

News Release

Contact: Suzanne Dawson Kathryn Oliver
Linden Alschuler & Kaplan PricewaterhouseCoopers
sdawson@lakpr.com kathryn.oliver@us.pwc.com
(212) 329-1420 (860) 345-3550

Financial Crisis Fallout Continues as Legislators and Enforcement Agencies Sharpen Their Swords, According to PricewaterhouseCoopers 2009 Securities Litigation Study

2009's Class Action Lull May Signal Shift in Focus from Financial Services to Other Industries, and Abroad

NEW YORK, April 1, 2010 -- The financial crisis continued to dominate the litigation landscape in 2009 - although to a lesser degree than in 2008, according to the annual PricewaterhouseCoopers (PwC) Securities Litigation study released today. Governments worldwide remained focused on regulatory overhaul, stimulus plans and investigations into the “who, what, when, where, why, and how” of alleged wrongdoings related to the crisis.

Across all industries, the total number of federal class action lawsuits filed fell to 155 in 2009 from 210 in 2008 and the Second Circuit continued to see the greatest amount of filing activity. A total of 51 financial-crisis-related filings were made during 2009, compared to 99 in 2008. Toward the end of 2009, a notable number of filings were made that had substantially longer time lags than usual between the end of the class period and the filing date. The average time lag of 218 days in 2009 was almost double the average of 114 days observed since the Private Securities Litigation Reform Act (PSLRA) of 1995, and more than 71 percent higher than the average lag of 127 days measured in 2008.

For the second consecutive year—and for only the second time in the post-PSLRA era—financial services companies bore the brunt of federal private securities filings. Other industry percentages remained consistent with those recorded in 2008. In 2009, financial services companies were named in 41 percent of total filings, or 63 cases. Although the percentage fell 7 percent (and by 37 cases) from 2008, the financial services industry was still the most frequently sued industry group by far during 2009, and clearly continued to be the main focus of the plaintiffs’ bar.

“Although 2009 saw a decline in the total number of federal securities class action lawsuits, neither financial services firms nor companies in other sectors should take this as license to drop their guard,” said Grace Lamont, partner and U.S. securities litigation and investigations practice leader for PricewaterhouseCoopers. “Far from being a trend, the decline may simply be a lull as the plaintiffs’ bar refocuses following two years of intense financial-crisis-related filings. And arguably, as the economy and particularly the financial sector returns to stability, other sectors may find the glare from the plaintiffs’ bar uncomfortably bright once again.”

A total of 93 settlements were made in 2009 compared to 95 in 2008. Total settlement value in 2009 was \$3.1 billion compared to \$3.9 billion in 2008—a decrease of 21 percent. The average settlement value in 2009 was 20 percent lower than the average settlement amount in 2008. Nine settlements in 2009 exceeded \$100 million compared to seven in 2008.

Also in 2009, the percentage of accounting-related cases fell to an all time low since the passage of the PSLRA. Accounting-related cases represented 37 percent of total federal filings in 2009 compared to the 41 percent noted in 2008 and an average of 59 percent since the passage of PSLRA. The average accounting-related settlements in dollar terms continued to outpace non-accounting-related settlements in 2009 by 69 percent. Total accounting-related settlements amounted to \$2.3 billion in 2009, representing 74 percent of the year's total settlement value.

Filings against Foreign Issuers (FIs) fell in 2009, according to the report. The 20 federal securities class actions filed against FIs in 2009 represented a drop of 16 cases (or approximately 44 percent) from 2008's all-time high of 36 cases. Eleven of the FI cases filed, or 55 percent, were against European companies, a 22 percentage point increase when compared to 33 percent in 2008. The number of settlements fell from 19 in 2008 to 9 in 2009, a drop of 53 percent. The average settlement, however, increased by 65 percent—from \$23.1 million in 2008 to \$38 million in 2009.

