

Where are we now?

**Markets and Legal Developments
for Technology Executives**

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Practice

August 30, 2012

Agenda

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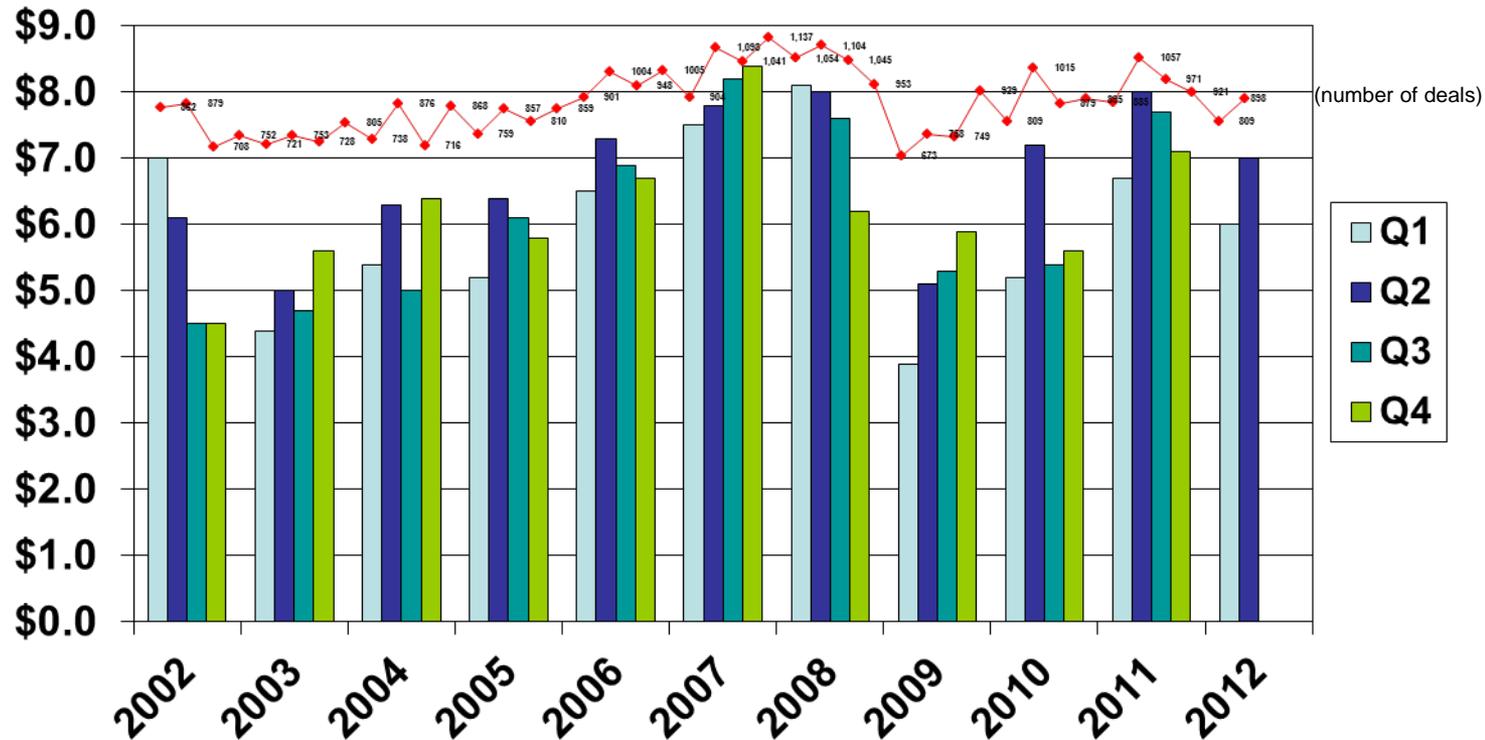
Market Trends - Total Investments

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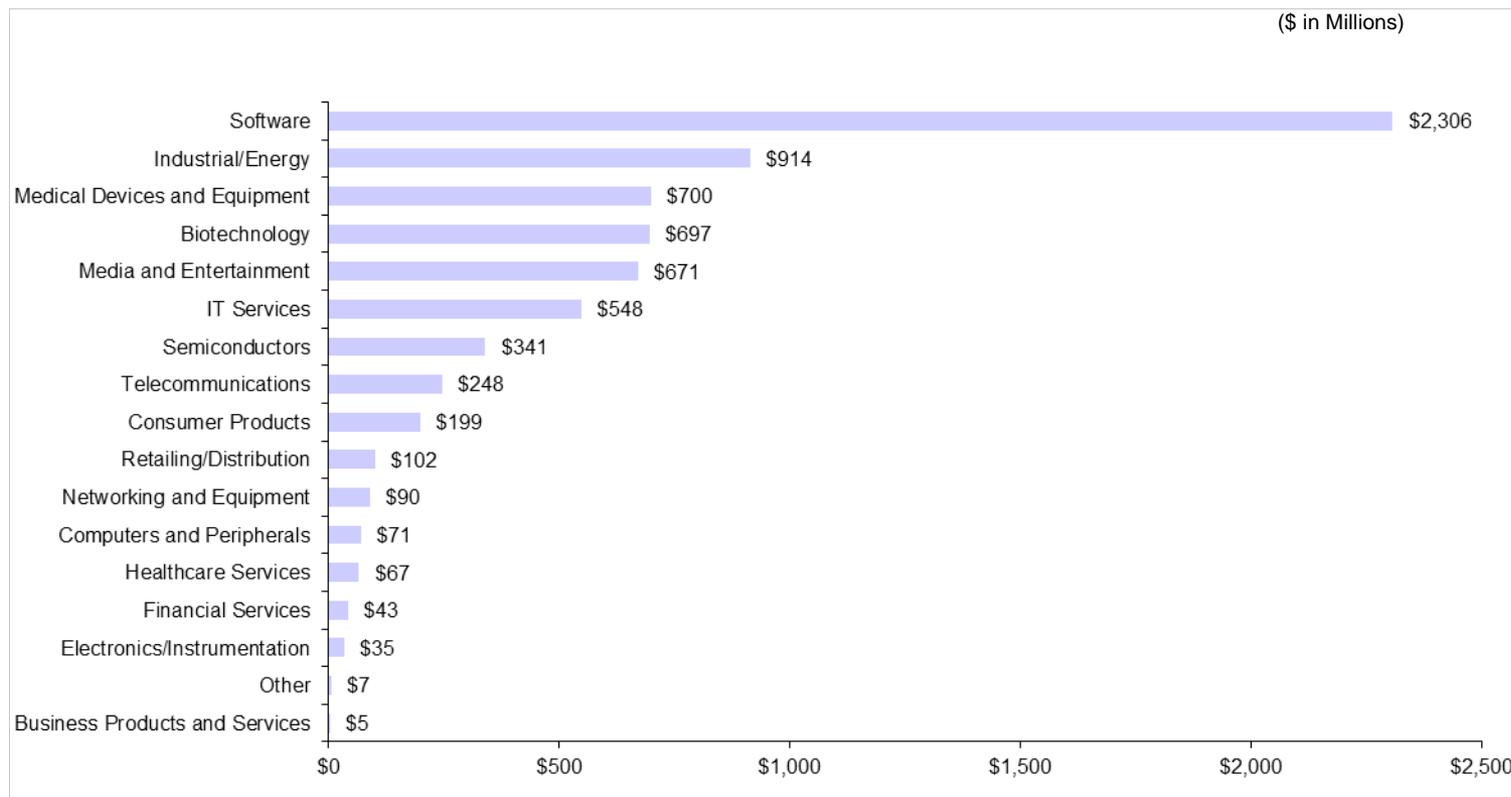
(\$ in billions)



Investments in the second quarter of 2012 totaled \$7.04 billion in 898 deals, a 17% increase in dollars and an 11% increase in deals from the first quarter of 2012, when \$6.04 billion went into 809 deals

