

 COMMITTEE ON CAPITAL MARKETS REGULATION **U.S. Enforcement Agencies Impose \$18 Billion in Fines on Financial Institutions in 2017**

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 determined, 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 Committee staff compiled data from 2000 to 2016 on enforcement actions by agencies with enforcement jurisdiction over the U.S. financial system.<sup>1</sup> 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 data showed substantial increases in enforcement activity as measured by the total number of enforcement actions and the total monetary sanctions in the years following the 2008-2009 financial crisis with a downward trend in the past few years. The data also showed similar trends in mean and median defendant-level monetary sanctions.

The staff 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. The last year of data in the CCMR staff report was for calendar 2016. Therefore, the staff has compiled data for calendar 2017 and presents it here.

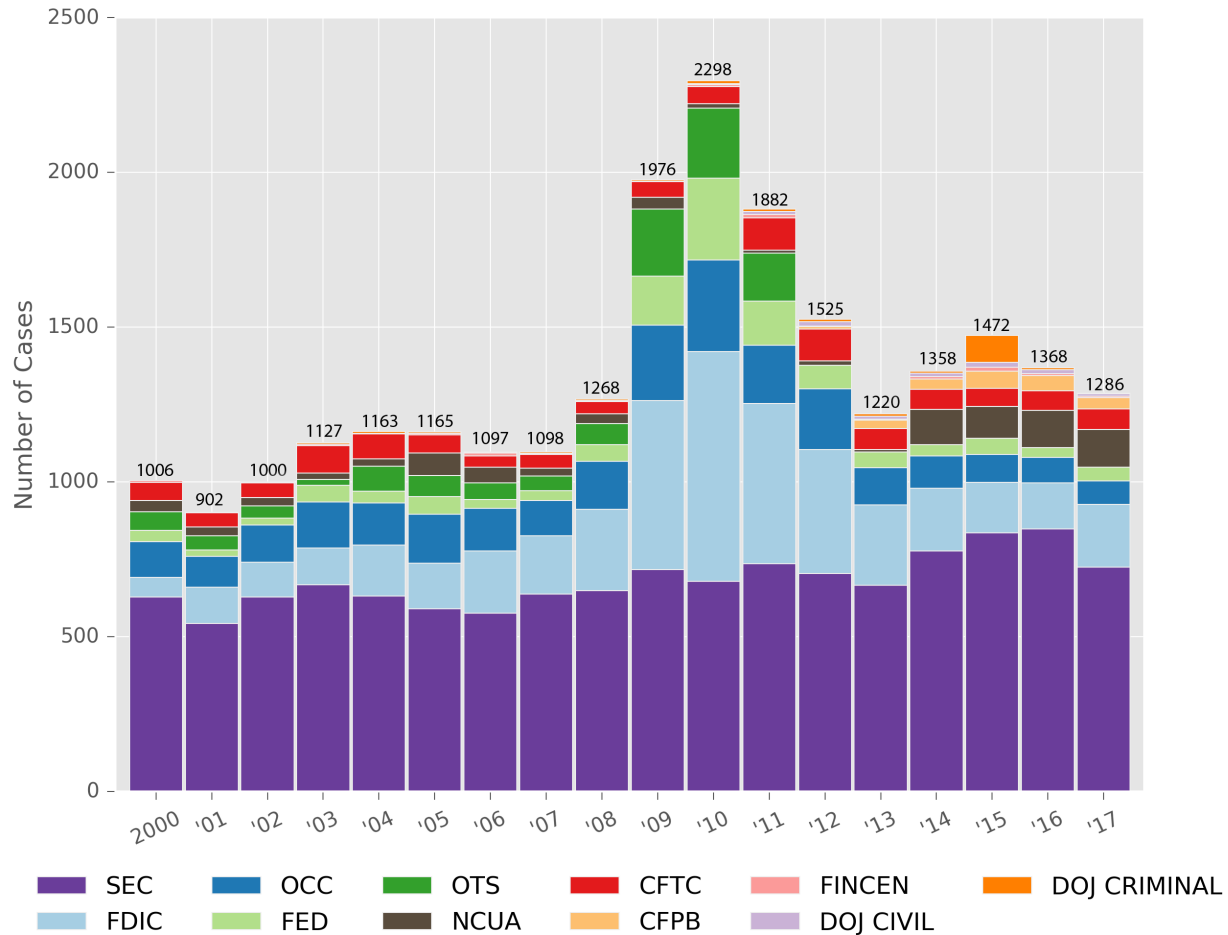
In general, the data for 2017 confirmed the trends observed in the report’s data: the total number of enforcement actions brought continued to decline and is now approaching pre-financial crisis levels; total monetary sanctions are declining from their peak, but remain well above pre-crisis levels; and mean and median monetary sanctions also remain substantially above pre-crisis levels but below their peak. The data raises the important question of whether we are entering a new equilibrium of higher sanctions in the post-crisis world or whether we are in the midst of a downward trend that will revert back to pre-crisis levels.

