Enforcement Data for Calendar 2018

Introduction

In June 2018, the staff of the Committee on Capital Markets Regulation released a report entitled "Rationalizing Enforcement in the U.S. Financial System." The staff report provided a comprehensive overview and assessment of the public enforcement system for the U.S. financial system. The report focused specifically on the structure of the enforcement system, the manner in which monetary sanctions are set, how enforcement authorities use monetary sanctions, and the importance of holding culpable individuals accountable for illicit conduct. The staff report made 19 recommendations aimed at enhancing the transparency, efficiency, and rationality of the enforcement system.

As part of the report, the staff compiled data from the period 2000 to 2016 on enforcement actions by agencies with enforcement jurisdiction over financial markets and the financial system.[1] The staff gathered data on the number of enforcement actions, the total monetary sanctions imposed, and the median and mean monetary sanctions imposed on defendants over the seventeen-year period. The report's data analysis showed substantial increases in enforcement activity as measured by total number of enforcement actions and total monetary sanctions in the years following the 2008-2009 financial crisis with a downward trend in the past few years. The data also generally showed similar trends in median and mean defendant-level monetary sanctions.

The staff updated the data in September 2018 to include calendar 2017 data and intends to update annually the relevant enforcement data to provide the public and policymakers a summary of the trends in enforcement actions over a long-term time horizon. This release updates the data to include calendar 2018.

In general, the data for 2018 confirmed previously observed trends: the total number of enforcement actions brought have declined since 2010 and appear to have leveled off slightly above pre-financial crisis levels; total monetary sanctions are continuing to decline from their peak, but remain above pre-crisis levels; and median and mean monetary sanctions have declined from pre-crisis levels but generally remain slightly above pre-crisis levels.

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[1] Data was collected on enforcement actions by the Commodity Futures Trading Commission (CFTC), Consumer Financial Protection Bureau (CFPB) , Department of Justice (DOJ) , Federal Deposit Insurance Corporation (FDIC), Federal Reserve (Fed), Financial Crimes Enforcement Network (FinCEN), National Credit Union Administration (NCUA), New York Department of Financial Services (NY DFS), Office of the Comptroller of the Currency (OCC), Office of Foreign Assets Control (OFAC), Office of Thrift Supervision (OTS), and Securities and Exchange Commission (SEC). A description of the methodology can be found in Appendix D of the staff's report at https://www.capmktsreg.org/wp-content/uploads/2018/06/Final-Enforcement-printing.pdf.

Data Presentation

Figure 1 illustrates the number of enforcement actions brought by each of the federal agencies identified in the chart from 2000 to 2018.[2] Each vertical bar shows the aggregate number of actions brought by all of the agencies indicated in the legend.