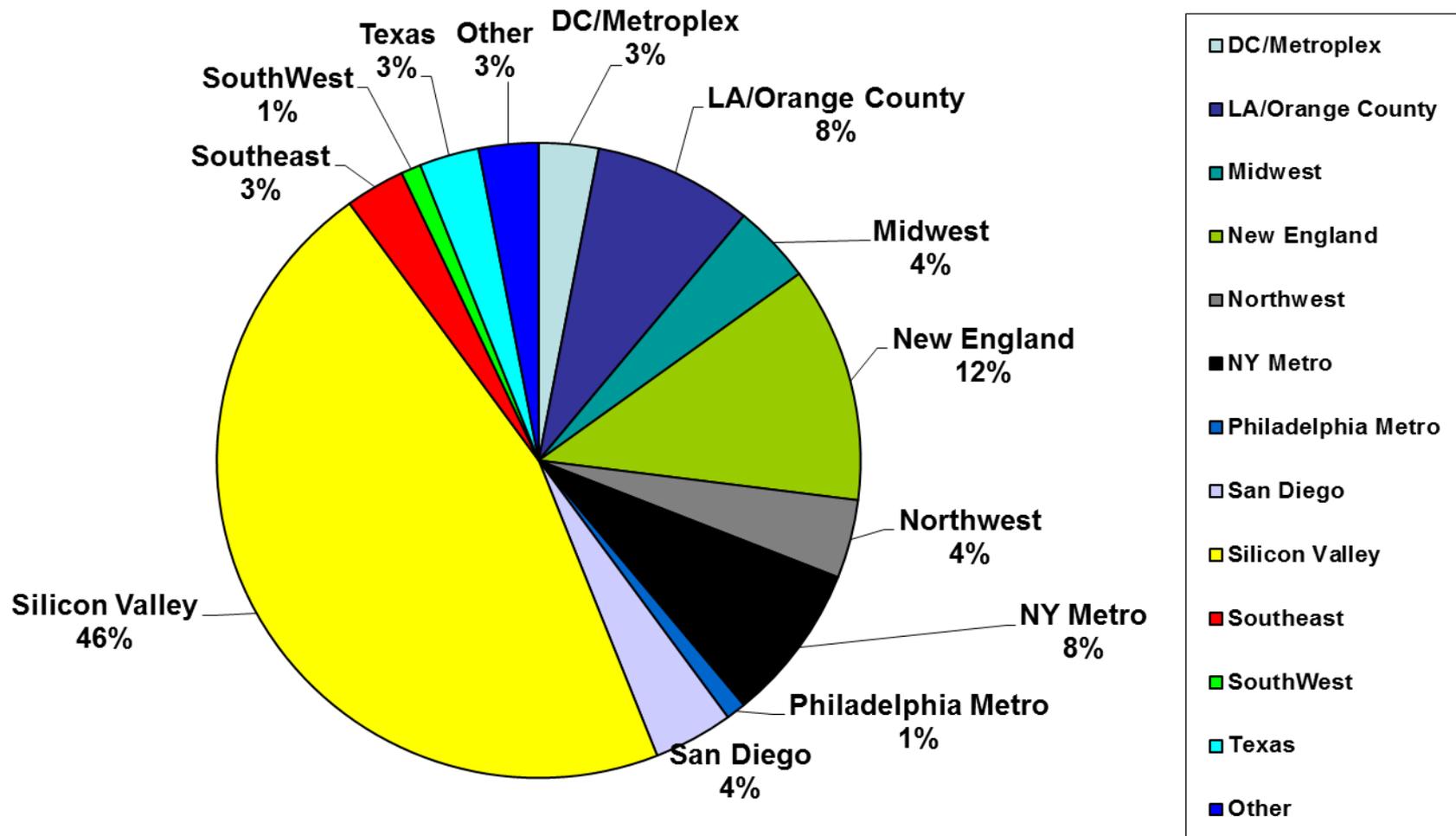
Venture capitalists invested \$0.96 billion less in the second quarter of 2012 than in the second quarter of 2011, and they invested in 159 fewer deals

Q2 2012 by Industry



Capital investment in the Software sector increased by 37.5% in Q2 2012 from its level in Q1 2012, and continues to lead with \$2.3 billion of total investments. The Industrial/Energy sector also enjoyed a 17% increase in funding over Q1 2012 levels

Q2 2012 by Region



Silicon Valley continues its domination of venture investing with 46% of total venture capital investments

Venture Fundraising

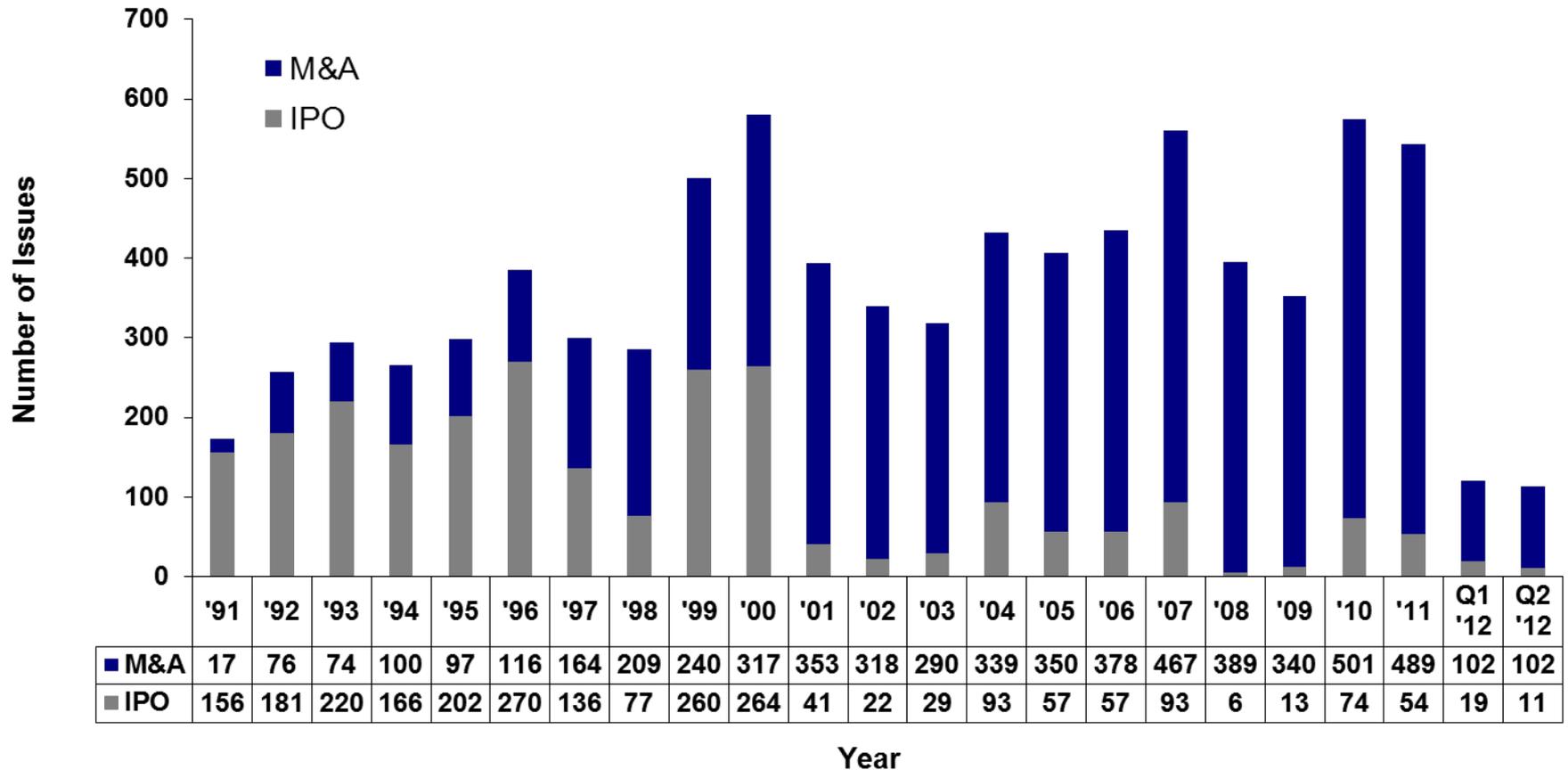
Fundraising by Venture Capital Funds

Year/Quarter	Number of Funds	Venture Capital (\$M)
2008	212	25,179.1
2009	163	16,335.8
2010	173	13,559.2
2011	182	18,575.1
2012	82	11,173.5
2Q'10	49	2,100.8
3Q'10	56	3,688.4
4Q'10	50	3,735.2
1Q'11	47	7,556.7
2Q'11	45	2,609.4
3Q'11	65	2,140.5
4Q'11	53	6,268.5
1Q'12	49	5,264.4
2Q'12	38	5,909.1

- Thirty-eight U.S. venture capital funds raised \$5.9B in Q2 2012
- This level marks a 12% increase by dollar commitments but a 22% decline by number of funds compared to the first quarter of 2012, which saw 49 funds raise \$5.3B
- Venture capital fundraising for the first half of 2012 totaled \$11.2B, a 10% increase by dollar commitments compared to the first half of 2011, which totaled \$10.2B

The top five funds accounted for nearly 80 percent of total fundraising this quarter, as the number of funds raising money during the quarter fell to its lowest levels since Q3 2009

Venture-Backed Liquidity Events



The number of M&A deals in Q2 2012 remained even with the number of M&A deals during Q1 2012, and increased by 6% from Q2 2011. The chilling effect from Facebook's IPO on public markets is beginning to subside, and it is hoped that the new JOBS Act will encourage a stronger second half of 2012

