

The Cost of SOX: Being Public After Sarbanes-Oxley: The Irony of Going Private

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- **Forthcoming, 55 Emory Law Journal (2005)**

Recent Changes

- **Executive Certification of Financials – Sections 302 & 404**
- **Audit Committee Requirements – Section 10A(m)**
- **Accelerated Disclosure Requirements – Reg. FD, Forms 4, 8-K , 10-K & 10-Q**
- **Increased Penalties**

The Cost of Regulation

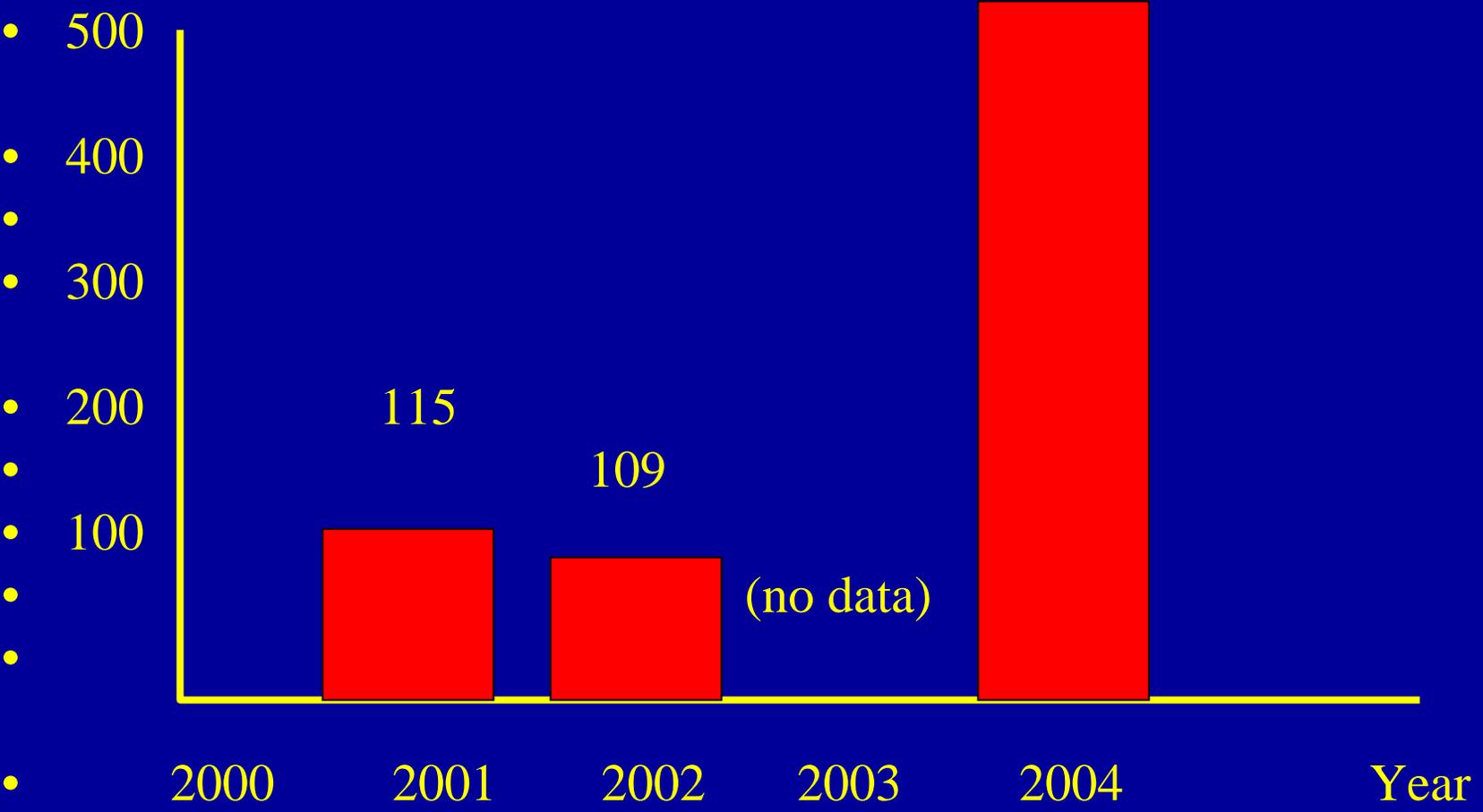
- **The Opportunity Costs of Executive Time**
- **Increases in D & O Insurance Premiums – 25 – 40%**
- **Increases in Auditing Fees – 58% from 2000 to 2002**
- **Increased legal costs**

