Securities Suits Remain Off Recent Highs

An Advisen Quarterly Report – Q2 2012

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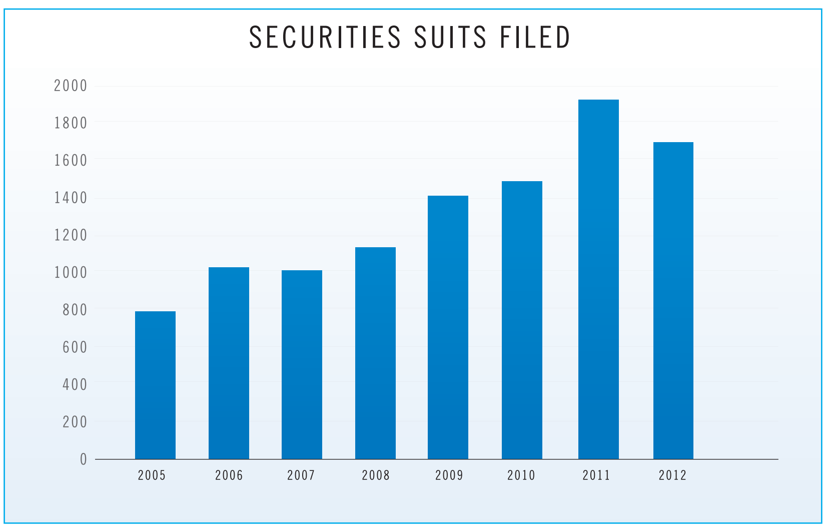
Executive summary

The post-credit crisis era of securities litigation continued to leave its mark in the second quarter of 2012: down from the frantic highs, but elevated compared to pre-credit crisis levels. The somewhat improving economy, albeit shaky, over the past year helped, but a falloff in M&A activities over the past year was the primary driver in the drop in overall new securities suits. Fewer M&As resulted in a drop in merger-objection suits. Ironically, the central concern that could thwart the economic recovery, the Eurozone sovereign-debt crisis, is also the leading reason for the falloff in M&A activities. Easing of regulatory actions also contributed to the result of fewer suits in the quarter.



2012 is H1 annualized.

The number of new securities suit filings declined to 412 suits, down 8 percent from the previous quarter, and down 7 percent from a year earlier. Of these suits, 331 unique companies had at least one suit filed against them, down 8 percent from the previous quarter, but flat with a year earlier. The annualized rate of 1,648 suits for Q2 2012 was 15 percent below the record-setting 2011, and likewise the annualized rate of 1,718 in the first half of 2012 was down 11 percent from 2011. The number of unique companies with at least one suit for Q2 2012 was 9 percent the average quarter in 2011.

Securities fraud cases, mostly regulatory actions, were once again the leading type of new securities-suit filing in Q2 2012; but down from the previous quarter and the quarterly average of 2011. Despite this falloff, securities fraud cases remained at a higher rate than all years

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Globalization has had a substantial impact on securities litigation over the past years, and this trend continued in the first half of 2012

prior to 2011. Securities class action suits were up from the previous quarter, and flat with the 2011 average. Derivative actions have been brought back into the limelight over the past year. Breach of fiduciary duties suits, driven by so-called merger objection suits, became litigators' bread-and-butter in recent years, and the level remained higher than other types of private litigation in Q2 2012. The level, however, dropped substantially since mid-2011 and is now on par with the level set in 2009. The drop in new merger-objection-suit filings in 2012 was likely due in part to the falloff in M&A activities.

Globalization has had a substantial impact on securities litigation over the past years, and this trend continued in the first half of 2012, with filings against non-U.S. companies reaching 15 percent. Although the total number of suits filed against non-U.S. companies fell off slightly in the first half compared to 2011, considering that the total number of suits dropped, the percentage of non-U.S.-company suits remained at an elevated level, as was the case in 2011. The second quarter saw the percentage fall to 13 percent, but the percentage of non-U.S. suits have been on a steady upward march from 10 percent in 2009. A major cause of this growth in suits filed against non-U.S. companies was the burst in suits filed against Chinese companies, which represented nearly a quarter of all such new suits for the second quarter.

Securities suits defined. The purpose of this report is to examine all sources of securities-related suits that impact the underwriting and placement of management liability insurance other than ERISA liability suits. In addition to securities class action suits, this report encompasses a much broader set of suits, including securities fraud, breach of fiduciary duties, derivative actions, collective actions and Ponzi scheme cases.

Several analytic firms publish tallies of securities class action suits filed, but rarely do these tallies agree. In addition to the broad array of securities suits other than securities class actions that Advisen covers, another difference is the way events are counted. In some cases, multiple companies (and their respective directors and officers) are named in the same complaint. Advisen counts each company for which securities violations are alleged in a single complaint as a separate suit. Advisen also includes in its tally securities suits that are filed in state courts.

The specific definition of each type of suit can vary as well, resulting in different lawsuit tallies. Advisen defines the major types of suits in this report as follows:

- **Securities Class Action:** suits alleging violations of federal securities laws, principally the Securities Act of 1933 and the Securities Exchange Act of 1934, filed by a private party on behalf of a class of persons injured by alleged violations.

Master Significant Case and Action Database (MSCAd).