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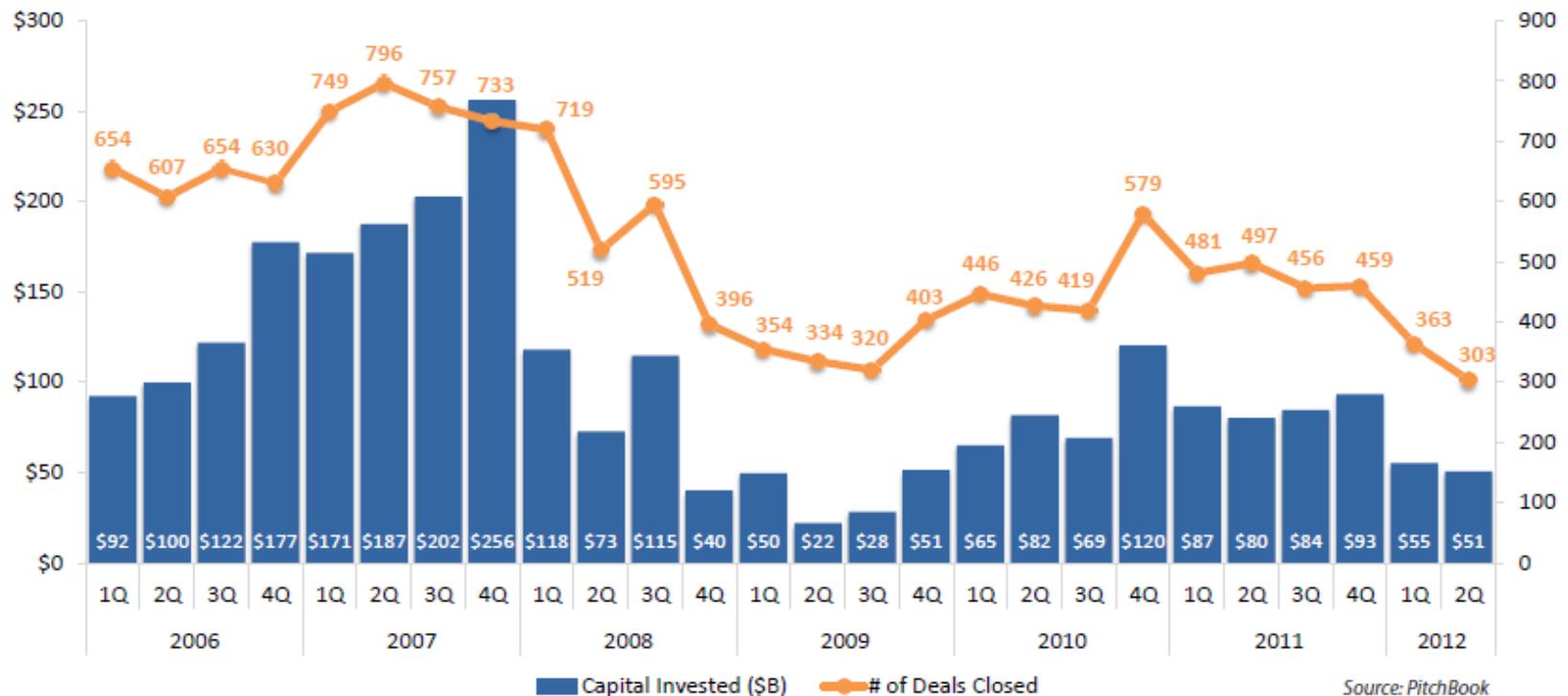
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Total Private Equity Deal Flow

- Q2 2012 capital investment and deal volume dropped in comparison to Q1 2012 and Q2 2011. The Q2 2012 capital investment of \$51B is the lowest level for any individual quarter since the post-bubble year of 2009, and with just 303 deals, it was the worst quarter by volume since before 2006
- Although deal-making was fairly consist throughout 2011, levels have slipped during the first half of 2012 with only 1,332 deals, the lowest level since 2003
- The secondary market should see strong activity through the remainder of 2012 and into 2013 with a significant inventory of private equity backed companies sitting in portfolios and tax cuts set to expire on January 1st

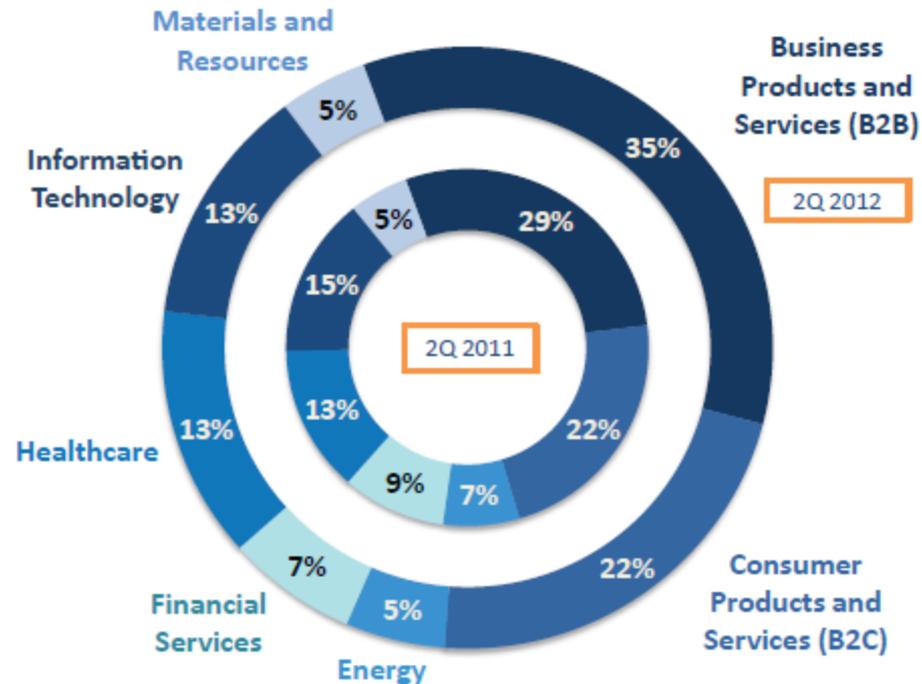


Q2 Transactions by Industry Sector

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- The predominant industry for private equity investing, Business Products and Services grew 6% in Q2 2012 from Q2 2011 and represents nearly 35% of all deal-making
- Investment in the Consumer Products and Services was stagnant at 22%, a sharp contrast to the early 2000s when it regularly represented 30% or more of activity
- Investment also lagged in both the Financial Services and Energy sectors



Source: PitchBook

Q2 Transactions by Region

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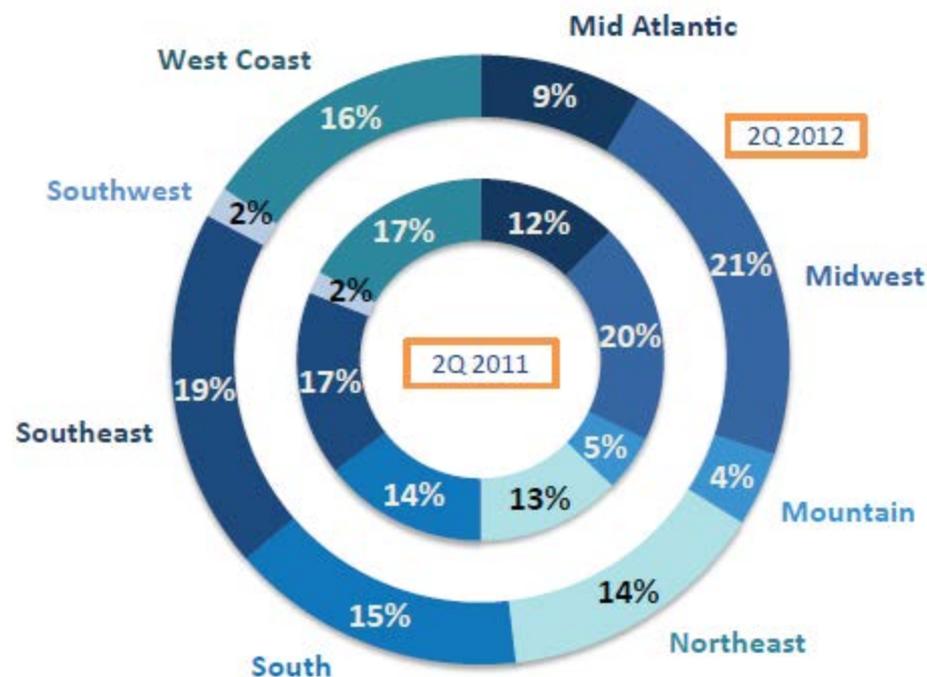
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- Overall, private equity investment activity focused in the Midwest and on the coasts
- The Midwest remained the most active region with 65 deals in Q2 2012, representing the largest percentage of any region
- Private equity investment grew in the South and Northeast regions during Q2 2012, fell in the West Coast and Mid-Atlantic regions and remained stagnant in the Mountain and Southwest regions



Source: PitchBook

Private Equity Exit Activity

- While the 114 exits completed in Q2 2012 was short of recent quarters, activity remained solid
- Capital exits fell from the stellar mark posted in Q1 by 42%
- Corporate acquisitions continue to dominate the exit landscape, representing 54% of activity but secondary buyouts grew from 32% of exits in Q1 2012 to 39% in Q2 2012. This trend is predicted to continue through the rest of the year



Private Equity activity fell short in Q2 2012 from recent quarters

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Q2 2012 Exit Trends (Venture Backed Issuers)