Going Private Filings, 1998-2004

• Year	No. Filings
• 1998	25
• 1999	52
• 2000	41
• 2001	65
• 2002	59
• 2003	101
• 2004	114

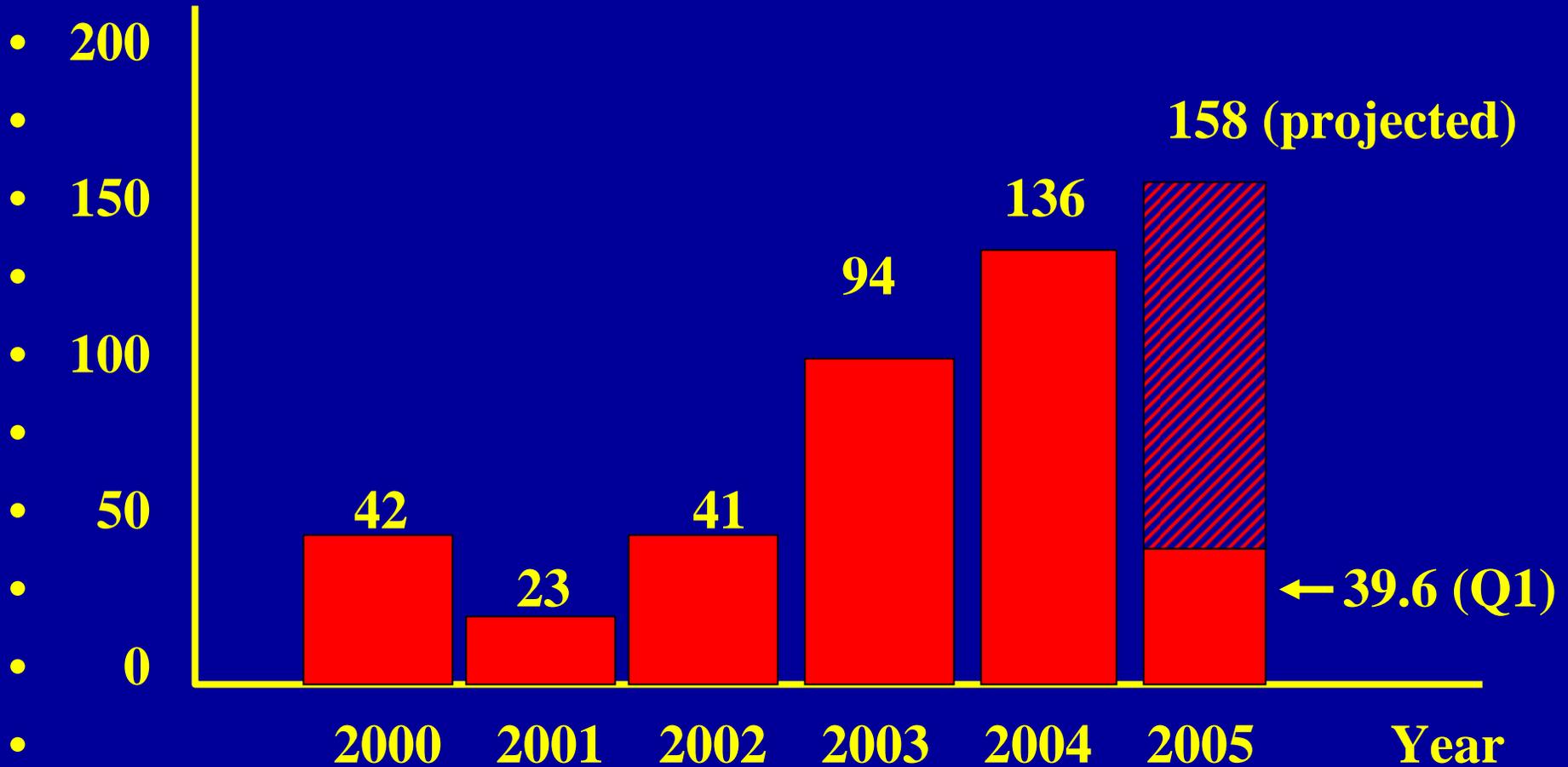