Advisen's MSCAd is the most complete and accurate database of lawsuits and major events, consisting of over 130,000 events and over $6 trillion in aggregate losses. MSCAd covers suits and large events across the board, in addition to securities-related suits. Settlement amounts typically do not include defense costs. Information about suits and filing details are available for purchase at Advisen's online store, Advisen Corner, at **http://corner.advisen.com/analytics_mscad.html** and available at no extra charge to Advisen members

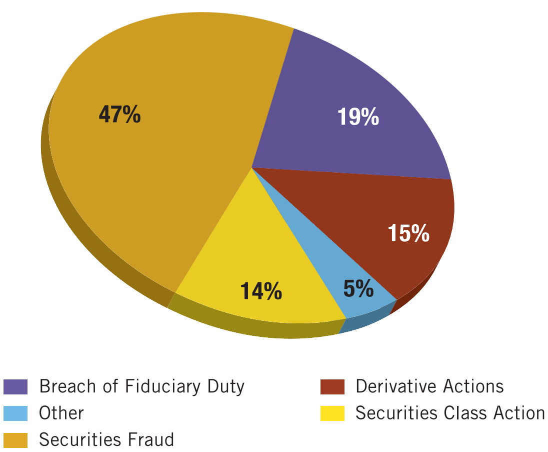
- **Securities Fraud:** suits filed by regulators or law enforcement agencies charging violations of securities fraud laws. Also included are cases brought by private parties alleging violations of securities laws that are not styled as class actions, and where more specific securities law violations are not made.
- **Breach of Fiduciary Duties:** suits alleging breach of fiduciary duties owed under the federal securities laws, primarily 15 USC Sec. 80a-35, or direct claims of breach related to securities and products whose sale or transfer is covered by securities laws. This includes merger, privatization or other transactions that involve public companies.
- **Derivative Action:** cases against directors and officers brought by shareholders on behalf of the company.

Suits filed

Securities suits filed in Q2 2012 tumbled to 412 new suits from 447 in the previous quarter, and after a record-setting 2011 at 1,931 new suits. The annualized rate of about 1,648 in the second quarter would place it at a level slightly higher than in 2010.

The number of new securities class action suits filed in Q2 2012 was up from 46 to 56, or 14 percent of total suits filed, which is up from Q1 2012. Of the 56 securities class action suits in Q2, 52 different companies were named in such suits, up from 43 in the previous quarter. The annualized number of suits, at 224, was on par with the number in 2011. Over the past couple of years, this type of suit represented a smaller percentage of all securities suits filed as compared to earlier years, as the percentage was routinely around a quarter of all suits in years past. Over half of securities class action suits in Q1 2012 named as defendants companies and their directors and officers from three sectors: healthcare, information technology, and financials.

SUIT TYPE - Q2 2012



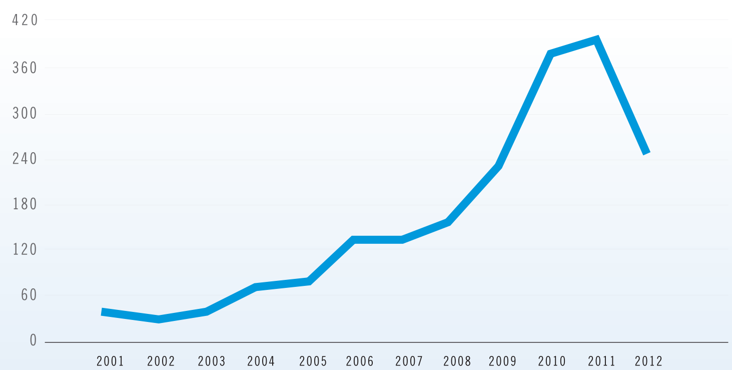
Securities fraud suits, a category defined by Advisen to be comprised principally of suits by regulators and law enforcement agencies, was the most active category. Not only did the number of filings fall with most suit-types in the second quarter, from 224 to 194, the percentage of total suits dropped from over half to 47 percent. The number of unique companies with securities fraud suits filed against them in the quarter was 171, down 12 percent from Q1 2012. The Q2 annualized rate of 776 suits filed was below the 2011 record level of 805, but higher than all previous years, demonstrating that the level remains historically high. Financial firms and their directors and officers continued to be the most often named as defendants in this category, at one-third of these suits. Consumer discretionary, energy, industrial, and information technology firms, and their directors and officers, together accounted for over almost half of securities fraud suit filings in the second quarter.

The breach of fiduciary duties category accounted for 79 suits in the second quarter of 2012, or 19 percent of all securities suits filed, down from 85 suits in Q1 2012. This included 59 unique companies with such suits in the second quarter, down 9 percent from the first quarter. The number of this types of suit filed has dropped considerably since mid-2011, with 500 new breach of fiduciary duty suits filed for the year, representing 26 percent of total suits filed, compared to an annualized rate of 316 for Q2 2012. By the fourth quarter of 2011, the number of suits dropped to an annualized rate of 372 suits. Over half of these suits were filed in state courts in Q2 2012. Breach of fiduciary duties suits had grown rapidly as a percentage of all securities suits filed over the years until 2011, from 8 percent in 2004 to 23 percent in 2009 to 28 percent in 2010 to a high of 35 percent in Q2 2011. The third quarter of 2011 marked the first fall off since the rise began in 2005, which continued through Q2 2012. The annualized rate of 316 in Q2 2012 was at about the same level as in 2009.

