NEW ANALYSIS: U.S. EXCHANGE-LISTED COMPANIES *continued*

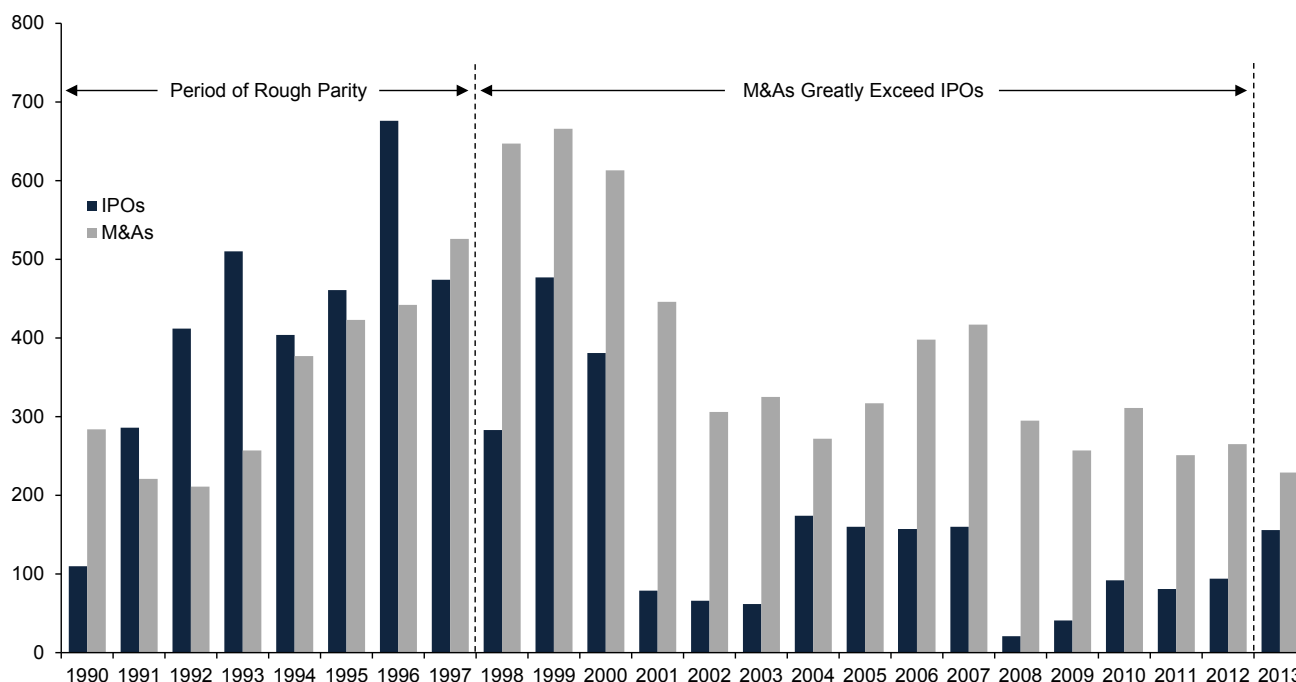
In this analysis, the number of M&As reflects deals targeting public companies listed on the NYSE or NASDAQ. The form of the deal was either a merger of stock or assets, or the acquisition of the remaining stock of the target company. IPOs included in the analysis are offerings of common stock by companies listed on the NYSE or NASDAQ.

KEY FINDINGS

- Rough parity between the number of M&A deals and the number of IPOs existed in many years between 1990 and 1997, with several years when IPOs were significantly greater in number.
- Between 1998 and 2012, M&A deals greatly exceeded the number of IPOs each year.
- In 2013, IPO activity increased and the difference in the number of M&A deals and the number of IPOs has narrowed to a degree not seen since 1997. It remains to be seen if 2013 signals the beginning of a sustained wave of IPOs and the stabilization of the number of exchange-listed companies in the U.S.

The trends in M&A and IPO activity largely explain the decline in U.S. exchange-listed companies.

FIGURE 11: ANNUAL NUMBER OF U.S. IPOs AND M&As 1990–2013



Source: Thomson Financial; Jay R. Ritter (2013), "Initial Public Offerings: Updated Statistics"

Note: Only M&A deals involving companies that are listed on U.S. exchanges and IPOs with an offer price of at least \$5, excluding ADSs, unit offers, closed-end funds, REITs, partnerships, small best efforts offers, banks and S&Ls, and stocks not listed on CRSP are included in this analysis.

NEW ANALYSIS: U.S. EXCHANGE-LISTED COMPANIES *continued*

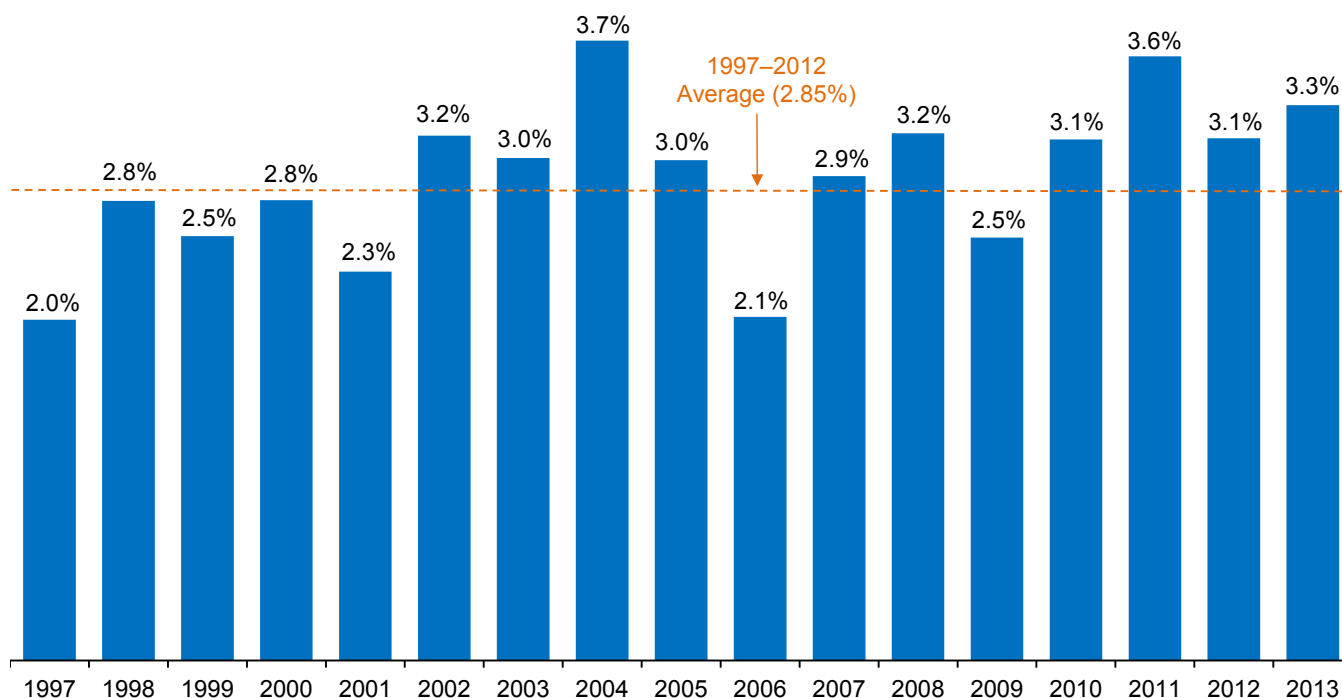
The percentage in the figure below is calculated as the unique number of companies that were the subject of class actions in a given year divided by the unique number of companies listed on the NYSE or NASDAQ.