The LBO Trend

- Numbers
- Of LBOs



The LBO Trend – Dollar Volume

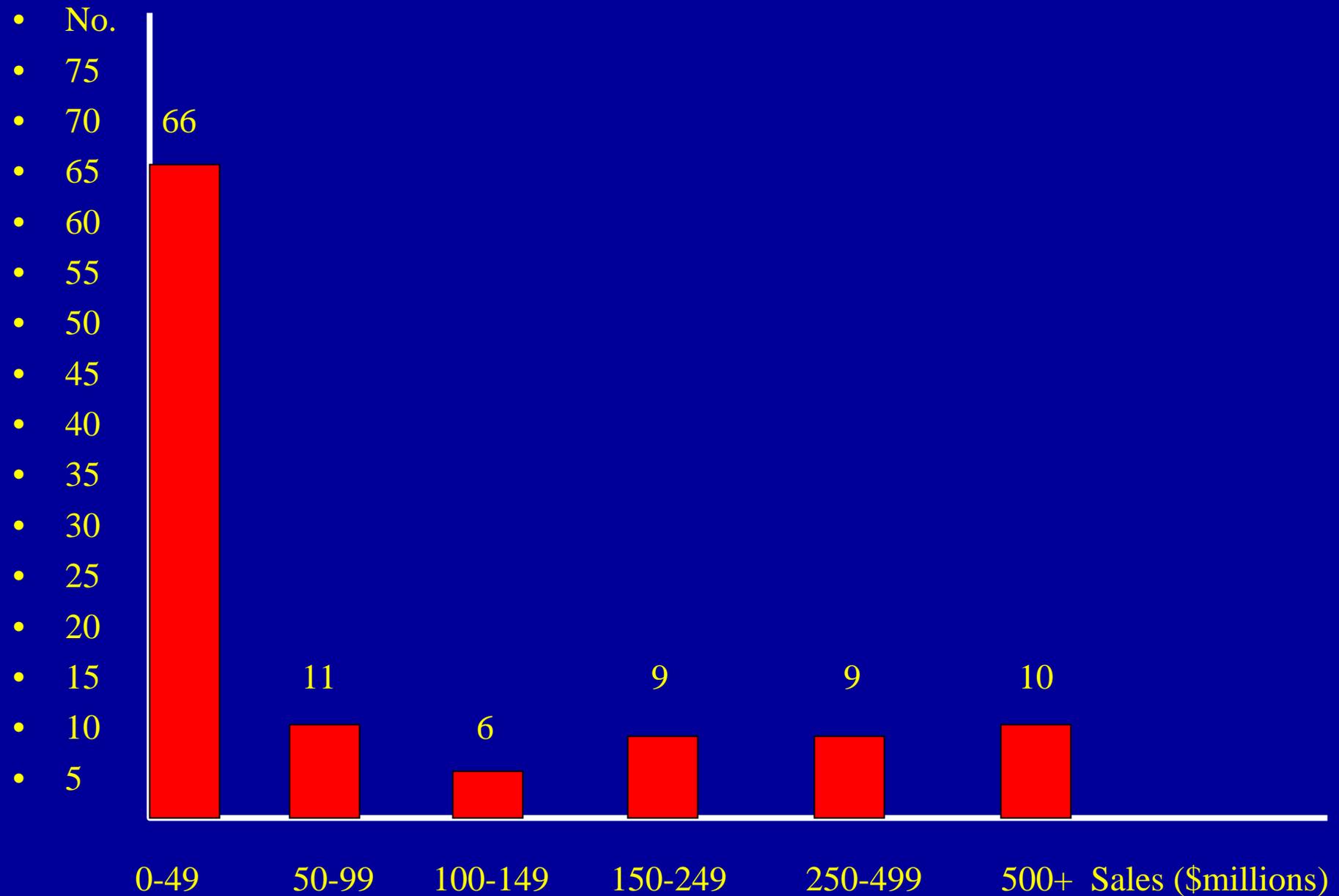
- LBO Value (\$Billions)