Breach of fiduciary duties suits typically allege that directors, officers or other company representatives failed to fulfill fiduciary duties owed under federal or state securities laws (as well as other corporate governance laws), or as otherwise concerns securities and products covered by securities laws. Many of these suits, often called merger objection suits, are filed shortly following the announcement of a proposed merger or acquisition by shareholders of the company to be acquired. Typically they demand more favorable terms, such as more bidders or a more transparent auction process. Over 70 percent of breach of fiduciary duties suits were among three sectors: consumer discretionary, healthcare, and information technology.

The merger objection suits that make up the lion's share of the breach of fiduciary duties category have been the driving force behind the growth of suits in this category, and the current drop. Mushrooming from 27 suits in 2002 to 365 in 2010 and 397 in 2011, these suits had not wavered in their growth trend despite fluctuations in M&A activities. It has been suggested, including by some judges presiding over these cases, that new filings are driven more by plaintiff's attorneys seeking new sources of fee revenue than by the economics of mergers and acquisitions. In 2011, the 397 new suits filed represented a slower growth rate than previous years. The drop in overall breach of fiduciary duties suits in the second half of 2011 was certainly reflected in the slower growth in merger objection suits in 2011. Additionally, in the first half of 2012, just 147 merger objection suits were filed, at an annualized rate of 294 new suits, much below the level set in 2011, driving the drop in overall new breach of fiduciary duty suits.

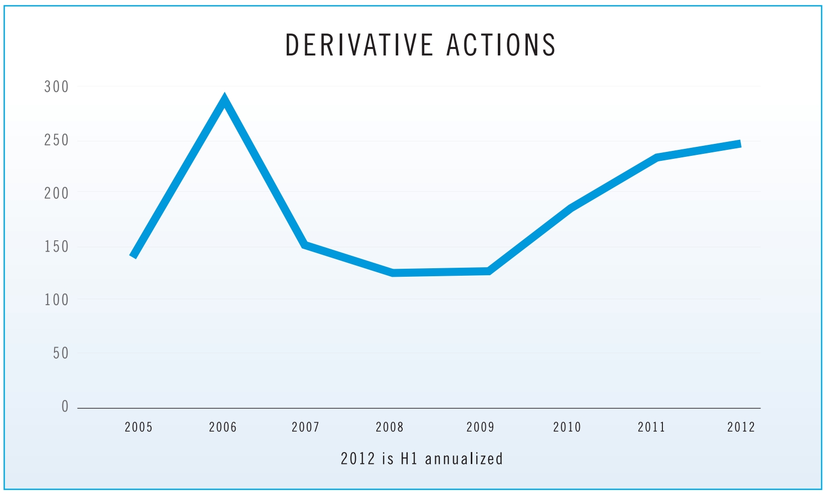
MERGER OBJECTION CASES FILED



40 investigations remain outstanding. 2012 is H1 annualized

In addition to a somewhat-improving economy, resulting in more favorable purchase prices, the drop in merger objection suits may be attributable to a drop in M&A activities in the first half of 2012. According to Ernst & Young, global M&A volumes might have risen 10 percent in the second quarter, but this followed a 24-percent falloff in the first quarter. Values of M&As were up 18 percent in the second quarter, following a down Q1 of 13 percent. Despite the rise in Q2, global M&A volume in Q2 remained at the second lowest level since Q1 2010, only lower in the previous quarter, and 26 percent below Q2 2011. Furthermore, M&A values were 22 percent their values in Q2 2011, despite its growth in Q2 2012. Bureau Van Dijk's Zephyr Half Year M&A Report claims that North American deals dropped 5 percent in terms of volume and 24 percent in value in the first half of 2012. The report also points out that U.S. deals declined 3 percent in volume and 29 percent in value for the first half. Global deals in the first half of 2012, according to the report, were down 24 percent from the second half of 2009 in terms of volume, and down 23 percent in terms of value. The uncertainty surrounding the Euro Zone's sovereign debt crisis, and its impact on the global economy, impacted M&A deal-making in Q1 2012, and the increase in deal in the second quarter was pale in comparison.

Derivative action filings (brought by shareholders on behalf of the corporation) in Q2 2012 were flat with the previous quarter at 63 new suits filed, and was the third most frequent type of suit for the quarter. The first half of 2012 is up 8 percent over 2011 on an annualized basis, at 252 new suits in 2012 compared to 234 in 2011. The number of this type of suit surpassed securities class action suits in Q4 2011, as the number of new derivative actions has risen over the past few years, shooting up from 126 new suits in 2009. The number of unique companies with derivative actions filed against in the quarter was down 13 percent from the previous quarter, at 47 companies. New derivative action filings accounted for 15 percent of total securities suits in the second quarter, up from 14 percent in the first quarter and 12 percent in 2011. In Q2 2012, companies in the consumer staples, financial, healthcare, and information technology sectors represented over half of all derivative actions.