Quarter/Year	Total M&A Deals	M&A Deals with Disclosed Values	*Total Disclosed M&A Value (\$M)	*Average M&A Deal Size (\$M)	**Number of IPO's	Total Offer Amount (\$M)	Average IPO Offer Amount (\$M)
2007	467	201	32,053.1	159.5	93	12,163.4	130.8
2008-1	125	41	4,560.2	111.2	5	282.7	56.6
2008-2	91	27	3,091.9	114.5	0	0.0	0.0
2008-3	99	36	3,596.2	99.9	1	187.5	187.5
2008-4	74	22	2,671.7	121.4	0	0.0	0.0
2008	389	126	13,920.0	110.5	6	470.2	78.4
2009-1	80	17	709.5	41.7	0	0.0	0.0
2009-2	70	13	1,996.3	153.6	6	827.4	137.9
2009-3	92	28	1,958.7	70.0	2	465.4	232.7
2009-4	98	45	8,412.8	187.0	5	481.3	96.3
2009	340	103	13,077.3	127.0	13	1,774.1	136.5
2010-1	139	36	4,960.4	137.8	9	936.3	104.0
2010-2	106	29	3,449.0	118.9	18	1,382.7	76.8
2010-3	128	33	3,850.5	116.7	15	1,558.0	103.9
2010-4	128	47	6,344.9	135.0	32	3,555.6	111.1
2010	501	145	18,604.8	128.3	74	7,432.5	100.4
2011-1	138	52	6,210.2	119.4	14	1,375.8	98.3
2011-2	96	41	6,458.7	157.5	22	5,454.0	247.9
2011-3	136	41	6,749.3	164.6	5	442.9	88.6
2011-4	119	37	4,936.6	133.4	12	2,648.9	220.7
2011	489	171	24,354.8	142.4	54	11,171.1	206.9
2012-1	102	26	3,441.3	132.4	19	1,517.9	79.9
2012-2	102	27	5,541.2	205.2	11	17,059.8	1550.8
2012	204	53	8,982.5	169.5	30	18,577.7	619.3

Source: Thomson Reuters & National Venture Capital Association

* Only accounts for deals with disclosed values

** Includes all companies with at least one U.S. VC Investor that trade on U.S. Exchanges, regardless of domicile.

- Venture-backed IPO activity marked its strongest quarter on record, by dollars raised, bolstered by the Facebook IPO in May
- 11 venture-based companies went public in the U.S. during Q2 2012, a decline of 42% from Q1 2012
- 102 venture-backed M&A deals were reported, 27 of which had an aggregate deal value of \$5.5 billion, a 61% increase from Q1 2012
- The psychological fallout from the Facebook IPO, coupled with economic uncertainty in Europe, had a chilling effect, but the passage of the JOBS Act may help stabilize public markets for the remainder of the year

Q2 2012 marked the largest quarter for dollars raised by venture-backed companies on record with Facebook's \$16B offering and 11 venture-backed IPOs valued at \$17.1B, but Q2 2012 experienced a decline in deal volume from both Q1 2012 and Q2 2011 by 42% and 50%, respectively

Comparison Average IPO Statistics

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	2009	2010	2011	H1 2012
Average Deal Size:	\$479M	\$159.9M	\$247M	\$406M
Underwriting Fees:	4.45%	6.51%	5.54%	3.12%
Issuer Counsel Fees:	\$2M	\$1.7M	\$1.9M	\$2.0M
Auditor Fees:	\$1.41M	\$958K	\$1M	\$1.1M
Printer Fees:	\$400K	\$316K	\$342K	\$379K
Transfer Agent Fees:	\$23K	\$19.6K	\$14.2K	\$14.8K
Listing Fees:	\$150K	\$151K	\$159K	\$164K
Total Fees as % of Offering Size:	8.62%	10.32%	10.30%	11.33%

The US IPO Market Year To Date

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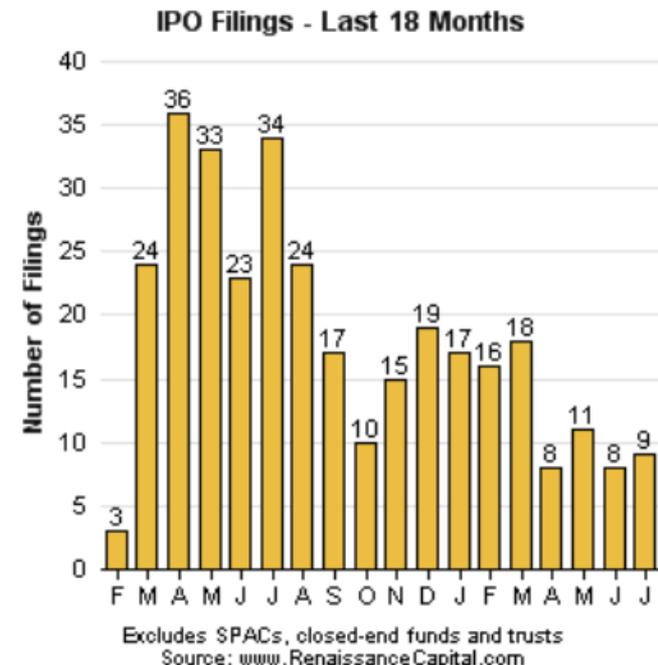
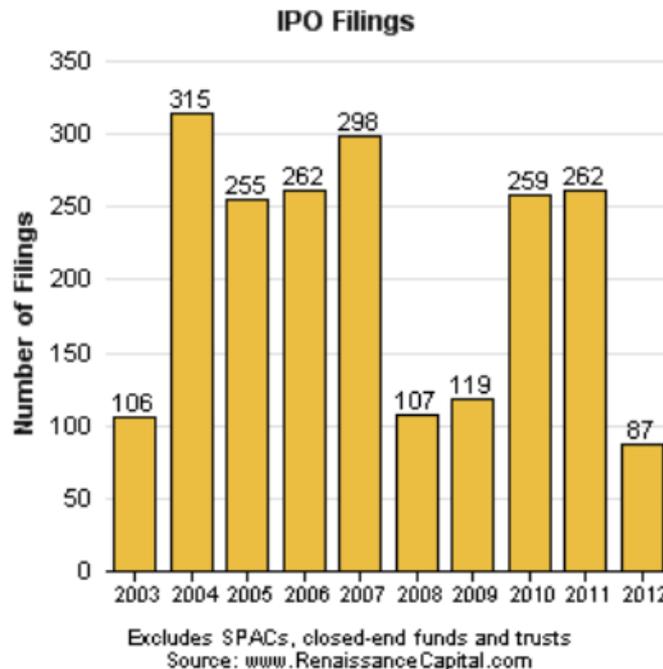
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- To date, there have been 87 IPOs filed in the U.S. in 2012 – representing a 46.6% drop from the same period last year
- 27 IPOs were filed in the second quarter of 2012
- Technology IPOs remain the most popular year-to-date, and comprised 34% of all U.S. IPOs in 2012 with total proceeds of \$18.8 billion



The US IPO Market Year To Date

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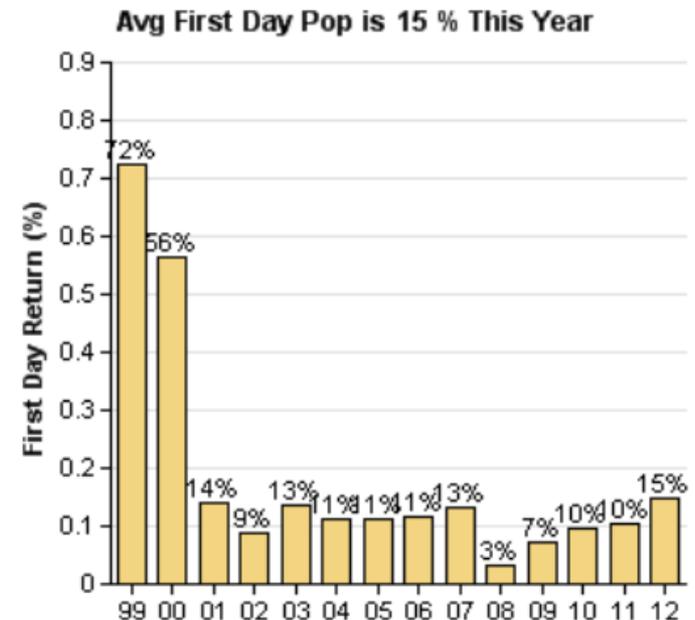
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- The year-to-date IPO returns increased from a total of 11.8% in the first quarter to 17.3% in the second quarter of 2012
- The IPO of Splunk in mid-April showed a 108% first day return and a total return of 105.2%
- The IPO of Envivio in April closed at \$8.49 a share, down 5.7% from its IPO price of \$9, and had a total return of -33.7%
- The difficult after-market trading in Facebook leaves the market uncertain