"It is not evident why, in a year when investors continued to suffer significant losses in the market, the plaintiffs' bar filed almost 50 percent fewer cases against FIs than it did in previous years," said Patricia Etzold, partner with PricewaterhouseCoopers. "Beyond the decrease in the number of foreign registrants, there are a multitude of factors to consider. The drop may be partly due to reportedly fewer funds available to pursue cases, causing plaintiffs' counsel to be more selective in the cases they file. There may also have been uncertainty regarding the ability of potential target companies to continue as going concerns."

Other key findings in the 2009 study include:

- Plaintiffs continue to take aim at the Fortune 500 - Filings against Fortune 500 companies decreased by 3 percent in 2009, falling to 20 percent from 23 percent in 2008. Despite the drop, 2009's figure represents the third highest percentage of total filings against Fortune 500 companies to occur in any single year since passage of the PSLRA.
- Decreased involvement from the SEC and DOJ - In 2009, 17 filings had some form of SEC involvement. As a percentage of total cases filed, this represented a year-over-year decrease of 8 percent—falling from 19 percent of total filings in 2008 to 11 percent in 2009. Major enforcement cases listed during 2009 included actions involving subprime-related securities, auction rate securities (ARS), fraud and Ponzi schemes, insider trading, and financial fraud and issuer disclosure.
- The reign of institutional investors - Institutional investors' involvement as lead plaintiffs in filings rose to 60 percent (101 filings) of total cases filed by 2005; however, since then, the percentage has fallen by a few percentage points each year, and in 2009 it fell to 48 percent of total filings—down from 50 percent in 2008, and also below the average of 52 percent recorded since 2002. In 2009, approximately 75 filings of the 155 total had an institutional investor as lead plaintiff, down significantly from the 104 filings reported in 2008.
- Plaintiffs keep directors and officers in their sights - Senior officers of companies continued to be named in the majority of filings during 2009, though in some cases to a lesser extent than in previous years. For the second consecutive year, filings against the offices of chief executive officer (CEO), chief financial officer (CFO), and chairman decreased.

Based on the findings of the report, PricewaterhouseCoopers urges that the issue of compliance must be a top priority for companies across the globe.

"Uncertain days lie ahead, and senior management must take appropriate steps to protect the companies they lead and ensure that they personally meet the responsibilities and expectations regulators now demand," added Lamont. "There has never been a greater need or expectation for senior officials to involve themselves on a more practical level in ensuring that their companies' books and records are

accurate, that internal control systems with particular emphasis on fraud controls are functioning effectively and that the proper tone at the top is being communicated to - and heard by - all parts of the organization.”

“Though 2009 saw a slow down in federal securities class action suits, there is still a pressing need for companies to maintain their day-to-day vigilance,” stated Lamont. “Organizations will need to continually and proactively ensure that they have proper internal controls and risk management procedures in place to mitigate potential future situations.”

For the full PricewaterhouseCoopers Securities Litigation Study, please visit <http://www.10b5.com>.

About PricewaterhouseCoopers' Advisory Practice

PricewaterhouseCoopers' [Advisory](#) professionals help organizations improve business performance, respond quickly and effectively to crisis, and extract value from transactions. We help clients implement their business strategies and priorities to build effective organizations, innovate and grow profitably, reduce costs, manage risk and regulation, and leverage talent. As business integrators, we look across the entire organization -- focusing on strategy, structure, people, process and technology -- to help our clients drive sustainable change that yields measurable results.

About PricewaterhouseCoopers

PricewaterhouseCoopers (www.pwc.com) provides industry-focused assurance, tax and advisory services to build public trust and enhance value for our clients and their stakeholders. More than 163,000 people in 151 countries across our network share their thinking, experience and solutions to develop fresh perspectives and practical advice.

"PricewaterhouseCoopers" refers to PricewaterhouseCoopers LLP or, as the context requires, the PricewaterhouseCoopers global network or other member firms of the network, each of which is a separate and independent legal entity.

© 2010 PricewaterhouseCoopers LLP. All rights reserved.

###