The surge in derivative actions in recent years has been driven by plaintiffs' attorneys seeking an additional litigation method to securities class actions and breach of fiduciary duties suits, particularly in light of recent high settlements for certain derivative actions. They also often offer forum shopping opportunities in state courts, as many securities class action suits are removed to federal courts. Say-on-pay issues were at the heart of many derivative actions in 2011, which differs from the last spike in 2006 that was related to the options backdating scandal. The say-on-pay issue refers to shareholders bringing derivative actions against directors and officers for an alleged disconnect between executive compensation and pay-for-performance policies. These suits claimed that the directors breached their fiduciary duties because the increases in executive compensation are allegedly not in line with the companies' pay-for-performance policies, invalidating the business judgment defense. In these suits, plaintiffs pointed to failed say-on-pay proxy votes to back their arguments. The Dodd-Frank Act, however, has a specific provision that say-on-pay votes mandated by the Act do not create additional fiduciary duties for directors. As such, many of these suits have been dismissed, but defense costs were indeed significant, and the negative spotlight could generate shareholder activity on this issue going forward.

The SEC recently adopted rules requiring disclosure of compensation consultant conflicts of interest, as well as directed the NYSE and NASDAQ exchanges to propose standards relating to the independence of compensation committees. The disclosure rule applies to proxy statements for annual director election meetings beginning on January 2013. The independence standards proposals are required from the exchanges by September 25, 2012, but the SEC might not approve the standards until June 27, 2013.

Jurisdiction. By jurisdiction, 21 percent of securities suits were filed in state courts in Q2 2012, down from 33 percent in Q2 2011. This is primarily due to the falloff of breach of fiduciary duties suits. In the quarter, 8 percent of all suits were filed in the traditional stronghold of federal securities litigation, the United States District Court, Southern District, New York. Just three percent of new filings in the quarter were filed in courts outside the U.S.

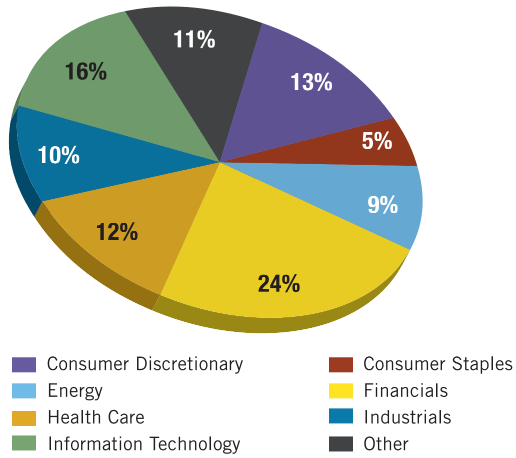
Court for Q2 2012 Filings	% Total
State	21%
Southern District, New York	8%
California Federal Districts	5%
Texas Federal Districts	4%
Florida Federal Districts	4%
Non-U.S. Courts	3%
Illinois Federal Districts	3%
Pennsylvania Federal Districts	3%

Suits alleging breach of fiduciary duties, by a wide margin, were the type of suit most likely to be filed in state courts, at about half for the quarter. The Class Action Fairness Act of 2005 (CAFA) requires most large multi-state class actions to be removed to federal courts. Securities class action suits filed in state courts typically rely on the non-removal provision in Section 22 of the Securities Act of 1933, which permits cases alleging violations of the '33 Act to be tried in state courts. Whether the non-removal provisions of the '33 Act or CAFA govern these cases is still being debated in the courts.

Defendant companies and their directors and officers

Financial firms accounted for 44 percent of securities suits filed in 2008 and 41 percent in 2009 due substantially to lawsuits sparked by the meltdown of the subprime mortgage market and the ensuing credit crisis, and by the Bernard Madoff Ponzi scheme. That number fell to 34 percent of securities suits filed in 2010, but was at 38 percent in Q1 2011, remaining

SUITS BY SECTOR - Q2 2012



stubbornly high. For the full year of 2011, the level was at 33 percent for financial firms. In the first quarter of 2012, new suits filed against financial firms dropped to 26 percent. That quarter was the first time since the early days of the credit crisis in 2007 that the percentage of new suits filed was more akin to historical averages for this sector. This new trend continued in the second quarter, coming in at 24 percent for the financial sector. The number of unique companies in the financial sector with securities suits filed against them in Q2 2012 was 82, down 13 percent from Q1. This level represented 25 percent of the total number of companies with newly filed suits.

The number of suits filed has become more broadly dispersed in recent years, particularly in the last two quarters, as compared to 2008 and 2009. Information technology companies followed financial firms at 16 percent, then consumer discretionary at 13 percent, healthcare at 12 percent, and industrials at 10 percent. In terms of unique companies with newly filed suits in Q2 2012, the information technology sector had 16 percent of the companies with new securities suits, consumer discretionary was at 12 percent, and healthcare and industrials both were at 11 percent. Two years after credit crisis- and Madoff-related suits substantially dropped, the stubborn hold that new filings of securities suits has had on financial firms reflects a long period of regulatory actions against these firms and private suits that tend to follow such actions. Perhaps the latest falloff reflects a thawing of this heightened activity against financial firms, and back to historical norms.