Source: www.RenaissanceCapital.com



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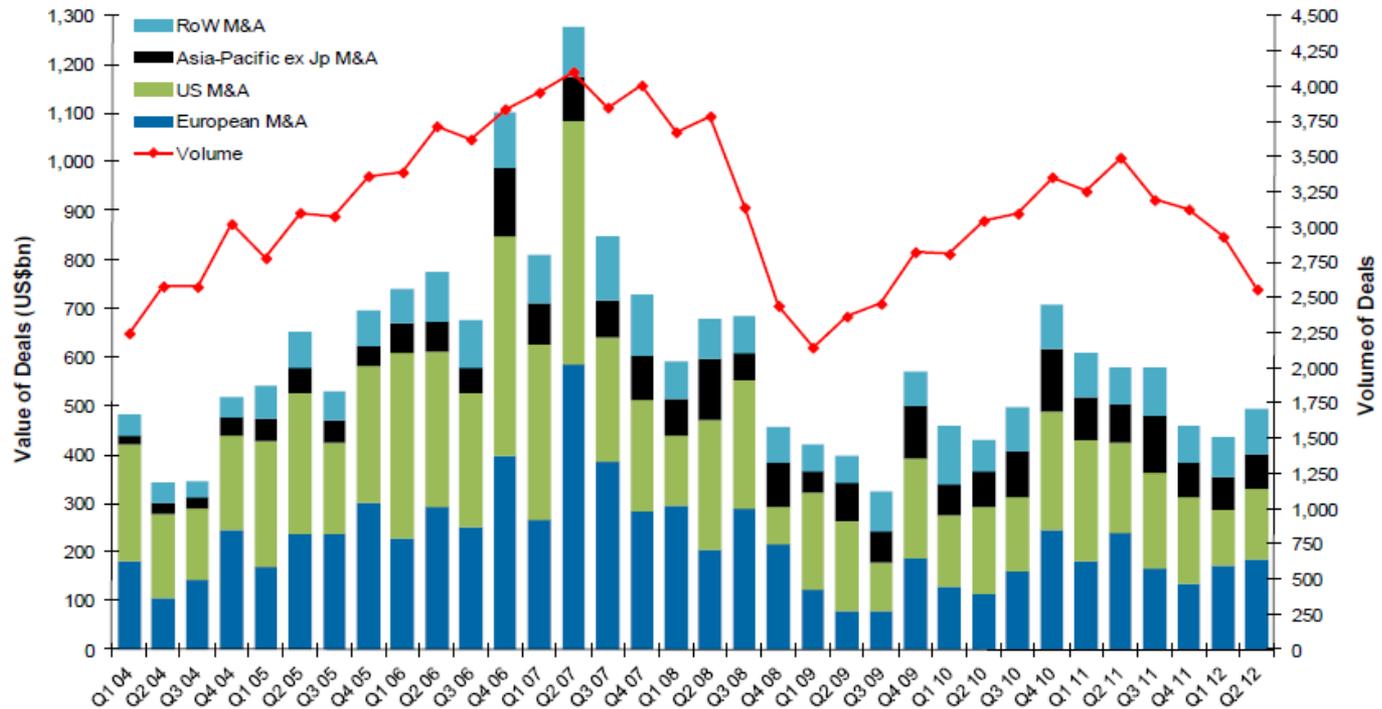
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Global M&A Quarterly Trend

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Global M&A Activity - Quarterly



Q2 2012 global M&A activity was at \$494.9 billion, and bucked the trend of five consecutive quarterly declines

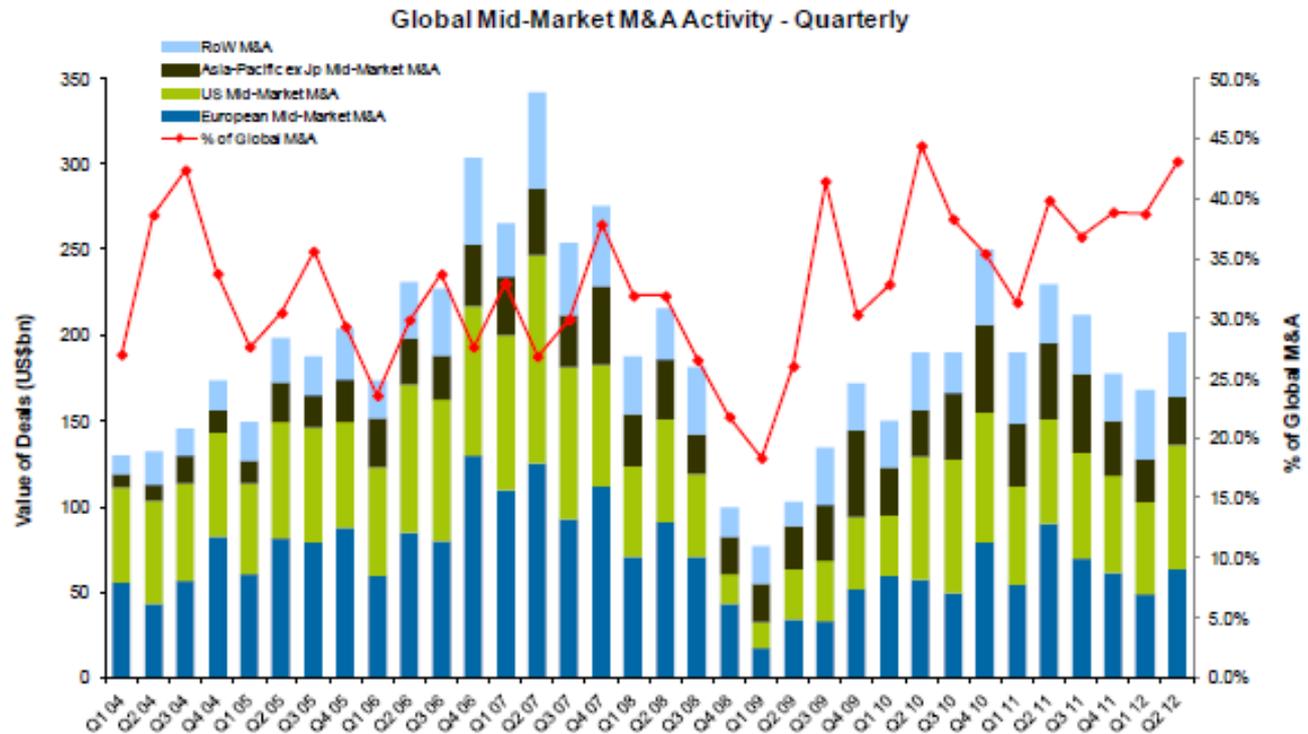
Global M&A Mid-market Quarterly Overview

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Global mid-market deals totaled \$370.1 billion for H1 2012, down 11.9% on H1 2011 – however, all major regions saw increases on the previous quarter

Source: Mergermarket/Monthly M&A Insider

U.S. M&A Sector Breakdown YTD 2012

Sector	H1 2012			H1 2011			Change	
	Value (US\$bn)	Market share	Deal Count	Value (US\$bn)	Market share	Deal Count	Value (%)	Deal Count
Energy, Mining & Utilities	59.7	23.1%	139	132.2	30.6%	145	-54.9%	-6
Pharma, Medical & Biotech	35.8	13.8%	167	41.5	9.6%	238	-13.9%	-71
Consumer	35.7	13.8%	171	14.9	3.5%	185	139.9%	-14
Technology	30.3	11.7%	276	46.6	10.8%	291	-35.0%	-15
Industrials & Chemicals	28.5	11.0%	286	79.0	18.3%	317	-63.9%	-31
Business Services	19.3	7.5%	163	25.4	5.9%	260	-23.8%	-97
Financial Services	15.6	6.0%	143	28.7	6.6%	196	-45.7%	-53
Leisure	12.6	4.9%	58	9.1	2.1%	65	38.4%	-7
Real Estate	8.6	3.3%	17	33.8	7.8%	17	-74.5%	0
Telecommunications	5.2	2.0%	9	0.5	0.1%	14	919.4%	-5
Media	3.8	1.5%	57	9.8	2.26%	55	-61.1%	2
Transport	2.1	0.8%	32	1.5	0.4%	36	39.8%	-4
Construction	1.0	0.4%	36	3.3	0.8%	53	-69.2%	-17
Agriculture	0.3	0.1%	6	0.1	0.02%	9	245.7%	-3
Defence	0.2	0.1%	11	5.2	1.2%	11	-96.1%	0
Total	258.7		1,571	431.5		1,892	-40.1%	-321