KEY FINDINGS

- In 2013, approximately one in thirty companies listed on U.S. exchanges was the subject of a class action.
- In the last four years, the increased likelihood of class actions against companies on U.S. exchanges has moderated the decline that otherwise would have occurred in the annual number of filings.

Since 2010, the percentage of exchange-listed companies subject to securities class actions has exceeded the historical average.

FIGURE 12: PERCENTAGE OF U.S. EXCHANGE-LISTED COMPANIES SUBJECT TO FILINGS 1997–2013



Source: Securities Class Action Clearinghouse; Center for Research in Security Prices (CRSP)

Note: Percentages are calculated by dividing the count of issuers that were subject to filings by the number of companies listed on the NYSE or NASDAQ as of the beginning of the year.

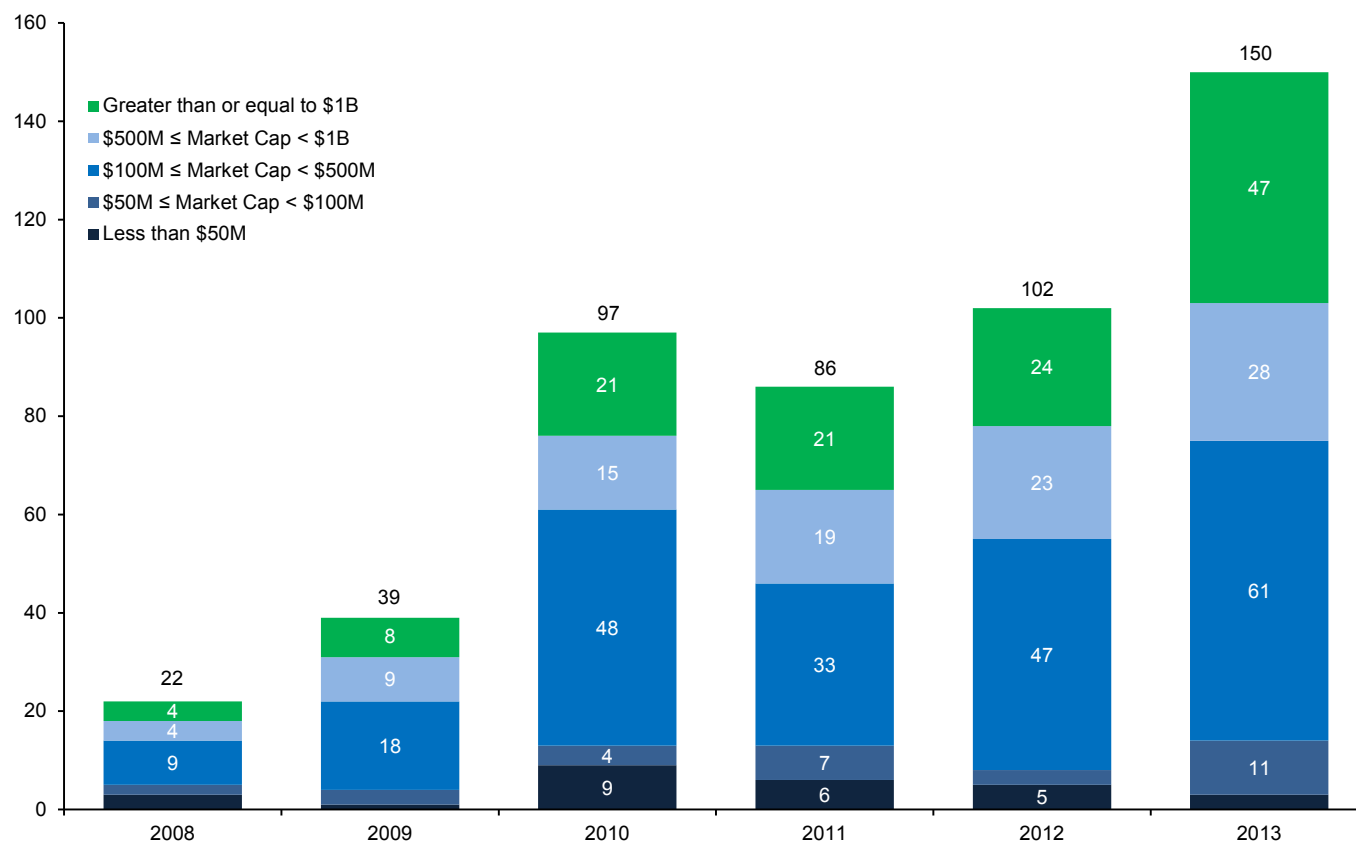
NEW ANALYSIS: RECENT IPO TRENDS

KEY FINDINGS

- IPO activity in 2013 represented a dramatic increase from the low in 2008, when there were only twenty-two IPOs.
- The number of larger companies going public, as measured by their market capitalization thirty days following the IPO, increased distinctly in 2010 and again in 2013.
- The number of IPOs with market capitalization in excess of \$1 billion increased by 96 percent in 2013 compared with 2012 and was nearly twelve times the level in 2008.

There were
150 IPOs on major
U.S. exchanges
in 2013—nearly
sevenfold the
number in 2008.

**FIGURE 13: NUMBER OF IPOs ON MAJOR U.S. EXCHANGES AND DISTRIBUTION OF THEIR MARKET CAPITALIZATION
2008–2013**



Source: Bloomberg; Capital IQ

Note: Market capitalization is given as of thirty days following the company's trading date or, where this information is unavailable, as of the first date for which market capitalization is available. Included in this sample are REITs and companies with common stock traded on the NYSE or NASDAQ.