Figure 1: Number of Enforcement Actions Per Year

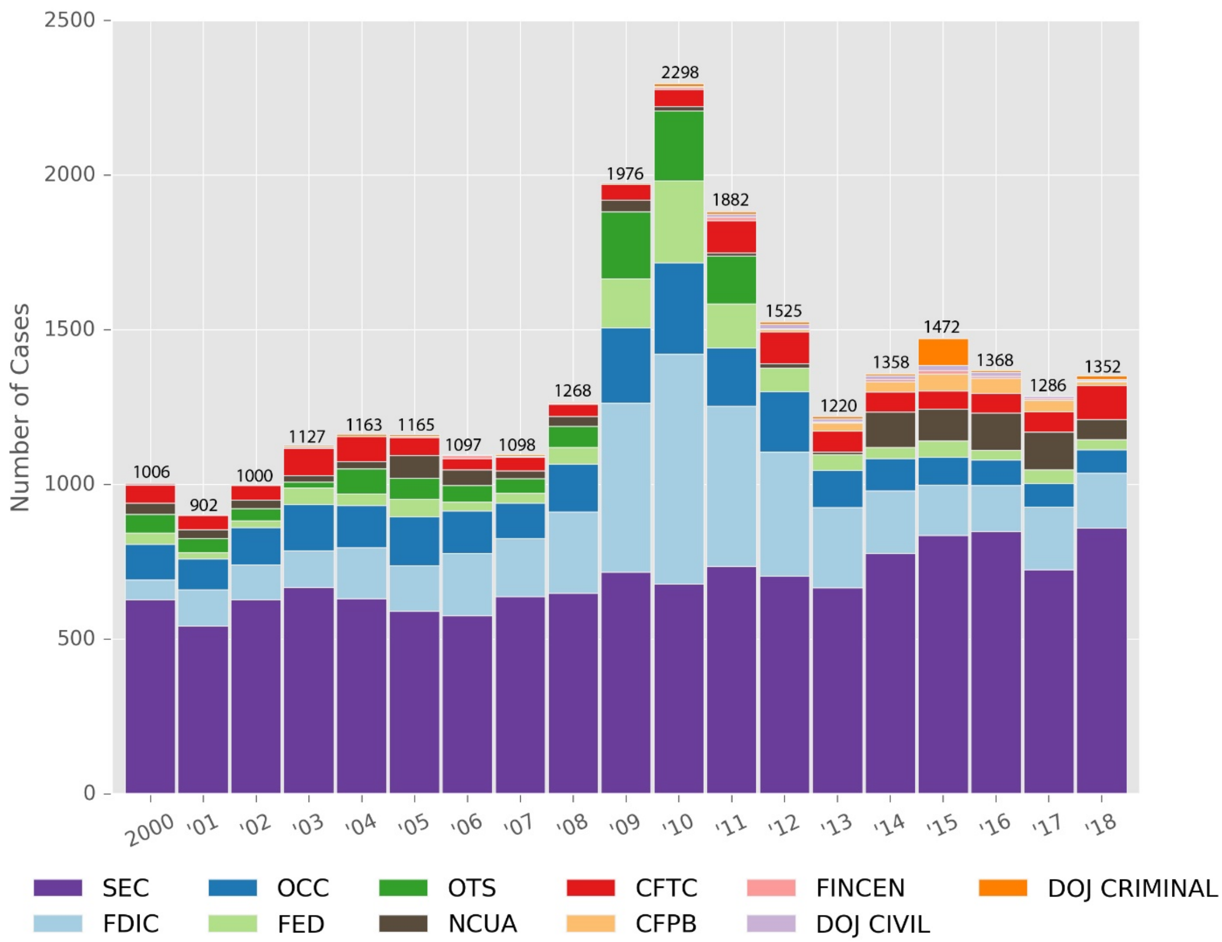


Figure 1 shows that there were 1,352 enforcement actions in 2018. This number of enforcement actions is within the range seen from 2012 to 2018 and is comparable to 2014 and 2016 levels. The amount of enforcement actions in 2018 represents a 5% increase from 2017, and a 41% decline from the 2010 peak during which about 2,300 actions were brought. As in prior years, the SEC continued to be the agency with the highest number of new cases, constituting more than 850 or 64% of cases brought in 2018. The FDIC, CFTC, OCC and NCUA brought 177, 110, 76, and 65 cases, respectively, which constituted the vast majority of the remaining cases.

[2] OFAC is excluded from the figure because in the early 2000's, OFAC brought a significant number of cases involving de minimus financial penalties against individuals for activities such as travelling illegally to Cuba, which are outside of the scope of our focus on capital markets and the financial system.

A separate measure of total enforcement activity is the total amount of monetary sanctions imposed in enforcement actions. **Figure 2** shows the aggregate amount of monetary sanctions ordered to be paid by the agencies identified in the graph's legend.[3]