The financial sector remains the leading sector for attracting securities litigation, as it is historically one of the leading sectors subject to regulatory scrutiny. Many companies specifically involved in the capital markets part of this sector – investment banks and asset

Lawsuits filed against information technology firms in Q2 2012 were dominated by securities fraud suits (42 percent) and breach of fiduciary duties (28 percent)

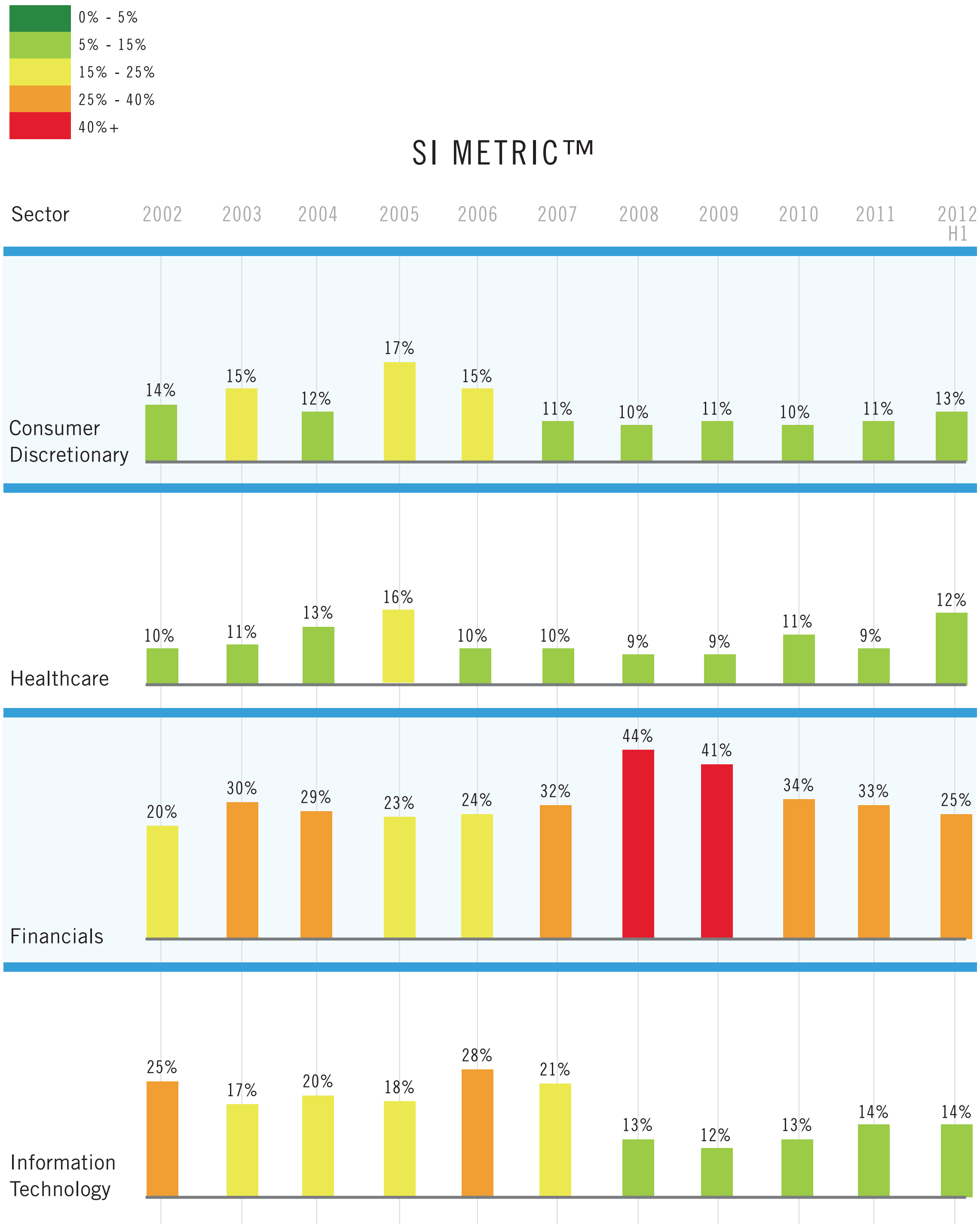
managers – continued to attract the attention of plaintiffs' attorneys. They also remain a target for regulatory actions, which in turn attract suits. Although suits against troubled commercial banks and thrifts generally increased in recent years, and FDIC suits have continued to roll in, the number of overall securities suits against small and regional banks is lower than a year ago. Furthermore, FDIC suits have been primarily filed against larger banks, which are technically part of the capital markets industry.

Historically, a large portion of cases against financial firms involve regulatory actions such as suits brought by the SEC. The second quarter was no exception: over 60 percent of all cases filed against financial firms and their directors and officers were securities fraud cases, and 8 percent were fines for FINRA (Financial Industry Regulatory Authority) violations. Breach of fiduciary duties suits, for duties to both shareholders and clients, accounted for 5 percent. Derivative actions were at 11 percent for the quarter. Securities class action suits are usually common for these firms, but were down from previous years, with 9 percent of suits naming financial firms for these types of suits.

Lawsuits filed against information technology firms in Q2 2012 were dominated by securities fraud suits (42 percent) and breach of fiduciary duties (28 percent). The directors and officers of healthcare companies saw their own mix of filings, with breach of fiduciary duties at 37 percent, securities class action suits at 23 percent, and 21 percent derivative actions. For industrial companies, 62 percent of the suits were securities fraud. Breach of fiduciary duties and securities fraud dominated suits against consumer discretionary firms, accounting for 70 percent of their suits.

Sector Impact Metric™. Advisen's Sector Impact Metric™ (SI Metric™) measures the distribution of securities lawsuits across industry sectors over the past decade. The Metric provides a visual compass tracking the changing seas of securities litigation. The industries consistently with the greatest number of new suits are financial, information technology, consumer discretionary and healthcare, though the relative percentage each represents of the total shifts over time.