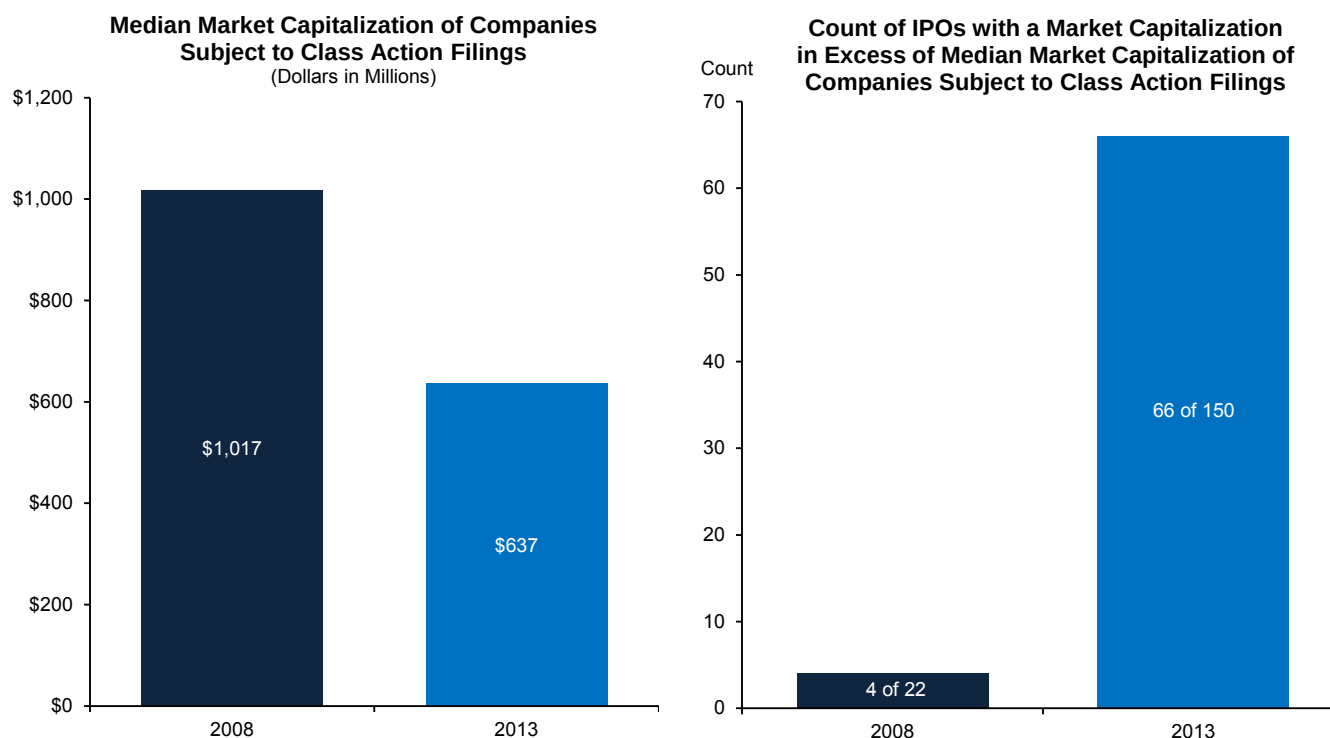
NEW ANALYSIS: RECENT IPO TRENDS *continued*

KEY FINDINGS

- Previous research has shown that companies with larger market capitalization historically are more often subject to securities class actions. IPO activity in recent years has increased significantly, including IPOs of larger market capitalization companies.
- The median market capitalization of companies that were the subject of class actions has declined substantially from \$1 billion in 2008 to \$637 million in 2013—a 37 percent decline in the median value.
- Over the same period, the number of IPOs with a market capitalization greater than or equal to the median market capitalization of companies sued in that year increased from four in 2008 to sixty-six in 2013.

Recent IPO activity may portend a future increase in class action filings.

FIGURE 14: MEDIAN MARKET CAPITALIZATION OF COMPANIES SUBJECT TO CLASS ACTION FILINGS JUXTAPOSED WITH NUMBER OF IPOs WITH MARKET CAPITALIZATION IN EXCESS OF THAT MEDIAN
2008 and 2013



Source: Bloomberg; Capital IQ

Note: Market capitalization of sued companies is determined as of the day prior to the final alleged disclosure date. IPO market capitalization is given as of thirty days following the company's trading date or, where this information is unavailable, as of the first date for which market capitalization is available. Included in this sample are REITs and companies with common stock traded on the NYSE or NASDAQ.

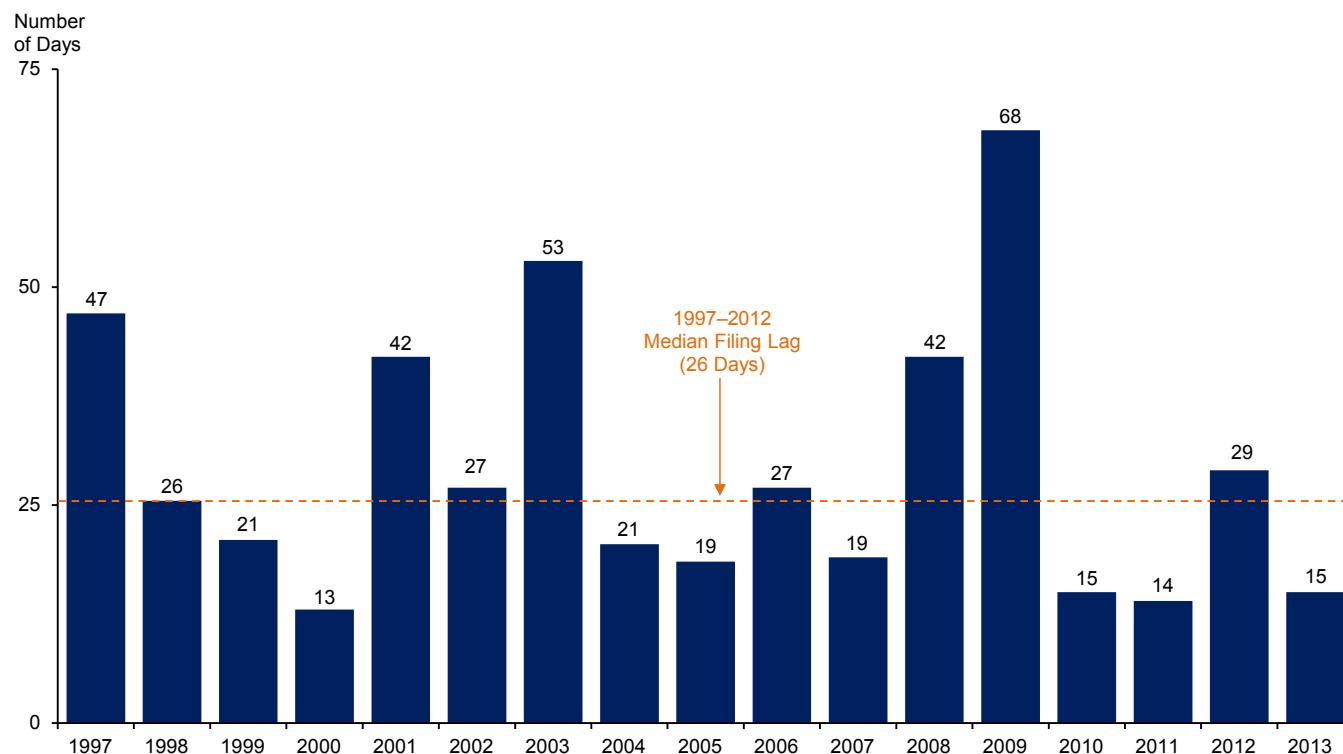
FILING LAG

KEY FINDINGS

- In three of the last four years, the median filing lag has been ten or more days shorter than the historical average.
- The short median lag time in 2010 and 2011 was largely a reflection of M&A filings—the vast majority of which are filed within days of the end of the alleged class period. In 2013, the median lag was seventeen days excluding M&A filings.
- While the median filing lag was fifteen days, 25 percent of class actions were filed within five days of the end of the class period. At the other end of the spectrum, 20 percent were filed more than six months (i.e., 180 days) after the end of the alleged class period.