Figure 2: Total Monetary Sanctions

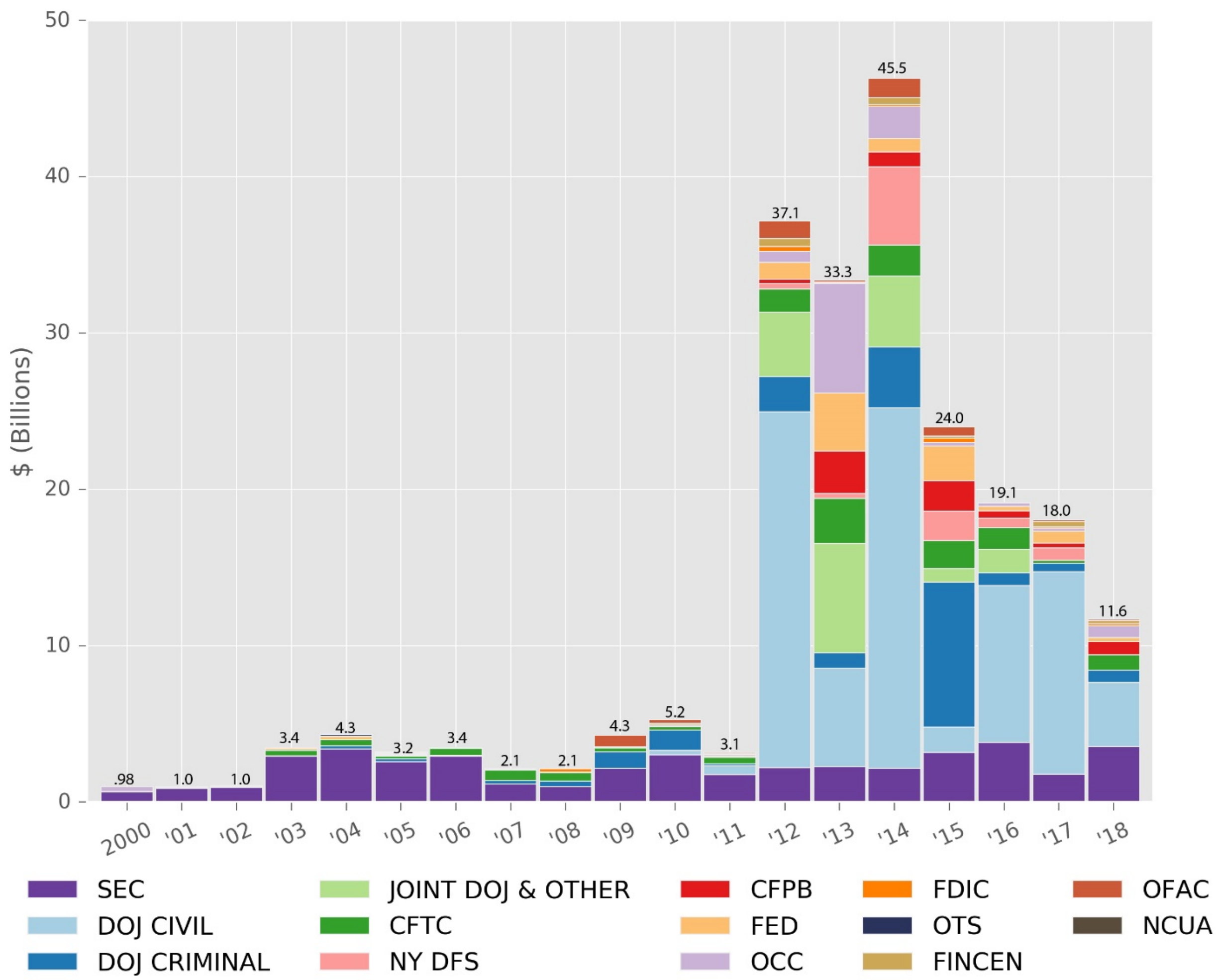


Figure 2 shows that in 2018 the downtrend in total monetary sanctions from the peak of $45.5 billion in 2014 continued. Total monetary sanctions in 2018 were $11.6 billion. That represents an over 75% decline from the peak. Additionally, the amount in 2018 represents a $6.4 billion, or 35%, decrease from the total in 2017 of $18 billion. However, total monetary sanctions remained significantly elevated above the levels seen before the 2012 spike. For example, 2018 total monetary sanctions were nearly three times higher than the highest pre-

[3] The "Joint DOJ & Other" amounts are comprised of amounts awarded to states or other agencies as part of a simultaneous settlement of claims against the defendant with the DOJ. To avoid double counting, amounts are not included in that category if already captured in the data for another agency identified in the legend.

crisis level of $4.3 billion in 2004, which saw heightened enforcement activity following a series of public company accounting scandals at Tyco, WorldCom and Enron.

It is important to highlight that just three cases accounted for approximately $5.9 billion, or roughly half, of the total monetary sanctions imposed by the agencies in 2018. The DOJ settled two major cases arising out of the financial crisis of 2008-2009. On March 29, 2018, the DOJ announced a $2 billion settlement with Barclays, to resolve fraud claims in the sale of mortgage-backed securities. Additionally, on August 1, 2018, the DOJ announced an approximately $2.1 billion settlement with Wells Fargo which also resolved claims relating to that bank's sale of residential mortgage-backed securities. The SEC additionally announced, on September 27, 2018, a nearly $1.8 billion settlement with Petrobras, a Brazilian oil company, related to a widespread corruption scheme perpetrated by its former senior executives. As such, the staff's 2018 data also continued to show that a small number of cases are responsible for the vast majority of monetary sanctions. For example, of the cases with monetary sanctions, the 10% of cases with the largest sanction amounts made up over 92% of total monetary sanctions imposed in 2018.

In addition to aggregate data, the report explored the median and mean monetary sanctions imposed by capital markets regulators,[4] bank regulators,[5] and DOJ civil and criminal actions against large financial institutions.[6] **Figure 3** on the next page shows the median sanction against defendants in instances where a monetary sanction was imposed. Median sanctions are useful to analyze because median amounts reflect the sanction amount in ordinary cases and are not affected by large outlier cases.