The SI Metric™ gives two visual indicators of securities lawsuits in each sector, providing a way to track trends by industry sector. The height of the bars indicates the percentage of securities suits that fell in each sector per year. The bars in the exhibit are color-coordinated to also reflect the frequency of suits per year for each sector: green (0%-5%); light green (5%-15%); yellow (15%-25%); orange (25%-40%); and red (40% and over).



Note: The totals for each year do not add to 100 percent because only the sectors with significant lawsuit activity are shown. Other sectors include: consumer staples, energy, industrials, materials, telecommunications and utilities.

Securities fraud cases averaged $4.4 million in settlements for the second quarter, down from $7.2 million in the first quarter

Settlements and awards

The average settlement value (including proposed and tentative settlements) of securities suits during Q2 2012 was $16.3 million, up from $12.2 million in Q1, and up from $14.9 million in 2011. Awarded amounts are included in these averages, though the vast majority of securities lawsuits are settled before going to trial.

Securities class action suits represented seven of the top eight settlements in the second quarter of 2012, with an average settlement of $40.9 million. The second highest case settled in the second quarter, and highest securities class action suit, was against Bear Stearns (owned by JPMorgan Chase). The suit alleged misrepresentation of the firm's financial health, in particular the riskiness of their sub-prime mortgage portfolio, in the year leading to their collapse in March 2008. The company entered a proposed settlement for $275 million. Motorola Solutions settled for $200 million in another securities class action suit on the allegations of issuing false and misleading statements indicating strong revenue growth expectations, in order to inflate their depressed stock price in 2006. Apollo Group entered into a pending settlement for $145 million on claims that the operator of private colleges tied recruiter compensation to enrollment, padding revenue growth with unqualified students and violating federal regulations.

Securities fraud cases averaged $4.4 million in settlements for the second quarter, down from $7.2 million in the first quarter, with one of the top 10 cases settled. In the second quarter of 2012, Western Pipeline Corporation was ordered to pay an award of $53 million in restitution through a Department of Justice prosecution. The majority owner of the company and his co-conspirators pleaded guilty to defrauding investors in oil and gas development projects, which included assuming false identities as investors in supposedly successful development projects.

Breach of fiduciary duties cases had an average settlement of $79.6 million in the second quarter, up from $2.4 million in the first quarter. This usually lower-settlement average category was largely influenced by the highest settlement of the quarter. Dutch bank ABN AMRO Group settled for almost $505 million (EUR 400 million) in Dutch court. During the financial crisis, the Dutch bank was separated from Royal Bank of Scotland, and has since been government owned by the Netherlands. Shortly after, the Dutch banking operations of government-owned insurer Ageas (formerly Fortis) were sold to ABN AMRO, and this settlement reconciles the dispute over the equity transaction terms. The other breach of fiduciary duties suit with a settlement in the top-10 of securities suits of the quarter was against

Securities class action suits eliminated from the calculations are those whose alleged losses are not tied to defendants' stock price losses, thus their potential damages are not tied to market capitalization losses

Delphi Financial Group (owned by Tokio Marine), in a proposed settlement for $49 million. Shareholders objected to the terms of the merger agreement with Tokio Marine.

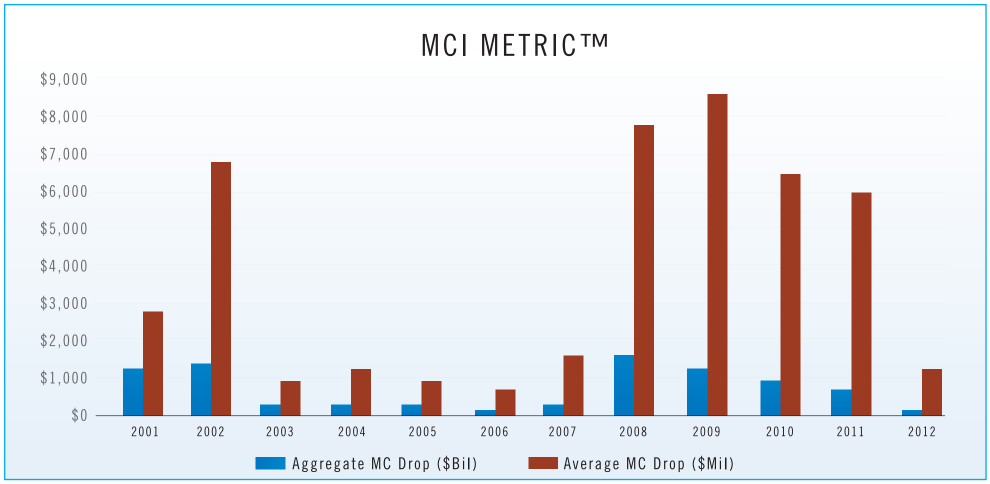
Derivative actions settled for an average of $4.2 million, about flat with the first quarter. In the past, derivative actions principally demanded changes in corporate governance or strategy with monetary awards beyond the plaintiffs' legal costs being rare. In recent years, large monetary settlements have become increasingly common. Furthermore, defense costs can be high in these cases. For example, the shareholders for Southern Copper Corporation brought a derivative action over the company's acquisition of a Grupo Mexico subsidiary. In October 2011, the company was awarded almost $2 billion in shares to cover the overpaid amount plus interest. The settlement also included $300 million in plaintiff attorney fees, one of the highest fee awards ever in securities litigation.[1] In the second quarter of 2012, Barnes & Noble tentatively settled for $29 million due to shareholder opposition to the terms of its 2009 acquisition of Barnes & Noble College Booksellers.