Size of 13E-3 Filers in 2004

	Gross Revenues (millions)	
	Average	Median
• All 13E-3 filers, 2004 (n: 114)	\$324	\$25
• Reporters of Compliance Costs (n: 44)	56	14

Size of 13E-3 Filers (n= 111)



Total Costs of Compliance for 13E-3 Filers 9

Average reported cost of compliance with securities laws	\$291,000
Average reported costs added by SOX.....	174,000
Average net profit (n: 43).....	545,000*
Compliance Costs/Net profit (n: 43):	53%
SOX costs as a percentage of other compliance costs	148%

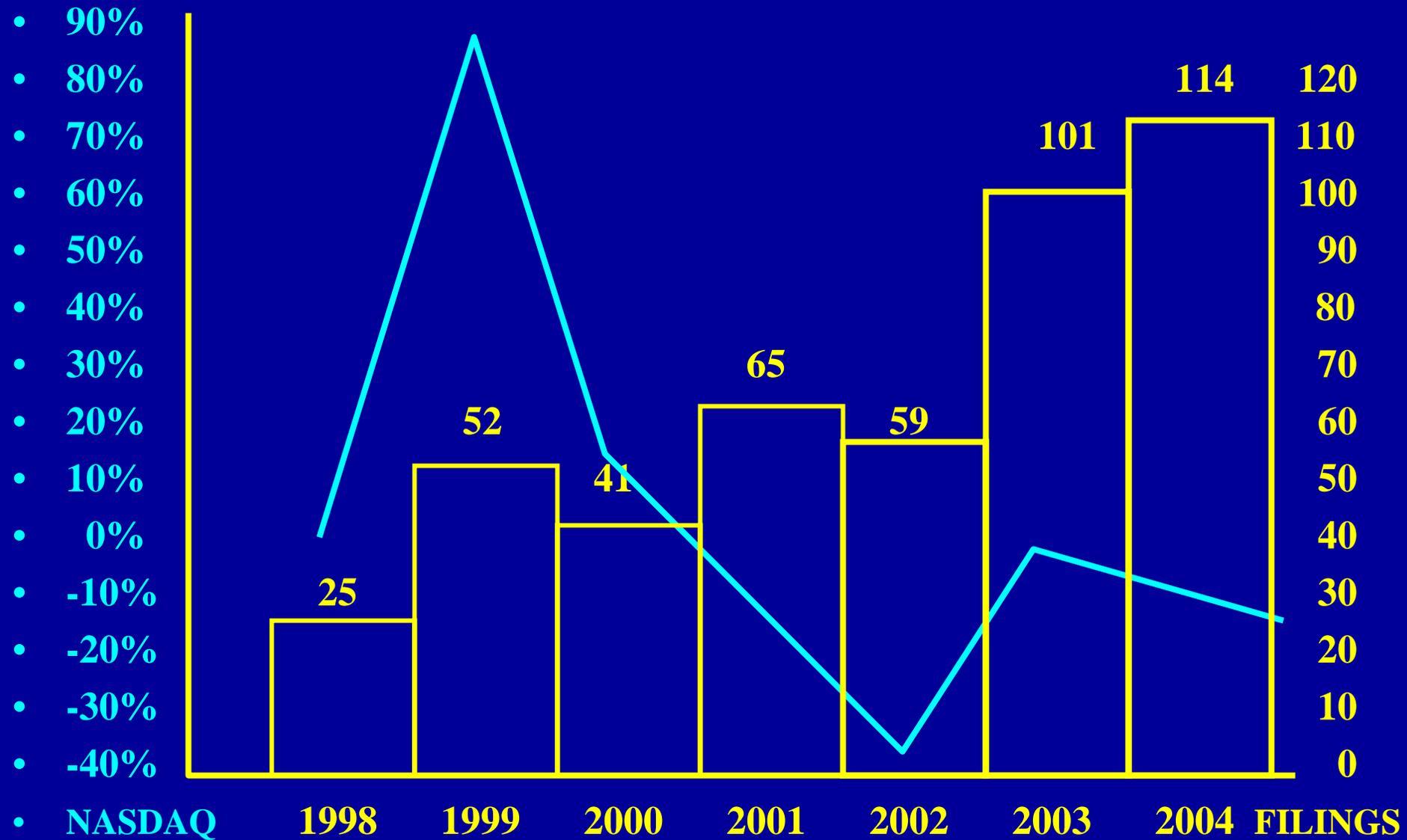
- * Excluding one filer with net losses of \$170 million