[4] The capital markets regulators are the SEC and CFTC.

[5] The bank regulators are the CFPB, FDIC, Fed, NCUA, OCC, and OTS.

[6] The DOJ actions include all criminal actions against financial institutions as compiled by the University of Virginia's Corporate Prosecution Registry and civil actions involving the fifty largest U.S. banks, and claims against financial institutions under the False Claims Act and the Financial Institutions Reform, Recovery and Enforcement Act.

Figure 3: Median Monetary Sanctions

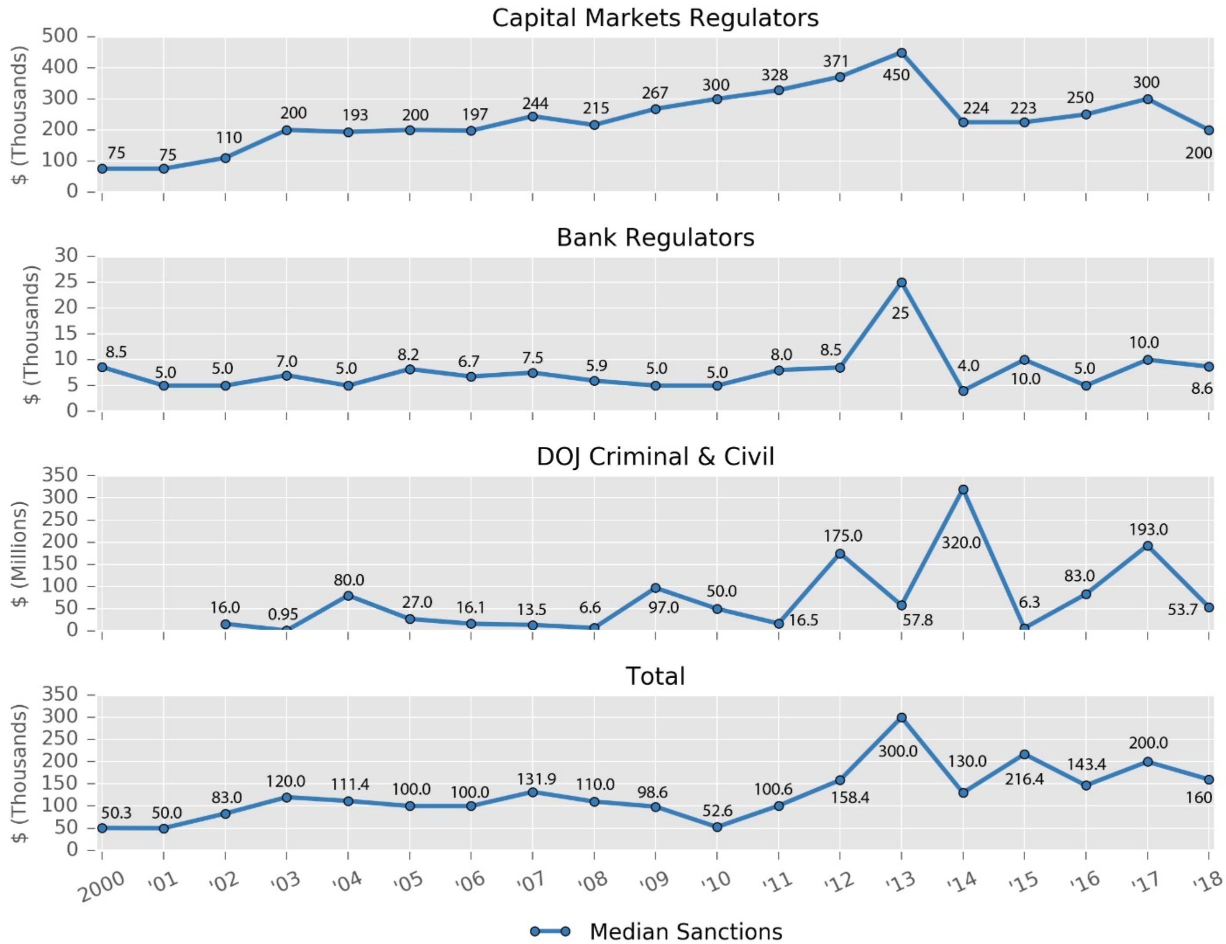


Figure 3 shows that the median monetary sanction imposed by capital markets regulators have fallen towards levels last seen before the financial crisis. Median monetary sanctions by bank regulators decreased from 2017 to 2018, falling below $9,000. That amount falls in line with median defendant-level penalties seen from 2000-2017, except for 2013 when median sanctions jumped to $25,000. Median sanctions imposed on financial institutions in DOJ actions declined sharply in 2018 to $53.7 million, a 72% decrease from 2017. The median sanctions in 2018 were well below the highest during the observed period, set by the $320 million median in 2014. As the figure shows, this amount fluctuates widely from year to year given the large variance in penalties imposed in given cases and the relatively small number of DOJ cases involving monetary sanctions each year. When examining the median monetary sanction of all of the agencies, one can see that the 2018 amount was 47% lower than the peak in 2013 and is only about 20% higher than 2007, the year before the financial crisis.