Market Cap Impact Metric™ (MCI Metric™)

The Advisen MCI Metric™ projects potential damages in securities class action lawsuits. This Metric measures the aggregate and average market capitalization drop around the class period. For cases initiated by shareholders, courts will typically award shareholders who purchased shares in a company during the class period an amount based on their estimated losses due to the alleged wrongful act. The MCI Metric™ calculates the market capitalization loss considering the typical starting and ending points for calculating damages to shareholders. Since claimants in any one case could have purchased shares on any date during the class period, Advisen considers the average market capitalization during the class period as the starting point. Advisen also uses the market capitalization 30 days after the class period end-date as the ending point for considering the company's market capitalization loss.

This projected market capitalization loss is calculated for most companies with a securities class action suit filed against them during each year of the past decade, with certain securities class action cases eliminated. Securities class action suits eliminated from the calculations are those whose alleged losses are not tied to defendants' stock price losses, thus their potential damages are not tied to market capitalization losses. For example, Madoff-related securities class action cases with investors that experienced losses due to feeder-fund investments in the Ponzi scheme claim losses that are not tied to the defendants' stock price. Other examples include losses experienced by auction rate securities investors, which are

1. *How Much is $300 million in attorneys' Fees?"* Wall Street Journal Law Blog, December 28, 2011.

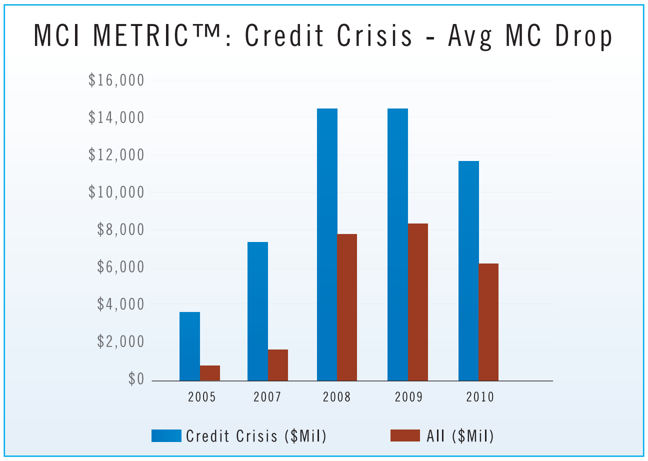


2012 aggregate is H1 annualized

tied to the underlying security as opposed to the stock price of investment banks named in many of these securities class action cases.

Aggregate losses and average losses are presented within the MCI Metric™. The aggregate loss measures the total fall-off in market capitalization, using the method described, for companies with securities class action suits filed against them for each year. This number is a starting point for calculating damages, and is a useful benchmark for comparing the impact across years. The average loss measures the average fall-off in market capitalization per company and lawsuit. It provides an important new insight into the impact the average securities class action suit could potentially have on the average company for each period.

The aggregate and average market capitalization losses shot up in 2008 and 2009, remained high in 2010 and 2011, but dropped substantially in 2012. Aggregate losses were $1.6 trillion in 2008 and $1.2 trillion in 2009. In 2010, aggregate losses began to drop but remained elevated at $769 billion, and dropped further to $661 billion in 2011. In the first half of 2012, aggregate losses plummeted to $119 billion, on an annualized basis. The losses in 2008 and many in 2009 reflect that most of the class periods occurred during the large stock market losses of 2008 and 2009. From the beginning of Q2 2009, however, stock markets rose from the depths of the credit crisis, yet the aggregate losses remained high through 2011, affirming that market cap losses for companies named in securities class action suits are far in excess of market cap loss attributable to overall market fluctuations. The level in the first half of 2012, much like the falloff in suits filed against financial firms, is a sign that securities litigation has finally moved beyond the effects of the credit crisis.



2011 credit crisis average would be $146 billion due to one suit against Citigroup

The surge in average market capitalization losses in 2008 through 2011 was driven largely by credit crisis cases. These cases, on average, have seen much greater destruction of market capitalization, implying that credit crisis suits will ultimately settle for far larger amounts than other types of suits, which has generally been the case thus far. The average market capitalization drop for credit crisis-related suits rose to $14.7 billion in 2008 and 2009, and remained high at $11.2 billion in 2010. Just one credit crisis-related securities class action suit was filed in the 2011, against Citigroup, connected to $146 billion in market capitalization losses. No credit crisis-related securities class action suit has been filed in 2012.