Technology accounted for \$30.3 billion and 11.7% of U.S. M&A activity

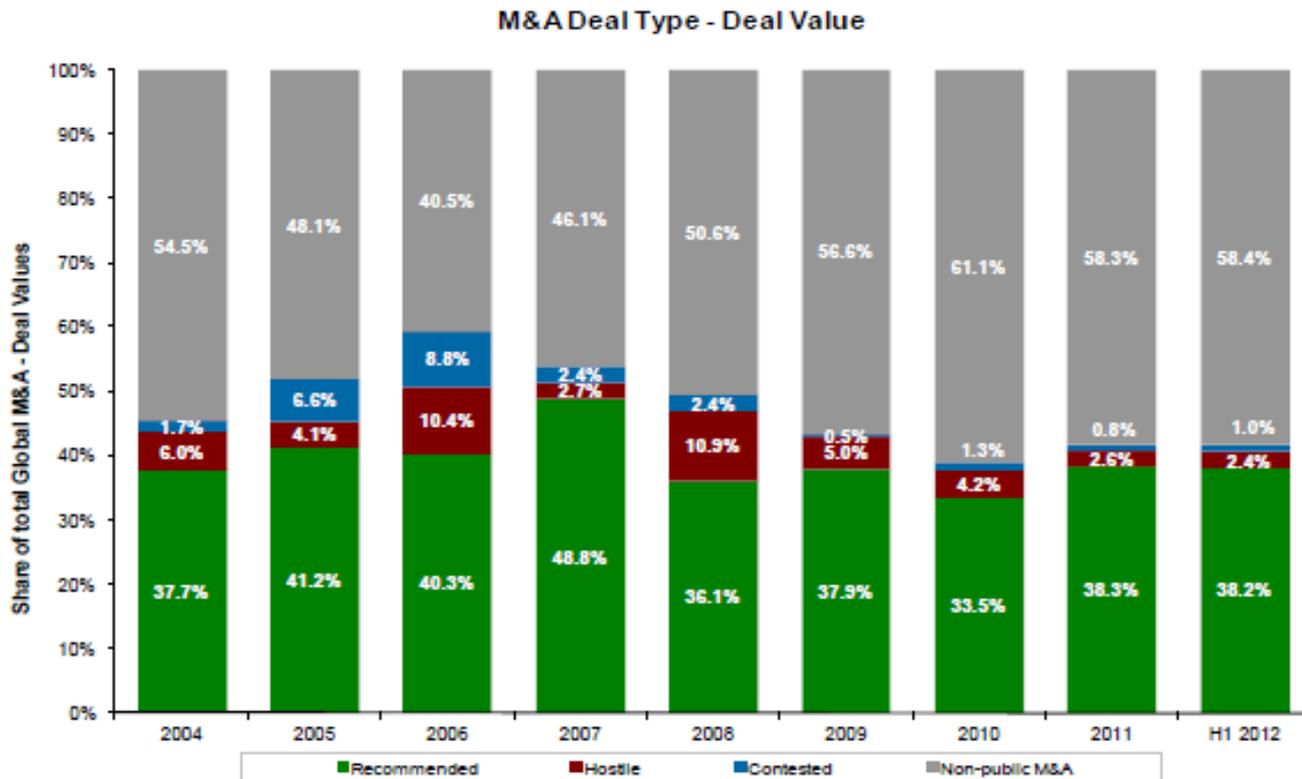
Global M&A Deal Size Breakdown

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H1 2012 M&A deal type by value has remained consistent with 2011

Global M&A Deal Size Breakdown

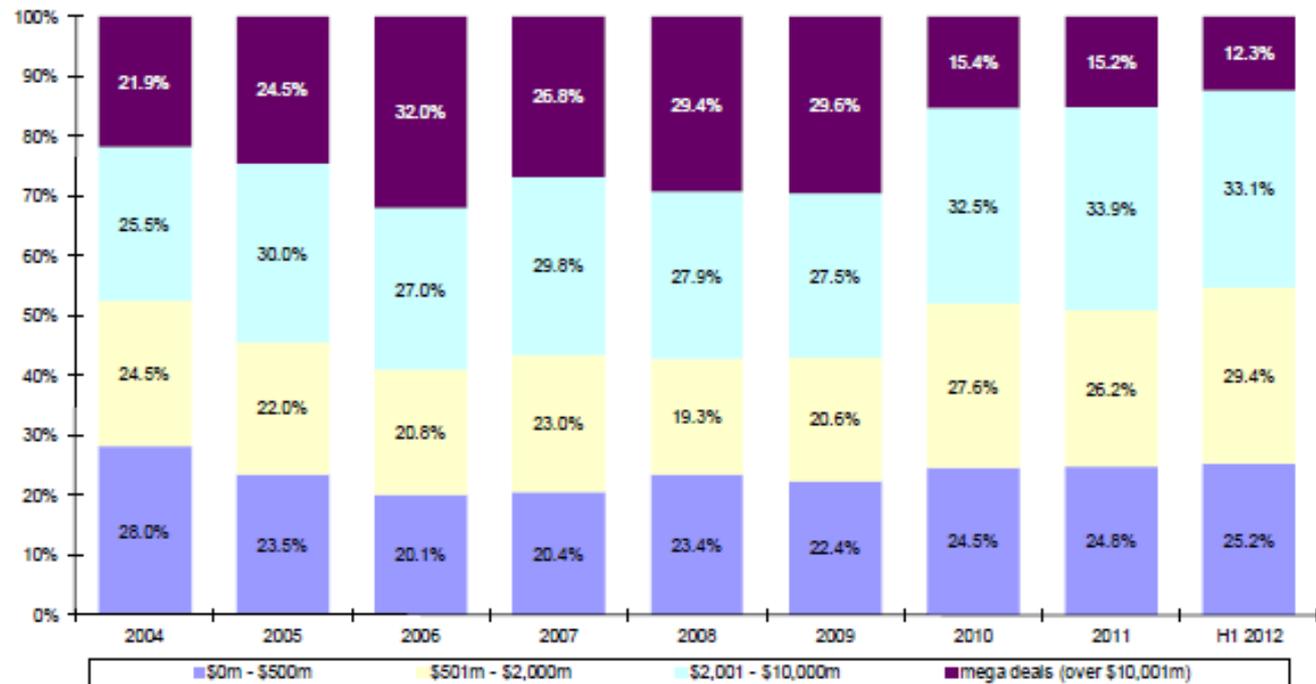
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Global M&A Deal Size Breakdown - % by Deal Value



H1 2012 Middle market M&A deals have increased to 29.4% of overall deals, while the percentage of larger deals have decreased

2012: Large Buyers with Lots of Cash

- The information technology sector led the venture-backed M&A landscape with 77 of the 102 deals of the quarter and had a disclosed total dollar value of \$2.6 billion
- Within this sector, Computer Software and Services and Internet Specific deals accounted for the bulk of the targets

	Latest Cash (in \$Bn)	2012 Annual Prj. Net Income (in \$Bn)	Noteworthy 2009 - 2012 Deals
 Microsoft	59.5	20.4	Skype, Videosoft, Yammer
 CISCO	48.4	8.7	Pure Digital, Starent, Tandberg, CoreOptics, NDS Group, BNI Video, Inlet Technologies
 Google	44.6	11.5	Admeld, ITA, Motorola Mobility, Zagat, DailyDeal, Meebo, Sparrow
	118.5	49.4	Quattro Wireless, Anobit, C3 Technologies, Chomp
 ORACLE	13.8	8.7	Sun, GoldenGate, ATG, RightNow, Endeca, Datanomic, Fatwire, Art, Phase Forward, Taleo, Vitruve
 intel	9.4	11.0	Wind River, McAfee, Telmap, Infineon Technologies, ASML Holding
 DELL	13.7	2.5	Perot, 3Par (failed), Compellent, Boomi, AppAssure, Quest
 IBM	12.3	12.3	SPSS, Sterling Commerce, Netezza, Unica, BigFix, DemandTec, Worklight
 hp	8.3	6.4	3Com, Palm, 3Par, ArcSight, Fortify, Autonomy
 EMC ²	6.3	2.5	Data Domain, Greenplum, Archer, Isilon, Pivotal Labs, XtremIO
 EA ELECTRONIC ARTS	.08	2.3	PopCap, Playfish
	\$244.9	\$135.7	

Source: SEC filings

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SEC Clarifies That Crowdfunding Remains Unlawful Until It Adopts Rules Implementing New JOBS Act Exemption

- On April 23, 2012, the SEC posted a notice reminding issuers that although the JOBS Act requires the SEC to adopt rules allowing crowdfunding under certain circumstances, it has not yet implemented this exemption. Until it does so, any offers or sales of securities purporting to rely on the crowdfunding exemption would be unlawful under the federal securities laws

First IPOs by Emerging Growth Companies Price

- In April 2012, Proofpoint, Splunk, and Infoblox became the first companies self-identifying as emerging growth companies under the JOBS Act to price their initial public offerings (IPOs)

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SEC Staff Releases Additional JOBS Act Title I FAQs (Questions 18-41)

On May 3, 2012, the SEC's Division of Corporation Finance issued additional frequently asked questions (FAQs) relating to Title I of the JOBS Act. Title I sets out the IPO on-ramp, scaled disclosure and other provisions applicable to emerging growth companies (EGCs). The May 3, 2012 FAQs (questions 18-41) supplement the initial set of FAQs (questions 1-17) issued by the Division of Corporation Finance on April 16, 2012

These new FAQs provide SEC staff guidance on the:

- Determination of EGC status
- Confidential review of EGC registration statements and EDGAR publication of related SEC comment letters
- General financial disclosure accommodations available to EGCs
- Extended transition period available to EGCs for complying with new or revised accounting standards

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JOB Act Crowdfunding Intermediaries FAQs Released

On May 7, 2012, the SEC's Division of Trading and Markets issued frequently asked questions providing guidance on the crowdfunding intermediary provisions in Title III of the JOBS Act. Among other things, the questions clarify:

- The duties and restrictions that the JOBS Act imposes on crowdfunding intermediaries
- That the SEC must adopt rules to implement the JOBS Act's crowdfunding provisions before a crowdfunding intermediary may operate or register as a funding portal

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SEC Missed JOBS Act Rulemaking Deadline for Regulation D and Rule 144A