Figure 4 presents the mean monetary sanction against defendants in instances where monetary sanctions were imposed. Once again, data is presented by capital markets regulators, bank regulators, and DOJ actions.

Figure 4: Mean Monetary Sanctions

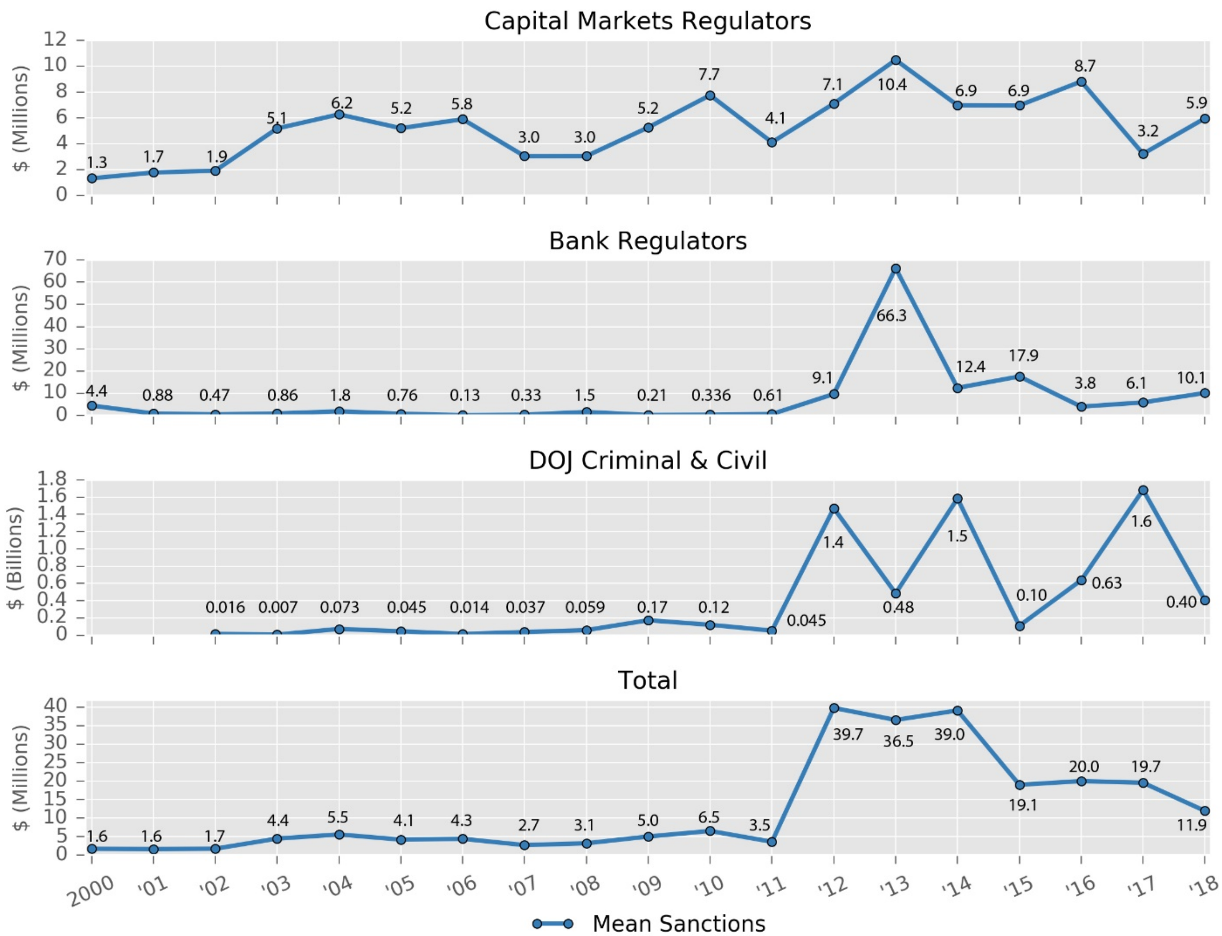


Figure 4 is notable in several respects. First, the overall mean defendant-level monetary sanction imposed by all the agencies of $11.9 million declined approximately 40% in 2018 compared to 2017, when the mean monetary sanction was $19.7 million. The 2018 amount represented a more than two-thirds decline from the peak 2012-2014 period when the DOJ settled numerous financial crisis-era cases and the banking regulators entered into the 2013 independent foreclosure review settlements for over $8.5 billion. However, the mean monetary sanction in 2018 remained two to three times greater than the mean sanction that was imposed in the period from 2003 to 2008 in the run up to the financial crisis.