In 2013, the median lag time between the end of the alleged class period and the filing date of the lawsuit was among the shortest observed.

FIGURE 15: ANNUAL MEDIAN LAG BETWEEN CLASS END DATE AND FILING DATE 1997–2013



FOREIGN FILINGS

The Class Action Filings-Foreign (CAF-F) Index™

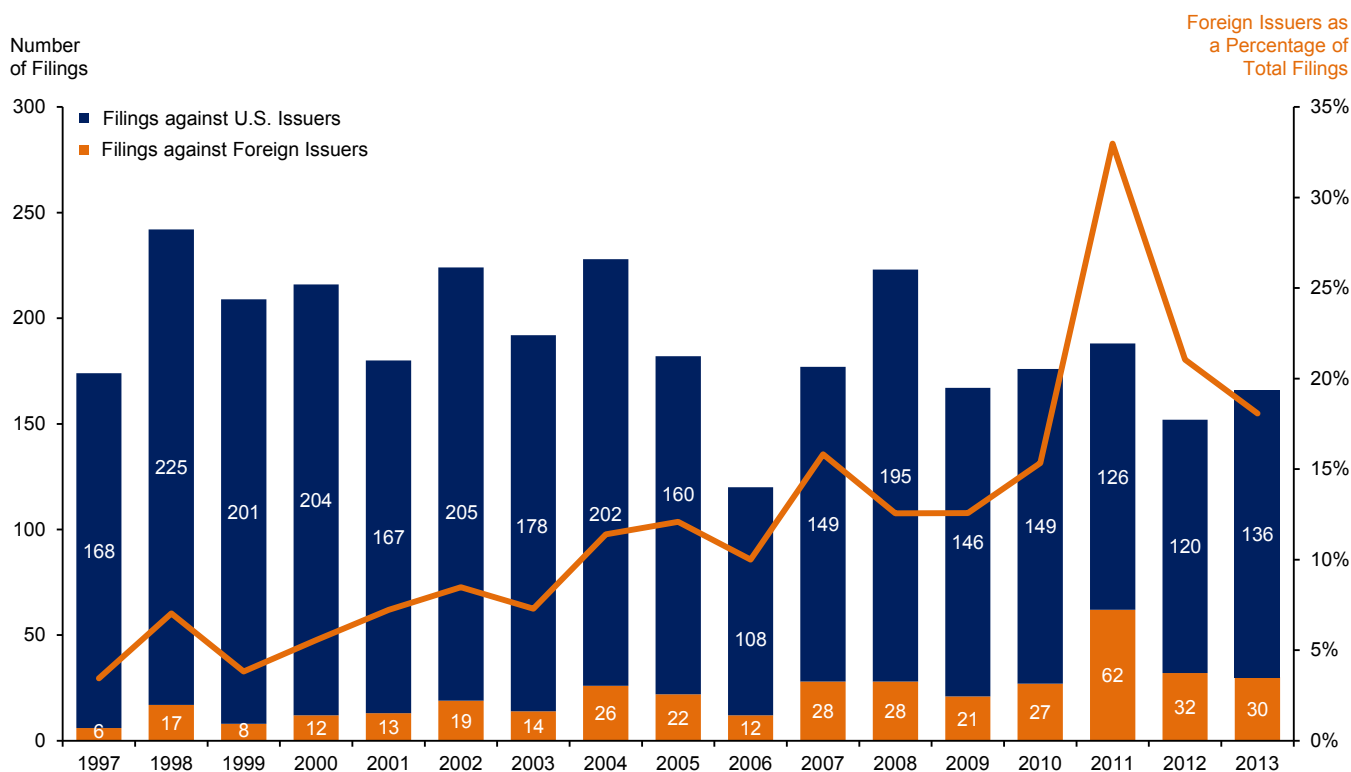
This index tracks the number of filings against foreign issuers (companies headquartered outside the United States) relative to total filings.

KEY FINDINGS

- Foreign filings were 18 percent of all filings in 2013 compared with 21 percent in 2012 and 33 percent in 2011.
- The number of filings against foreign issuers declined modestly from thirty-two in 2012 to thirty in 2013, largely attributable to a decrease in CRM filings.
- Filings against Chinese companies, including CRMs, were the most prevalent type of foreign filing in 2013.

Foreign filings
continued in 2013
at historically
high rates.

FIGURE 16: CLASS ACTION FILINGS-FOREIGN (CAF-F) INDEX™
ANNUAL NUMBER OF CLASS ACTION FILINGS BY LOCATION OF HEADQUARTERS
1997–2013