- On June 28, 2012, SEC chairman Mary Schapiro testified before a house Oversight and Government Reform Committee that the SEC will miss a JOBS Act rulemaking deadline related to Rule 506 of Regulation D and Rule 144A
- Title II of the JOBS Act requires the SEC to revise these rules to remove the ban on general solicitation and general advertising in certain situations by July 4, 2012
- Schapiro indicated that although the SEC did not meet this deadline, it has made significant progress and will be in a position to move forward on the rule revisions in the near future

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SEC Schedules Meeting to Consider General Solicitation Rulemaking under JOBS Act

- On July 2, 2012, the SEC announced that it has scheduled an open meeting for August 22, 2012 to consider amendments to Rule 506 of Regulation D and Rule 144A under the Securities Act of 1933
- Title II of the JOBS Act requires the SEC to revise rules 506 and 144A to remove the ban on general solicitation and general advertising in certain situations. The original deadline for this rulemaking was July 4, 2012 but SEC Chairman Mary Schapiro announced on June 28, 2012 that the SEC would not meet this deadline
- It is unclear whether the SEC will propose rules at the open meeting or adopt interim final rules

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GAO Releases Regulation A Study Required by JOBS Act

On July 3, 2012, the Government Accountability Office (GAO) released a study required by Section 402 of the JOBS Act on factors affecting trends in securities offerings made in reliance on Regulation A under the Securities Act of 1933. Key findings of the study include:

- After peaking in 1998 (57 offerings), the number of completed Regulation A offerings has significantly declined to just one offering in 2011
- While multiple factors contributed to this decline, a major factor was the increased attractiveness of Regulation D which, unlike Regulation A, preempts state blue sky laws
- Stakeholders interviewed by the GAO had differing opinions on whether simply raising the \$5 million per issuer per year limit for Regulation A offerings to \$50 million would increase its use

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SEC Staff Issues Instructions for Submitting Draft Registration Statements under JOBS Act

On May 11, 2012, the SEC's Division of Corporation Finance (Division) issued instructions for submitting draft registration statements confidentially under the JOBS Act or for non-public review under the Division's policy for certain foreign private issuers. The Division implemented a secure e-mail system to allow it to receive draft registration statements and to securely correspond with companies about their draft registration statements. On May 14, 2012, the secure e-mail system replaced the procedures previously described in its April 5th announcement

Issuers must follow these new instructions on how to use the secure e-mail system. All submissions must:

- Be in text searchable PDF format
- Include a transmittal letter that identifies the issuer and type of submission (emerging growth companies (EGC) should also confirm their status as an EGC in their transmittal letters)

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SEC Updates Policy on Nonpublic Submissions by Foreign Private Issuers

- On May 30, 2012, the SEC's Division of Corporation Finance updated its policy permitting foreign private issuers to submit draft registration statements on a nonpublic basis in their first-time registration with the SEC
- Among other things, the Division stated that foreign issuers that initially submit a registration statement nonpublicly after May 30, 2012 must publicly file all nonpublic submissions, and resubmit all issuer response letters as correspondence on EDGAR, when they make the first public filing of the registration statement
- This applies whether the foreign issuer has submitted nonpublicly as an emerging growth company or an eligible foreign issuer

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FINRA Issues Proposed Amendments to Its Corporate Financing Rule

On June 6, 2012, FINRA proposed amendments to FINRA Rule 5110, its corporate financing rule, to permit additional deferred compensation arrangements in public offerings. Under the amended rule, termination fees and rights of first refusal in engagement letters for underwriting and financial advisory services in connection with public offerings would be permitted under certain conditions

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SEC Approves FINRA Rule 5123 Requiring Notice Filings in Certain Private Placements

- On June 7, 2012, the SEC granted accelerated approval of new FINRA Rule 5123. The rule requires FINRA member firms that participate in certain private placements to make notice filings (which must include a copy of the offering document used in the private placement, if any) with FINRA, subject to certain exceptions
- The new rule will provide FINRA with more timely and detailed information about the private placement activities of its member firms

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FINRA Rule 5110 Filing Fee Increase Effective July 2, 2012

- On July 2, 2012, FINRA's recently-announced filing fee increase for FINRA Rule 5110 (the corporate financing rule) filings became effective
- The new filing fee is \$500, plus .015 percent (an increase from .01 percent) of the proposed aggregate offering price of the securities included on the offering document. Additionally the maximum filing fee cap of \$75,000 has been increased to \$225,000
- The fee changes apply to initial filings and the net increase in the maximum aggregate offering price of amendment filings

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SEC Approves Alternative to \$4 Initial Listing Bid Price Requirement for NASDAQ Capital Market

- On April 18, 2012, the SEC granted accelerated approval of a final rule adopting an alternative to the \$4 minimum bid price requirement for companies seeking to list on the NASDAQ Capital Market
- This alternative permits companies to list with a \$2 or \$3 minimum closing price if they meet additional listing requirements
- The final rule adopts the proposed rule and an amendment to the proposed rule

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Martin Marietta: Delaware Court of Chancery Holds Use of Confidential Information in Hostile Bid Breaches Confidentiality Agreements

- On May 4, 2012, the Delaware Court of Chancery held in *Martin Marietta Materials, Inc. v. Vulcan Materials Company* that Martin Marietta breached two confidentiality agreements by using confidential information acquired during its merger negotiations with Vulcan to initiate a hostile bid and proxy contest, even though neither confidentiality agreement included an express standstill provision
- This case highlights the importance of careful drafting. In particular, if a buyer can negotiate a confidentiality agreement without a standstill provision, it needs to be careful that other provisions (such as the use and disclosure provisions) do not otherwise restrict its ability to make an unsolicited bid. Although the Court ultimately based its decision on extrinsic evidence, both the narrow definition of “Transaction” in the use provision and the narrowly defined exception for legally required disclosures prohibited Martin Marietta from initiating a hostile bid or proxy contest
- On May 31, 2012, Vulcan Materials issued a press release on the Delaware Supreme Court’s ruling affirming the Delaware Court of Chancery’s decision in *Martin Marietta Materials, Inc. v. Vulcan Materials Company, No. 7102-CS (Del. Ch., May 4, 2012)*. The decision came the day before Vulcan’s annual stockholders meeting. Martin Marietta now must abide by the Court of Chancery’s decision and has been enjoined from pursuing its exchange offer and proxy contest to acquire control of Vulcan for four months

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FTC Premerger Notification Office Publishes Item 4(c) Guidance

- The Premerger Notification Office (PNO) of the FTC recently published a tip sheet interpreting the scope of Item 4(c) of the Hart-Scott-Rodino Premerger Notification and Report Form (HSR Form). The HSR Form is required to be filed in connection with transactions meeting certain thresholds. Item 4(c) requires the submission of certain documents that evaluate or analyze the competitive aspects of the transaction for topics such as markets, market shares and competition
- Item 4(c) is broadly drafted and has not been consistently interpreted by even the most seasoned HSR practitioners. Although the PNO publishes informal interpretations on its website on Item 4(c) topics to help ensure consistency, not all practitioners follow this guidance in the same way. This is the first time the PNO has issued a tip sheet on Item 4(c) clarifying some of the advice contained in its informal interpretations

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Executive Agrees to Serve Jail Time for Obstruction of Justice Charges

- On May 3, 2012, the DOJ announced that a former executive officer had agreed to plead guilty to two counts of obstruction of justice as a result of his attempts to undermine an HSR investigation of a proposed merger. The criminal charges were brought in connection with the DOJ's 2008 investigation of Nautilus Hyosung Holdings Inc.'s proposed acquisition of a competing ATM manufacturer. In the first case of its kind, the DOJ alleged that the officer had altered and directed his subordinates to alter several documents before submitting them to the DOJ and the FTC in an attempt to minimize the competitive effect of the proposed acquisition
- As part of the plea agreement, and subject to court approval, the officer agreed to serve a five-month jail term. The case illustrates that merging parties may face criminal charges for obstructing an HSR merger investigation, over and above any civil penalties or merger-review delays

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SEC Adopts Rules under Dodd-Frank on Listing Standards for Compensation Committees

On June 20, 2012, the SEC adopted rules directing the national securities exchanges to prohibit listing the equity securities of any company not in compliance with the compensation committee and compensation advisor requirements of Section 10C of the Exchange Act

The rules:

- Require the exchanges to set listing standards requiring each member of a listed company's compensation committee to be an "independent" director
- Direct the exchanges to prohibit listing the equity securities of any company not in compliance with specified requirements relating to the authority and responsibilities of compensation committees (including the authority to retain compensation advisers) and the independence of compensation advisers retained by compensation committees
- Require companies to include specified disclosure about the use of compensation consultants and any related conflicts of interest in the proxy materials for their annual shareholders' meetings

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Proxy Access Proposal Approved by Nabors Shareholders

- On June 5, 2012, shareholders of Nabors Industries Ltd. approved a proxy access proposal, marking the first time a proposal of this type has passed
- The Nabors proposal, which is non-binding, requests the board to adopt a proxy access by-law. This by-law provision would allow shareholders owning at least 3% of Nabors stock for at least three years to nominate competing candidates for up to a quarter of the board's seats for inclusion on the company's proxy card. This proposal includes the same ownership threshold and holding period that was in the SEC proxy access rule struck down by the US Court of Appeals for the District of Columbia in July 2011. The proposal was submitted by several large New York City pension funds and co-sponsored by a group of pension funds from other states