The data shows that the increase in the overall mean monetary sanction from pre-crisis levels is being driven by DOJ cases and cases by bank regulators. The mean DOJ sanction of $400 million remains well above the pre-crisis amounts, which were always less than $50 million.

Bank regulators' mean monetary sanction continued to increase from its 2016 post financial crisis low of $3.8 million, rising to $10.1 million in 2018, compared to $6.1 million in 2017. While the mean monetary sanction has declined by nearly 85% from 2013, the year the independent foreclosure review settlement was reached, the mean monetary sanction in 2018 remains significantly above pre-2012 levels when the mean penalty exceeded $1 million in only three years.

Additionally, the mean monetary sanction imposed by capital markets regulators increased by over 86% in 2018 over 2017 levels. However, the 2018 amount was largely driven by the $1.8 billion Petrobras settlement and is still comparable to the mean monetary sanction observed in the 2003-2006 period. After 2019 concludes and 2019 data is available, it will be useful to see whether 2018 represents the beginning of a trend toward higher mean penalties for capital markets regulators or just reflects noise and volatility in the data, particularly from the Petrobras case.

Finally, the report also presented data on the median and mean monetary sanctions imposed by agencies on firm and individual defendants. The data can help policymakers and the public understand if firms and individuals are being treated similarly or differently and whether trends in sanctions apply equally to both types of defendants. **Figure 5**, which follows, shows the median monetary sanctions imposed against firm and individual defendants by capital markets regulators and bank regulators.[7]

[7] The staff's data on DOJ cases is limited to cases against institutions and therefore we cannot compare firms versus individual monetary sanctions for DOJ cases.