Exiting Firms Identifying Disclosure Costs

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- **Ambassador Food Services Corp.**
- **American Bancorp La.**
- **American Retirement Villas Props.**
- **ASA Int'l, Ltd.**
- **Avoca, Inc.**
- **Benchmark Bancshares Inc.**
- **Bestway Inc.**
- **Central Federal Corp.**
- **Commercial Nat'l Financial Corp.**
- **Crown Andersen, Inc.**
- **Crown Energy Corp.**
- **Daleen Technologies**
- **Darlington County Bankshares**
- **Edelbrock Corp.**
- **First Commerce Comm'l Bankshares**
- **General Bearing Corp.**
- **Georgian Bancorporation Inc.**
- **Giant Group, Ltd.**
- **Hanover Foods Corp.**
- **Hickock, Inc.**
- **Home Products International**
- **Horizon Telcom Inc.**
- **KS Bancorp.**
- **Logansport Financial Corp.**
- **Nicolet Bankshares Inc.**
- **Opt Sciences Corp.**
- **Pioneer Railcorp.**
- **Portland Brewing Co.**
- **Quality Dining Inc.**
- **Reeds Jewelers Inc.**
- **RSI Holdings, Inc.**
- **Safeguard Health Enterprises Inc.**
- **Semele Group Inc.**
- **Southern Michigan Bancorp Inc.**
- **Star Multi Care Services Inc.**
- **Sterling Sugars Inc.**
- **Sturgis Bancorp**
- **Uni Marts Inc.**
- **Unified Financial Services Inc.**
- **Valrico Bancorp Inc.**
- **Waxman Industries Inc.**
- **Webco Industries**
- **Wells Financial Corp.**
- **West Metro Financial Services Inc.**

Correlation – NASDAQ Index and 13E-3 Filings 11



Going Public, Going Private

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- **Cycles:**
- **1960s bull market followed by going private in 1970s**
- **1970s stalled market followed by LBOs in 1980s**
- **The Great Bull Market of the 1990s (2,555 IPOs 1995 – 2000)**
- **Followed by? ...**

Access to Paper

- http://papers.ssrn.com/sol3/papers.cfm?abstract_id=672761