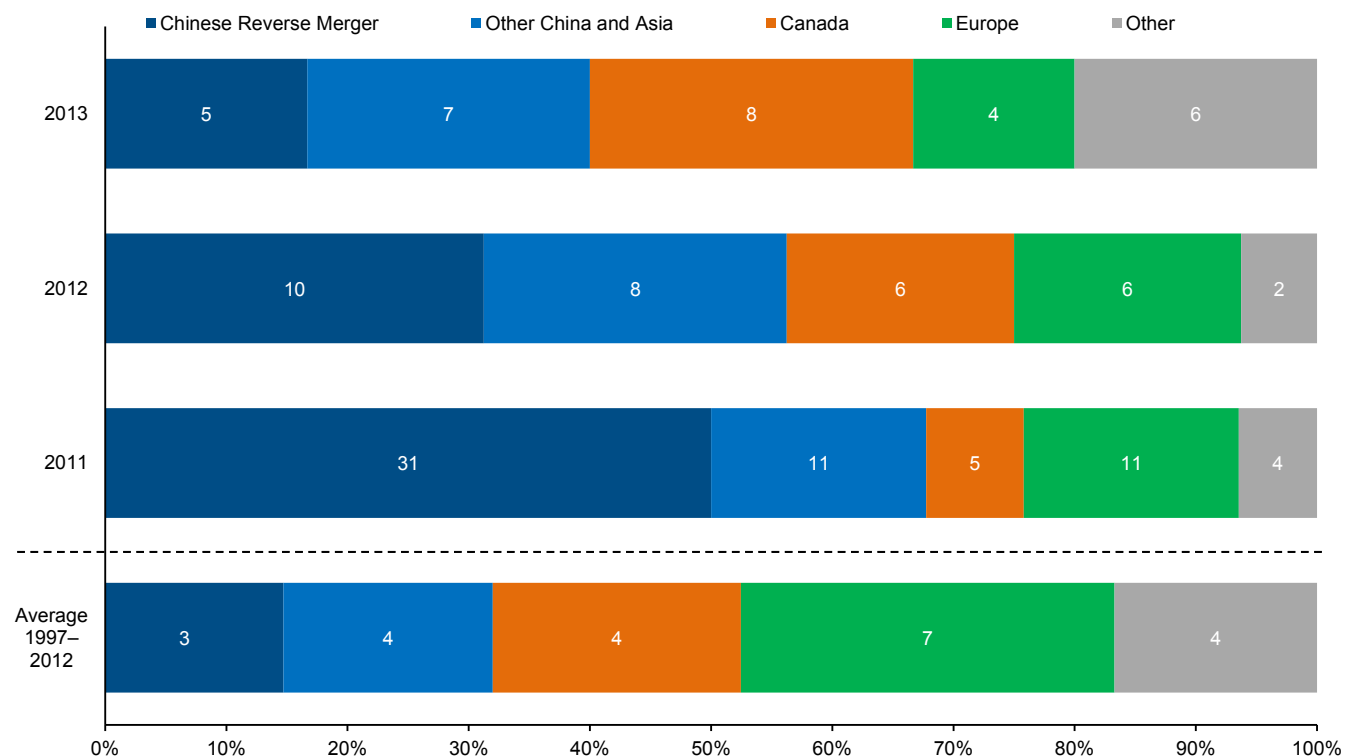
FOREIGN FILINGS *continued*

KEY FINDINGS

- Despite the 84 percent decline in CRM filings from 2011 levels, the number of filings against Chinese companies remained above the historical average from 1997 to 2012.
- Filings against companies headquartered in Canada were the second most common foreign filings in 2013. The increase in filings in U.S. federal courts is likely related to cross-border parallel actions in Canadian venues.
- Filings against European companies declined in each of the last two years and were 43 percent below the historical average of seven filings. Of the four European filings, two related to Irish companies.
- Other foreign filings included class actions against companies headquartered in Argentina, Bermuda, Israel, and Mexico.

Filings against Canadian companies have increased in the last two years.

FIGURE 17: ANNUAL NUMBER OF FOREIGN FILINGS BY LOCATION OF HEADQUARTERS 1997–2013



HEAT MAPS: S&P 500 SECURITIES LITIGATION™

The Heat Maps analyze securities class action activity by industry sector. The analysis focuses on companies in the S&P 500 index, 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:

- (1) What percentage of these companies were subject to new securities class actions in federal court during the year?
- (2) What percentage of the total market capitalization of these companies was accounted for by companies named in new securities class actions?

KEY FINDINGS

- Only about one in twenty-nine companies (3.4 percent) in the S&P 500 at the beginning of 2013 was a defendant in a class action filed during the year.
- The historical average is approximately one in seventeen companies (5.9 percent).
- The high activity on a percentage basis in the Telecommunication Services sector is the result of a single filing against one of the seven companies in the sector.

The last three years have seen the lowest levels of new class action filings against S&P 500 companies in fourteen years.

FIGURE 18: HEAT MAPS OF S&P 500 SECURITIES LITIGATION™
PERCENTAGE OF COMPANIES SUBJECT TO NEW FILINGS
2000–2013

	Average 2000–2012	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Consumer Discretionary	5.1%	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%	8.4%
Consumer Staples	3.6%	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%	0.0%
Energy	2.2%	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%	0.0%
Financials	10.3%	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%	0.0%
Health Care	8.9%	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%	5.7%
Industrials	3.2%	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%	0.0%
Information Technology	6.4%	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%	8.6%
Materials	1.1%	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%	0.0%
Telecommunication Services	7.5%	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%	14.3%
Utilities	6.7%	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%	0.0%
All S&P 500 Companies	5.9%	5.0%	5.6%	12.0%	5.2%	7.2%	6.6%	3.6%	5.4%	9.2%	4.8%	5.4%	3.2%	3.4%	3.4%

Legend 0% 0%–5% 5%–15% 15%–25% 25%+

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.

HEAT MAPS: S&P 500 SECURITIES LITIGATION *continued*

KEY FINDINGS

- Only 4.7 percent of the S&P 500 market capitalization was subject to new filings in 2013 compared with the historical average of 10.6 percent.
- Information Technology was the most active sector in 2013 as a percentage of market capitalization.
- Six of the ten S&P 500 sectors had no activity in 2013: Consumer Staples, Energy, Financials, Industrials, Materials, and Utilities.
- Larger S&P 500 companies have historically been more likely targets of class actions, and this pattern continued to a lesser degree in 2013. The percentage of S&P 500 companies subject to filings was less than their share of the S&P 500 market capitalization.

This was the first time in the last fourteen years with no new filing activity in the Financials sector of S&P 500 companies.

FIGURE 19: HEAT MAPS OF S&P 500 SECURITIES LITIGATION™
PERCENTAGE OF MARKET CAPITALIZATION SUBJECT TO NEW FILINGS
2000–2013

	Average 2000–2012	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Consumer Discretionary	6.6%	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%	4.4%
Consumer Staples	5.5%	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%	0.0%
Energy	2.7%	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%	0.0%
Financials	22.1%	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%	0.0%
Health Care	15.9%	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%	4.4%
Industrials	7.0%	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%	0.0%
Information Technology	8.8%	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%	18.1%
Materials	2.2%	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%	0.0%
Telecommunication Services	12.0%	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%	6.3%
Utilities	8.3%	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%	0.0%
All S&P 500 Companies	10.6%	11.1%	10.9%	18.8%	8.0%	17.7%	10.7%	6.7%	8.2%	16.2%	8.6%	11.2%	5.1%	4.9%	4.7%

Legend 0% 0%–5% 5%–15% 15%–25% 25%+

Note:

- The chart is based on the market capitalizations of the S&P 500 companies as of the last trading day of the previous year. If the market capitalization on the last trading day is not available, the average fourth-quarter market capitalization is used.
- Sectors are based on the Global Industry Classification Standard.
- Percentage of Market Capitalization 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.

MEGA FILINGS

Mega DDL and MDL Filings

This section provides an analysis of large filings, as measured by DDL and MDL, in which mega DDL filings have a disclosure dollar loss (DDL) of \$5 billion or greater and mega MDL filings have a maximum dollar loss (MDL) of \$10 billion or greater.