Figure 5: Median Individual- and Firm-Defendant Monetary Sanctions

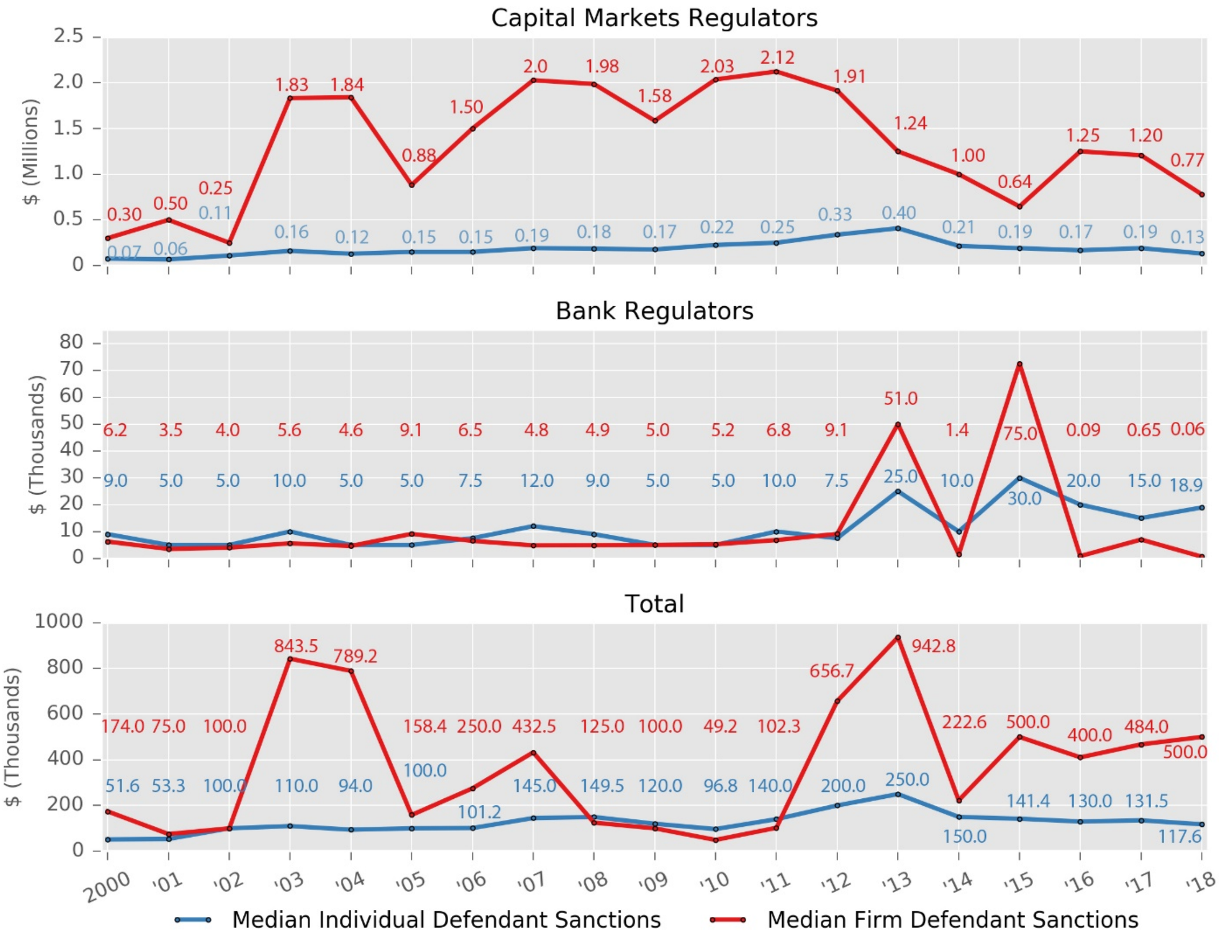


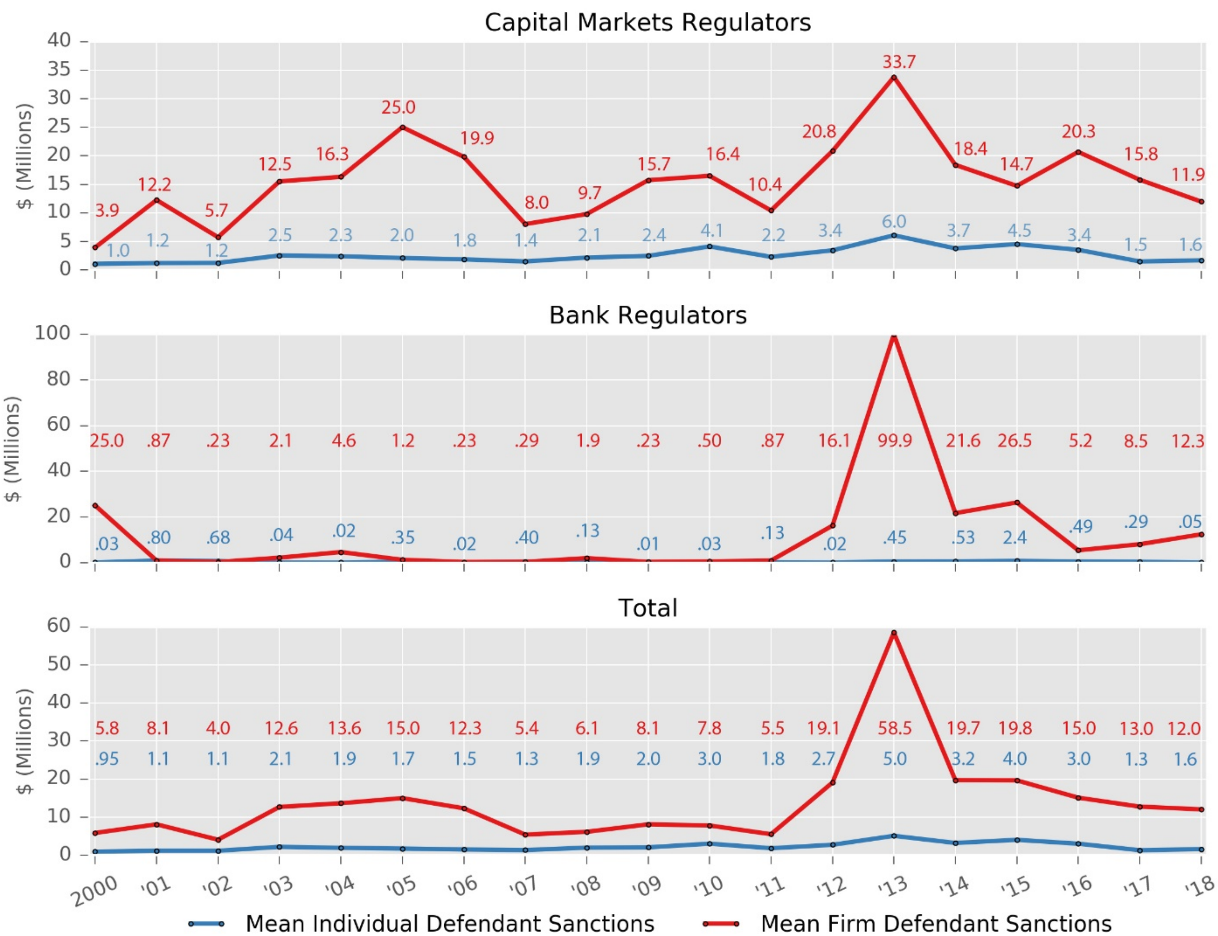
Figure 5 shows that, overall, firm defendants typically face larger median monetary sanctions than do individual defendants. That remained true in 2018 as median firm-defendant sanctions were $500,000 compared to $118,000 for individual defendants. Overall median firm-defendant sanctions have held steady for the past three years but are 47% below the peak amount of $936,000 reached in 2013. Median individual-defendant sanctions, by contrast, have remained very stable over the 18-year period captured by our data. The 2018 amount of $117,600 falls within the normal historical range of $100,000 to $150,000.