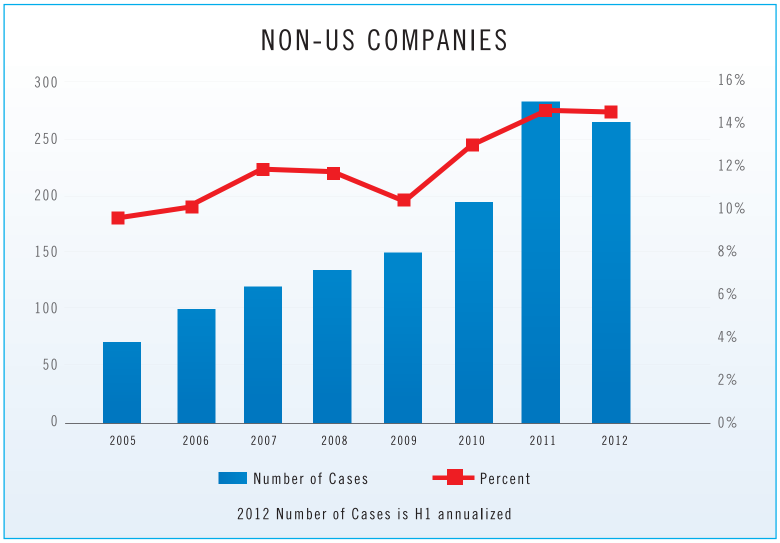
Globalization of securities litigation

The increasing number of non-U.S. companies agreeing to securities litigation settlements in excess of $100 million makes it clear that exposure to securities litigation has become a reality of doing business for companies around the world. Any company with shares trading on U.S. exchanges is subject to securities litigation (and other management liability-related litigation) in U.S. courts. Furthermore, many countries around the world, especially in Europe, are "modernizing" their civil legal systems by providing greater access to court remedies through various collective action mechanisms. The end results are systems closer to the U.S. class action system, and ultimately more suits with greater payouts from courts outside of the U.S. In addition, financial regulators around the world have stepped up enforcement efforts in the wake of the credit crisis, and increasingly work in concert with one another, including heightened coordination with U.S. authorities.

As compared to the U.S., securities litigation in Europe, Asia and Latin America is less frequently a matter of public record, making it difficult to get as complete a picture of litigation activity. Typically only the largest cases attract media attention, and non-U.S. companies are far less likely to provide details of litigation in their public disclosures. In spite of these limitations on data collection, it is nonetheless clear that securities litigation activity has been on the rise in recent years in courts outside the U.S. In Q2 2012, Advisen recorded 13 securities suits filed in courts outside the U.S., or 3 percent of total suits for the quarter.

This is down from 4.4 percent recorded in 2011, a record year for securities litigation from non-U.S. courts. The Madoff Ponzi scheme, which drew in a number of non-U.S. investors and banks, led to a spike in non-U.S. securities cases in 2009. Even so, 2009 saw just 4 percent of total securities cases filed in non-U.S. courts, lower than the 2011 record level.

Securities suits against non-U.S. companies – both in the U.S. and elsewhere – have accounted for about 10 percent to 12 percent of total securities suits tracked by Advisen from 2005 to 2010. In 2011, 15 percent of securities suits were filed against non-U.S. companies, up significantly from the 12.6 percent level of 2010 and the 10.0 percent level in 2009. In the first half of 2012, the total number of suits against non-U.S. companies remained elevated at 15 percent. Credit crisis-related suits and Madoff-related suits were global in nature, but the falloff in these suit-types did not lead to a decline in the percentage of securities suits filed against non-U.S. companies in 2010, which has only increased since.



Some predicted that the number of suits filed against non-U.S. companies would dip in the short-term, as a result of the U.S. Supreme Court decision in *Morrison v. National Australia Bank.* This decision ends the practice of filing lawsuits in U.S. federal courts as concerns securities purchased on non-U.S. exchanges. The U.S. federal court system has been the venue of choice for securities litigation for shareholders across the globe. This scenario of fewer suits filed against non-U.S. companies, however, has not occurred yet. The number of securities suits against non-U.S. firms almost certainly will continue to grow in the long-term, but as shareholders gain greater access to legal systems elsewhere to litigate securities claims, it is possible that fewer suits against non-U.S. firms will be filed in the U.S.

Cases in U.S. courts against companies from China mushroomed in 2010 and 2011, and remained elevated in 2012. The number of suits filed against these companies grew from five suits recorded by Advisen in 2009 to 28 in 2010, including 19 in the fourth quarter alone. In 2011, the pace continued with 74 new suits filed, but the highest quarter was the second with 34 new filings. The first quarter of 2012 saw a high number of suits against Chinese firms as well, with 21 new filings, and Q2 had 13, bringing the first half at an annualized rate of 68. These cases are unaffected by the Morrison decision since they were filed against companies that are listed on U.S. exchanges. As the number of companies from China that choose to list on U.S. exchanges has grown, so does the likelihood of suits for these companies.

Many of these suits against Chinese companies deal with large discrepancies between revenue reported in SEC-filed financial statements and statements filed with the China State Administration for Industry and Commerce. In certain cases, investment bankers and other advisors associated with these stock offerings on U.S. exchanges found themselves as defendants as well. Companies claim that the differences are due to the differences in tax-accounting rules and financial-reporting rules, as well as different accounting standards. In certain cases, however, revenue in SEC-filed reports is over ten-times greater than reports filed for tax purposes. It appears that many executives in China have a lesson to learn about the scrutiny thrust upon them, by both regulators and plaintiffs' attorneys, by listing on U.S. exchanges.

More information

More information about suits and filing details is available for purchase at Advisen's online store, Advisen Corner, at http://corner.advisen.com/analytics_mscad.html and available at no extra charge to Advisen subscription members through their advisen.com logins. For more information please call +1.212.897.4800 or e-mail corner@advisen.com.

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