KEY FINDINGS

- In 2013, there were three mega DDL filings that accounted for \$53 billion of DDL, an increase of 24 percent from 2012.
- One large filing against a technology company accounted for 35 percent of the total DDL Index.
- There were five mega MDL filings in 2013 with a total MDL of \$132 billion, a decline in MDL of 41 percent from 2012.
- This year had the lowest number of mega MDL filings since 1998.

The number of mega DDL and MDL filings remained well below the historical average.

FIGURE 20: MEGA FILINGS

	Average 1997–2012	2011	2012	2013
Mega Disclosure Dollar Loss (DDL) Filings ¹				
Mega DDL Filings	6	4	4	3
DDL (\$ Billions)	\$70	\$63	\$43	\$53
Percentage of Total DDL	56%	57%	44%	51%
Mega Maximum Dollar Loss (MDL) Filings ²				
Mega MDL Filings	14	9	10	5
MDL (\$ Billions)	\$478	\$396	\$224	\$132
Percentage of Total MDL	73%	77%	55%	47%

Note:
1. Mega DDL filings have a dollar loss of \$5 billion or greater.
2. Mega MDL filings have a dollar loss of \$10 billion or greater.

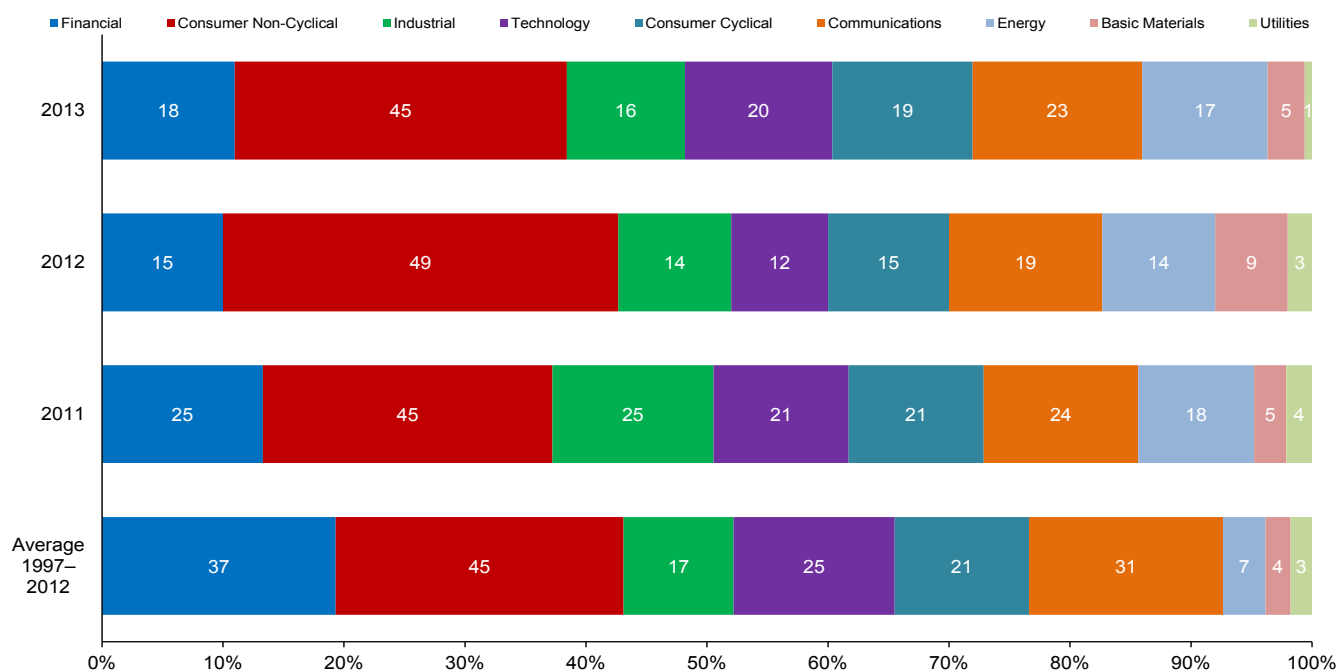
INDUSTRY

KEY FINDINGS

- Healthcare, biotechnology, and pharmaceutical companies (included in the Consumer Non-Cyclical sector) together accounted for 21 percent of total filings in 2013.
- Reversing a four-year trend, filings against companies in the Financial sector increased modestly in number and as a percentage of all filings, but remained well below the historical average.
- Filings against Energy companies increased in 2013. This is the third consecutive year with heightened levels of filing activity in that sector.
- The number of filings against companies in the Industrial, Technology, Consumer Cyclical, and Communications sectors also increased.

For the fourth consecutive year, companies in the Consumer Non-Cyclical sector continued to be most frequently targeted.

FIGURE 21: FILINGS BY INDUSTRY



Note:

- 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.
- Sectors are based on the Bloomberg Industry Classification System.

EXCHANGE

KEY FINDINGS

- In 2013, fifty-five class actions were filed against firms listed on the NYSE, while ninety-seven class actions were filed against firms listed on NASDAQ.
- The number of filings against NYSE firms declined by 26 percent.
- The number of filings against NASDAQ firms increased by 62 percent.
- Median DDLs for both NYSE and NASDAQ companies declined from 2012 to 2013.
- The number of filings against issuers not listed on an exchange decreased from nineteen to fourteen from 2012 to 2013.

2013 showed a return to the more typical mix of filings in which NASDAQ companies were more frequently the subject of class action filings.

FIGURE 22: FILINGS BY EXCHANGE LISTING

	Average (1997–2012)		2012		2013	
	NYSE/Amex	NASDAQ	NYSE/Amex	NASDAQ	NYSE	NASDAQ
Class Action Filings	78	96	73	60	55	97
DDL Total (\$ Billions)	\$92	\$33	\$72	\$24	\$41	\$63
MDL Total (\$ Billions)	\$440	\$210	\$298	\$100	\$170	\$108
Disclosure Dollar Loss						
Average (\$ Millions)	\$1,392	\$374	\$1,167	\$447	\$815	\$755
Median (\$ Millions)	\$255	\$88	\$239	\$144	\$226	\$121
Maximum Dollar Loss						
Average (\$ Millions)	\$6,583	\$2,315	\$4,737	\$1,886	\$3,396	\$1,300
Median (\$ Millions)	\$1,312	\$441	\$1,404	\$427	\$1,005	\$531

Note:

1. Average and median numbers are calculated only for filings with MDL and DDL data.
2. NYSE Amex was renamed NYSE MKT in May 2012.