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SEC Charges Foreign Audit Firm with Failing to Comply with SOX Document Request

- On May 9, 2012, the SEC issued a press release announcing an enforcement action against Shanghai-based Deloitte Touche Tohmatsu CPA Ltd. (Deloitte Shanghai) for refusing to provide its audit documents relating to a Chinese company charged with violating the Sarbanes-Oxley Act (SOX)
- The SEC served Deloitte Shanghai with a request for its audit work papers under Section 106 of SOX, which requires foreign public accounting firms to provide audit work papers regarding US issuers to the SEC upon request. Deloitte Shanghai believes that Chinese law prohibits it from producing the documents. This is the first time that the SEC has brought an enforcement action against a foreign audit firm for not complying with a Section 106 request

Proposed NYSE Rule Change

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NYSE Proposes to Permit the Listing of Emerging Growth Companies Based on Two Years of Reported Financials

- On May 14, 2012, the NYSE filed a proposed rule change that would amend Sections 102.01C and 103.01B of its Listed Company Manual to permit the listing of emerging growth companies (EGCs) on the basis of two years rather than three years of audited financial data
- The purpose of the change is to conform the NYSE's requirements to those of the JOBS Act, which allows EGCs to include only two years of audited financial data in the registration statement used in connection with a first sale of common equity securities
- The proposed amendment would only apply to EGCs that take advantage of the ability to provide two years of audited financial data

One-year Internal Audit Transition Period for IPO Companies

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NYSE Re-proposes One-year Internal Audit Transition Period for IPO Companies and Other New Listings

On June 27, 2012, the NYSE filed a proposed rule change that would amend Section 303A.00 of its Listed Company Manual to provide a one-year transition period for compliance with the internal audit requirement of Section 303A.07(c). The transition period would be available to companies that are listing at the time of:

- Their IPO or first-time SEC registration of common stock under the Exchange Act
- A carve-out or spin-off

The proposed rule change also clarifies the duties of audit committees of companies taking advantage of the transition period. The NYSE previously proposed a similar rule change in April 2012 but then withdrew it

NYSE Rules

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NYSE Proposes Uniform Method for Companies to Provide Notice of Events

On May 14, 2012, the NYSE issued a proposed rule change providing that the companies required by a provision in the NYSE's Listed Company Manual to give notice to the Exchange must do so by web-based communication. This change will make notice requirements for all NYSE rules consistent

Notice must be made using either:

- An e-mail address designated by the NYSE
- Egovdirect.com, a web portal operated by the NYSE

The proposed rule change would also:

- Reduce the number of copies of a proxy statement a listed company must submit to the NYSE from six to three
- Change the name of the item "Shareholders' Meeting Notice" to "Shareholder's Meeting/Notice of Record Date"
- Change the due date for the item "Shareholders' Meeting/Notice of Record Date" to conform with the "Dividend Notification" due date

NASDAQ Rules

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SEC Approves NASDAQ Rule Change Broadening Exception for Non-independent Director Committee Service

- On July 19, 2012, the SEC approved a NASDAQ rule change that broadened an existing exception to NASDAQ's board committee independence rules. NASDAQ proposed the rule change on May 17, 2012.
- The exception permits a listed company to allow one non-independent director to serve on its audit, compensation or nominations committee for up to two years under exceptional and limited circumstances and with proper disclosure. Under the amended exception, a director is not disqualified from serving as a temporary committee member solely because a family member is a non-executive employee of the company.

SOX Whistleblower Protection

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DOL Rules SOX Whistleblower Provision Protects Employees of Private Contractors to Public Companies, Rejecting First Circuit Decision

- The Department of Labor's Administrative Review Board ruled in *Spinner v. David Landau & Associates, LLC* that employees of contractors, subcontractors or agents of publicly traded companies are covered by the whistleblower protection provision in Section 806 of the Sarbanes-Oxley Act of 2002 (SOX)
- The May 31, 2012 decision directly contradicts the US Court of Appeals for the First Circuit's February 3, 2012 holding in *Lawson v. FMR LLC* that whistleblower protection under Section 806 of SOX is limited to employees of publicly traded companies

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Firm Overview: Fast Facts



Fast Facts

- AmLaw 100 firm founded in Los Angeles in 1927
 - 600 attorneys practicing worldwide
 - Represent 56 of the Fortune 100
- Firm's attorneys ranked in *Chambers USA*, *Legal 500*, *Best Lawyers in America*, *Which Lawyer PLC*, *Super Lawyers*, etc.

Firm Overview: Global Reach



NORTHROP GRUMMAN

**WELLS
FARGO**

Comerica Bank

**STATE
COMPENSATION
INSURANCE
FUND**

SAMSUNG



GE Capital

TaylorMade



Rizvi|Traverse

usbank



**Liberty
Mutual.**

htc

quietly brilliant

lenovo

WM
WASTE MANAGEMENT

ExxonMobil.



**SONY
PICTURES**

Walmart
Save money. Live better.

Bank of America



**ANGELO,
GORDON
& CO.**

realD

The
WALT DISNEY
Company

Firm Overview: Recent Firm Recognitions

- Chairman of the Firm, Guy Halgren, was named 2011 "Law Firm Leader of the Year" by the *Daily Journal*.
- *Chambers & Partners'* 2011 guide to America's leading business lawyers listed 33 Sheppard Mullin lawyers who were lauded by their peers and clients. On a national level, the firm's Advertising and Government Contracts practice groups were recognized.
- The *Legal 500 US* named Sheppard Mullin's M&A, Bankruptcy, First Amendment Litigation, Entertainment, Advertising, Antitrust, Real Estate and Land Use practices as among the best in the country. The directory also named five partners "Leading Lawyers."
- Sheppard Mullin was ranked among "The Best Law Firms" in the U.S. by *U.S. News & World Report* in 2010.
- 56 Sheppard Mullin attorneys were named to the annual *2011 Best Lawyers* in America list.

Firm Overview:

Recent Firm Recognitions (cont.)

- 97 Sheppard Mullin attorneys were named “Super Lawyers” in the most recent edition of *Law & Politics* magazine.
- Sheppard Mullin was ranked among the best litigation firms by Benchmark Litigation 2011.
- In a recent survey by *Corporate Counsel* magazine and *The National Law Journal* Sheppard Mullin was listed in "Who Represents Corporate America" 2010 by Wells Fargo & Company, Perrigo Company of South Carolina, Inc., and RealD, Inc.
- The firm has been ranked as a member of "The BTI Client Service A-Team 2012" by BTI Consulting Group. This group is comprised of those law firms nominated by clients for their unparalleled client service delivery. It is based 100% on independent, unbiased feedback from clients. According to BTI's interviews with more than 240 corporate counsel, Sheppard Mullin delivers better client service than 300 of the law firms serving the world's largest organizations.

Firm Overview: Core Practices

- Corporate and Securities
- Mergers and Acquisitions
 - Finance
- Government contracts and regulated industries
 - Labor and employment
 - Real estate, land use, construction and environmental
 - White collar defense
- Antitrust and Trade Regulation
- Bankruptcy and restructuring
 - Entertainment, media and technology
 - Intellectual property
 - Litigation
- Tax, employee benefits and estate planning

Firm Overview: Key Industries Served

- Aerospace & Defense
- Aviation
- Climate Change & Clean Technology
- Energy
- Entertainment & Media
- Fashion & Apparel
- Financial Institutions
- Food & Beverage
- Healthcare
- Hispanic/Latino Business
- Hospitality
- Insurance
- Life Sciences/FDA
 - Maritime
- Mortgage Banking
 - Outsourcing
- Venture Capital
- Private Equity
 - Retail
 - Sports
 - Technology
- Telecommunications/FCC
 - Video Game



Corporate Practice

- With more than 90 attorneys, we focus on helping clients understand and navigate the legal issues necessary to close complex transactions.
- We deliver highly-responsive, creative and efficient advice while also being able to call upon the full resources of our other practice areas and global offices.
- We serve as trusted advisors to venture capital and private equity firms, as well as the emerging growth companies in which they invest.
- We provide a complete range of services at all stages of the investment cycle from start-up or “seed” capital to growth capital, mature private equity and liquidity events including public offerings, M&A, and recapitalizations.



Corporate Practice (cont.)



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- Private Equity
- Capital Markets
- Public Company Compliance
- Emerging Company/Venture Capital
- Outsourcing/Tech Transfer

- **Chambers USA 2011** ranked Sheppard Mullin's Corporate/M&A practice as among the best in California.
- **Corporate INTL magazine** named Sheppard Mullin "Best Law Firm in California for M&A work in both 2010 and 2009."
- **The Legal 500 US 2010** named Sheppard Mullin's M&A practice as among the best in the country, and individually recognized several partners.
- In a survey of the Fortune 500 by **Corporate Counsel magazine**, Sheppard Mullin was recognized as a "Go-To" law firm for Corporate Transactions.

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