The median sanctions imposed by capital markets regulators exhibit similar characteristics. Median firm-defendant sanctions in 2018 were six times higher than the median individual-defendant monetary sanction. Median individual-defendant sanctions of $132,000 fell within the historical range whereas median firm-defendant sanctions of $770,000 actually fell below the typical range of $1.5 million to $2 million seen from 2003 to 2012.

Meanwhile, bank regulator median individual-defendant sanctions increased 26% from 2017 to 2018. The median $18,900 sanction remained higher than the $5,000 to $12,000 range observed prior to 2012. Firm-defendants' median sanctions set a record low in 2018. The low firm median sanction amount is being driven by the NCUA's policy of fining credit unions very small sums of money for delinquent filings of call reports. Excluding the NCUA, the median firm-defendant monetary sanction imposed by bank regulators was $1.5 million in 2018 up slightly from $1.3 million in 2017, and down from a peak of $8.9 million in 2015.

Figure 6 presents the mean monetary sanctions for individual and firm defendants imposed by capital markets and bank regulators.

Figure 6: Mean Individual- and Firm-Defendant Monetary Sanctions



Several important trends can be seen in **Figure 6**. Mean firm-defendant monetary sanctions are multiple times larger than the mean individual-defendant monetary sanctions. Overall, in 2018, firms faced mean sanctions of $12 million compared to $1.6 million for individuals. Capital markets regulators in 2018 imposed mean sanctions on firms more than ten times higher than on individuals and bank regulators imposed mean firm defendant monetary sanctions almost 250 times higher than mean individual-defendant monetary sanctions.

Mean individual-defendant monetary sanctions in 2018 were consistent with historical norms. The overall mean individual-defendant monetary sanction of $1.6 million fell within the range of approximately $1 million to $2 million seen from 2000 to 2009. Likewise, the mean individual-defendant sanction imposed by capital markets regulators of $1.6 million in 2018 approached the lowest since 2007 and the $50,000 mean sanction imposed by bank regulators was on the lower end of the range of $10,000 to $800,000 seen from 2000 to 2011.

Mean firm-defendant monetary sanctions also exhibited a continued downtrend since peaking in 2013. Overall, the $12 million mean sanction in 2018 was almost 80% lower than the peak of $58.5 million in 2013 and was down 8% from 2017. While higher than many years in the 2000 to 2010 period, it was in line with the mean sanction against firms imposed in 2003 to 2006. At the capital markets regulators, the mean firm-defendant sanction of $11.9 million was down 25% from 2017 and is the lowest it has been since 2011. And while bank regulators saw the mean firm-defendant monetary sanction increase over 30% to $12.3 million, it still represented a decline of over 87% from 2013. However, mean firm-defendant monetary sanctions remained well above the range of $230,000 to $4.6 million observed from 2001 to 2011.

Conclusion

Data from 2018 largely reinforces trends previously observed in the enforcement data from 2000 to 2017. Enforcement activity as measured by new actions has been declining for several years though the number of actions appears to have stabilized in the past few years. The aggregate penalty amounts imposed by enforcement authorities continues its significant and persistent decline since the 2014 peak. Notably, both the number of actions and aggregate penalty amounts remain above pre-financial crisis levels. Moreover, median and mean monetary sanctions have also declined in the past several years, and at the capital markets regulators in particular, are generally in line with historical norms.