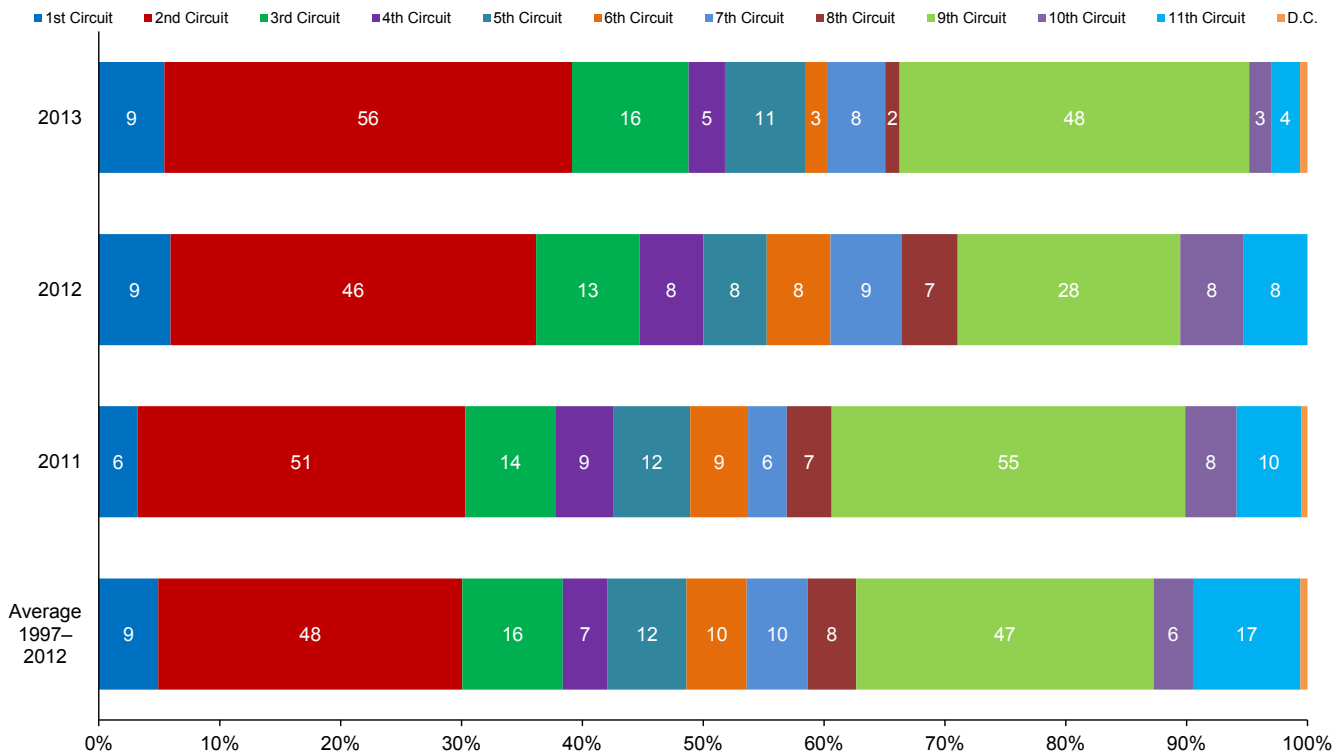
CIRCUIT

KEY FINDINGS

- A 71 percent increase in Ninth Circuit filings was caused by sectors that scarcely contributed to that circuit's case mix in 2012. In the Ninth Circuit there were eighteen filings in the Consumer Cyclical, Energy, Financial, and Industrial sectors compared with only three such filings in 2012.
- Filings in the Fourth, Sixth, Eighth, Tenth, and Eleventh Circuits markedly declined in 2013.
- The Second Circuit's DDL of \$31 billion is well below its historical average of \$43 billion, attributable in part to a sharp decline in filings against companies in the Financial sector after 2011.
- Of the three mega DDL filings in 2013, two originated in the Second Circuit and one in the First Circuit. Despite the increased level of activity in the Ninth Circuit, none of the mega DDL or mega MDL filings originated there.

Filing activity in 2013 was more concentrated in the Second and Ninth Circuits than in most years.

FIGURE 23: FILINGS BY COURT CIRCUIT



NEW DEVELOPMENTS

HALLIBURTON CO. v. ERICA P. JOHN FUND

In a case with potentially wide-ranging effects on federal securities class actions, the U.S. Supreme Court in November 2013 agreed to hear this appeal by Halliburton. At issue is the fraud-on-the-market presumption established in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988). Petitioners present two questions to the Court: (1) whether the Court should overrule or substantially modify *Basic* and the notion that classwide reliance derives from the fraud-on-the-market concept; and (2) whether defendants may rebut the presumption, when invoked by plaintiffs, by introducing evidence that the alleged misrepresentations did not distort the market price of the security at issue.

For a typical securities class action, *Basic* established that plaintiffs did not need to demonstrate that individual class members relied on any allegedly misleading statements if the market in which the security at issue traded can be shown to be “efficient”—that is, the market price reflected all publicly available information. In those circumstances, any material misrepresentations were reflected in the price of the security.

Petitioners and respondents in *Halliburton* have respectively stated that the Court’s seminal decision in *Basic* is now “bedrock securities and class-action law” and a “cornerstone for modern private securities litigation.” Arguments will be heard in March 2014 with a ruling possible by mid-summer.

If Halliburton prevails, then the entire ecology of the market for class action securities fraud litigation is likely to undergo a dramatic change.

Joseph Grundfest
Stanford Law School

NEW DEVELOPMENTS *continued*

IN RE BP P.L.C. SECURITIES LITIGATION

On December 6, 2013, the court in this Rule 10b-5 securities class action in the U.S. District Court for the Southern District of Texas, Houston Division, denied the plaintiffs' motion for class certification based on an application of the U.S. Supreme Court's ruling in *Comcast v. Behrend*. The ruling, applying *Comcast* to a securities class action, followed multiple filings and expert reports from both sides, as well as a hearing.

Judge Ellison ruled that the plaintiffs "failed to meet their burden of showing that damages can be measured on a class-wide basis consistent with their theories of liability," and stated further that "*Comcast* signals a significant shift in the scrutiny required for class certification."⁶

Comcast signals a significant shift in the scrutiny required for class certification.

GLOSSARY

Chinese reverse merger (CRM) filing is a securities class action against a China-headquartered company listed on a U.S. exchange as a result of a reverse merger with a public shell company. See Cornerstone Research, *Investigations and Litigation Related to Chinese Reverse Merger Companies*.

Class Action Filings (CAF) Index™ tracks the number of federal securities class action filings.

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.

Disclosure Dollar Loss (DDL) Index™ measures the aggregate DDL for all filings over a period of time. 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. DDL should not be considered an indicator of liability or measure of potential damages. Instead, it estimates the impact of all information revealed during or at the end of the class period, including information unrelated to the litigation.

Filing lag is the time between the end of a class period and the filing of a securities class action.

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 (S&P 500) index, 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: (1) What percentage of these companies were subject to new securities class actions in federal court during the year? (2) What percentage of the total market capitalization of these companies was accounted for by companies named in new securities class actions?

Market capitalization losses 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. They are calculated for publicly traded common equity securities, closed-ended mutual funds, and exchange-traded funds where data are available. 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. 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. 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.

Maximum Dollar Loss (MDL) Index™ measures the aggregate MDL for all filings over a period of time. 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. MDL should not be considered an indicator of liability or measure of potential damages. Instead, it estimates the impact of all information revealed during or at the end of the class period, including information unrelated to the litigation.

GLOSSARY *continued*

Mega filings include mega DDL filings, securities class action filings with a DDL of \$5 billion or greater; and mega MDL filings, securities class action filings with an MDL of \$10 billion or greater.

Merger and acquisition (M&A) filing is a securities class action that has Section 14 claims, but no Rule 10b-5, Section 11, or Section 12(2) claims, and involves a merger and acquisition transaction.

Securities Class Action Clearinghouse is the leading source of data and analysis on the financial and economic characteristics of federal securities fraud class action litigation, cosponsored by Cornerstone Research and Stanford Law School.

APPENDIXES

APPENDIX 1: FILINGS COMPARISON

	Average (1997–2012)	2012	2013
Class Action Filings	191	152	166
DDL Total (\$ Billions)	\$126	\$97	\$104
MDL Total (\$ Billions)	\$652	\$405	\$279
Disclosure Dollar Loss			
Average (\$ Millions)	\$798	\$762	\$745
Median (\$ Millions)	\$120	\$150	\$148
Median DDL % Decline	23.1%	23.3%	21.7%
Maximum Dollar Loss			
Average (\$ Millions)	\$4,147	\$3,161	\$2,004
Median (\$ Millions)	\$653	\$653	\$532

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

APPENDIX 2: FILINGS BY INDUSTRY

(Dollars in Billions)

Industry	Class Action Filings				Disclosure Dollar Loss				Maximum Dollar Loss			
	Average 1997–2012	2011	2012	2013	Average 1997–2012	2011	2012	2013	Average 1997–2012	2011	2012	2013
Financial	37	25	15	18	\$21	\$33	\$23	\$1	\$128	\$255	\$99	\$2
Consumer Non-Cyclical	45	45	49	45	\$37	\$10	\$25	\$20	\$132	\$40	\$57	\$56
Industrial	17	25	14	16	\$13	\$4	\$2	\$2	\$39	\$15	\$12	\$10
Technology	25	21	12	20	\$16	\$22	\$13	\$52	\$82	\$78	\$98	\$93
Consumer Cyclical	21	21	15	19	\$8	\$7	\$17	\$12	\$53	\$15	\$46	\$31
Communications	31	24	19	23	\$25	\$29	\$9	\$13	\$181	\$76	\$41	\$22
Energy	7	18	14	17	\$3	\$3	\$5	\$2	\$20	\$24	\$33	\$13
Basic Materials	4	5	9	5	\$1	\$3	\$4	\$1	\$9	\$9	\$18	\$51
Utilities	3	4	3	1	\$1	\$0	\$0	\$0	\$10	\$1	\$1	\$1
Unknown/Unclassified	-	-	2	2	-	-	-	-	-	-	-	-
Total	190	188	152	166	\$126	\$110	\$97	\$104	\$652	\$511	\$405	\$279

Note:

- Numbers may not add due to rounding.
- Analysis excludes two filings in unknown sectors in 2012 and two filings in unknown sectors in 2013. Filings with missing sector information or infrequently used sectors may be excluded in prior years.

APPENDIXES *continued***APPENDIX 3: FILINGS BY COURT CIRCUIT**

(Dollars in Billions)

Circuit	Class Action Filings				Disclosure Dollar Loss				Maximum Dollar Loss			
	Average 1997–2012	2011	2012	2013	Average 1997–2012	2011	2012	2013	Average 1997–2012	2011	2012	2013
1st	9	6	9	9	\$6	\$1	\$1	\$39	\$21	\$3	\$4	\$46
2nd	48	51	46	56	\$43	\$47	\$42	\$31	\$236	\$301	\$167	\$137
3rd	16	14	13	16	\$18	\$2	\$0	\$3	\$65	\$3	\$9	\$8
4th	7	9	8	5	\$3	\$1	\$1	\$2	\$14	\$6	\$4	\$4
5th	12	12	8	11	\$8	\$0	\$0	\$1	\$41	\$3	\$2	\$6
6th	10	9	8	3	\$8	\$2	\$14	\$0	\$31	\$13	\$23	\$1
7th	10	6	9	8	\$6	\$2	\$5	\$1	\$28	\$7	\$21	\$8
8th	8	7	7	2	\$4	\$3	\$3	\$1	\$15	\$5	\$12	\$11
9th	47	55	28	48	\$22	\$50	\$24	\$20	\$159	\$162	\$132	\$51
10th	6	8	8	3	\$3	\$0	\$4	\$4	\$14	\$3	\$23	\$6
11th	17	10	8	4	\$5	\$2	\$2	\$0	\$26	\$5	\$7	\$1
D.C.	1	1	0	1	\$1	\$0	\$0	\$0	\$3	\$0	\$0	\$0
Total	191	188	152	166	\$126	\$110	\$97	\$104	\$652	\$511	\$405	\$279

Note: Numbers may not add due to rounding.

RESEARCH SAMPLE

- The Stanford Law School Securities Class Action Clearinghouse, in collaboration with Cornerstone Research, has identified 3,733 federal securities class action filings between January 1, 1996, and December 31, 2013 (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).
- 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.

ENDNOTES

- ¹ The classifications in the Allegations Box Score are based on the first identified complaint. Additional allegations and defendants may be added in subsequent complaints and are not captured in this analysis.
- ² This finding is based on the first identified complaint. Our review of complaints indicates that underwriters and auditors are often added as defendants later.
- ³ In addition to examining only the known last ruling, this analysis ignores any class certification rulings when they are solely related to certifying a settling class. If no class certification motion was filed prior to an agreement between the parties to settle, the case is treated as having no motion filed even if a class was certified for settlement. If a class certification motion was filed and the parties settled before the court ruled on the merits of the motion, then it is treated as being denied for procedural reasons.
- ⁴ In the analyses of class certifications rulings, those labeled as being denied for procedural reasons may signify one of several different decisions by the plaintiff or the court. It encompasses situations in which the court issues an order denying class certification on procedural grounds; for example, when the case was dismissed or settled while the motion was pending, thus rendering the motion moot; or because the need for additional discovery rendered further class certification proceedings inappropriate at that time. It also encompasses situations in which a motion for class certification was filed but was withdrawn or stricken by the plaintiff or the court before any order was issued.
- ⁵ This analysis includes companies formerly on the American Stock Exchange (AMEX) prior to its acquisition by NYSE Euronext in 2008.
- ⁶ Memorandum and Order, *In re BP p.l.c. Securities Litigation*, Case No. 4:10-md-02185 (December 6, 2013).

The authors request that you reference Cornerstone Research and the Stanford Law School Securities Class Action Clearinghouse in any reprint of the information or figures included in this study.

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