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<sup>1</sup> 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.capmktreg.org/wp-content/uploads/2018/06/Final-Enforcement-printing.pdf>.

**Figure 1** illustrates the number of enforcement actions brought by each of the federal agencies identified in the chart from 2000 to 2017.<sup>2</sup> 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**

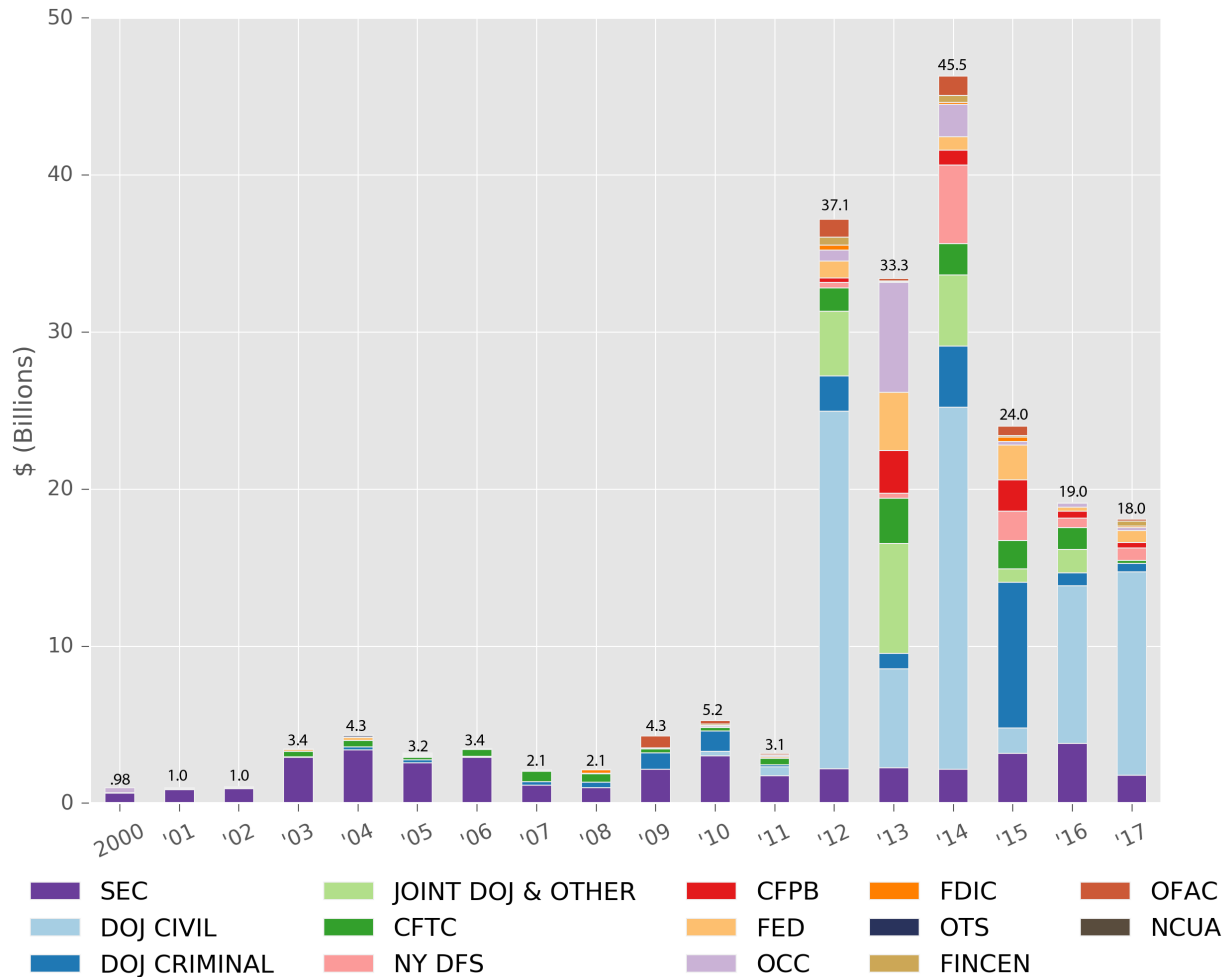


**Figure 1** shows that in 2017 there were 1,286 enforcement actions. That represents a 6% decline from 2016 and falls to levels last seen in 2008 and 2013. The decline continues a downward trend in total enforcement actions that peaked in 2010 at nearly 2,300 cases. The number of actions brought in 2017 represents a 44% decline from the 2010 peak. As in prior years, the SEC continued to be the agency with the highest number of new cases, constituting 725 or 56% of cases brought in 2017. The FDIC, OCC and NCUA brought 202, 76, and 123 cases, respectively, which constituted the vast majority of the remaining cases.

<sup>2</sup> 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.<sup>3</sup>

**Figure 2: Total Monetary Sanctions**



**Figure 2** shows that in 2017 the downtrend in total monetary sanctions from the peak of \$45.5 billion in 2014 continued but largely abated from the steeper declines in 2015 and 2016. Total monetary sanctions in 2017 were \$18 billion. That represents an over 60% decline from the peak. However, the amount in 2017 was only a \$1 billion, or 5% decrease from the total in 2016 of \$19 billion. Moreover, total monetary sanctions remained significantly elevated above the levels seen before the 2012 spike. For example, 2017 total monetary sanctions were more than four times higher than the highest pre-crisis level of \$4.3 billion in 2004, which saw heightened enforcement activity following a series of public company accounting scandals including Tyco, WorldCom and Enron.

<sup>3</sup> 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.

It is important to note that just two cases involving foreign banks resolved in January 2017 accounted for approximately \$12.5 billion, or nearly 70%, of the total monetary sanctions imposed by the agencies in 2017. The DOJ settled two financial crisis-era cases in early 2017. On January 17, 2017, the DOJ announced a \$7.2 billion settlement with Deutsche Bank to resolve allegations that the bank misled investors on the sale of residential mortgage-backed securities. The next day, January 18, 2017, the DOJ announced a \$5.28 billion settlement with Credit Suisse, which also resolved claims relating to that bank's sale of residential mortgage-backed securities. In fact, agencies other than the DOJ saw monetary sanctions in 2017 decline 44.5% from 2016 to \$4.6 billion, which is not materially higher than pre-2009 levels, before the DOJ began obtaining billion-dollar settlements with financial institutions.

In addition to aggregate data, the staff's report examined whether there were observable trends in monetary sanctions imposed at the defendant level. More specifically, the report explored the median and mean monetary sanctions imposed by capital markets regulators,<sup>4</sup> bank regulators,<sup>5</sup> and DOJ civil and criminal actions against large financial institutions.<sup>6</sup>

**Figure 3** on the next page shows the median sanction against individual and firm 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.

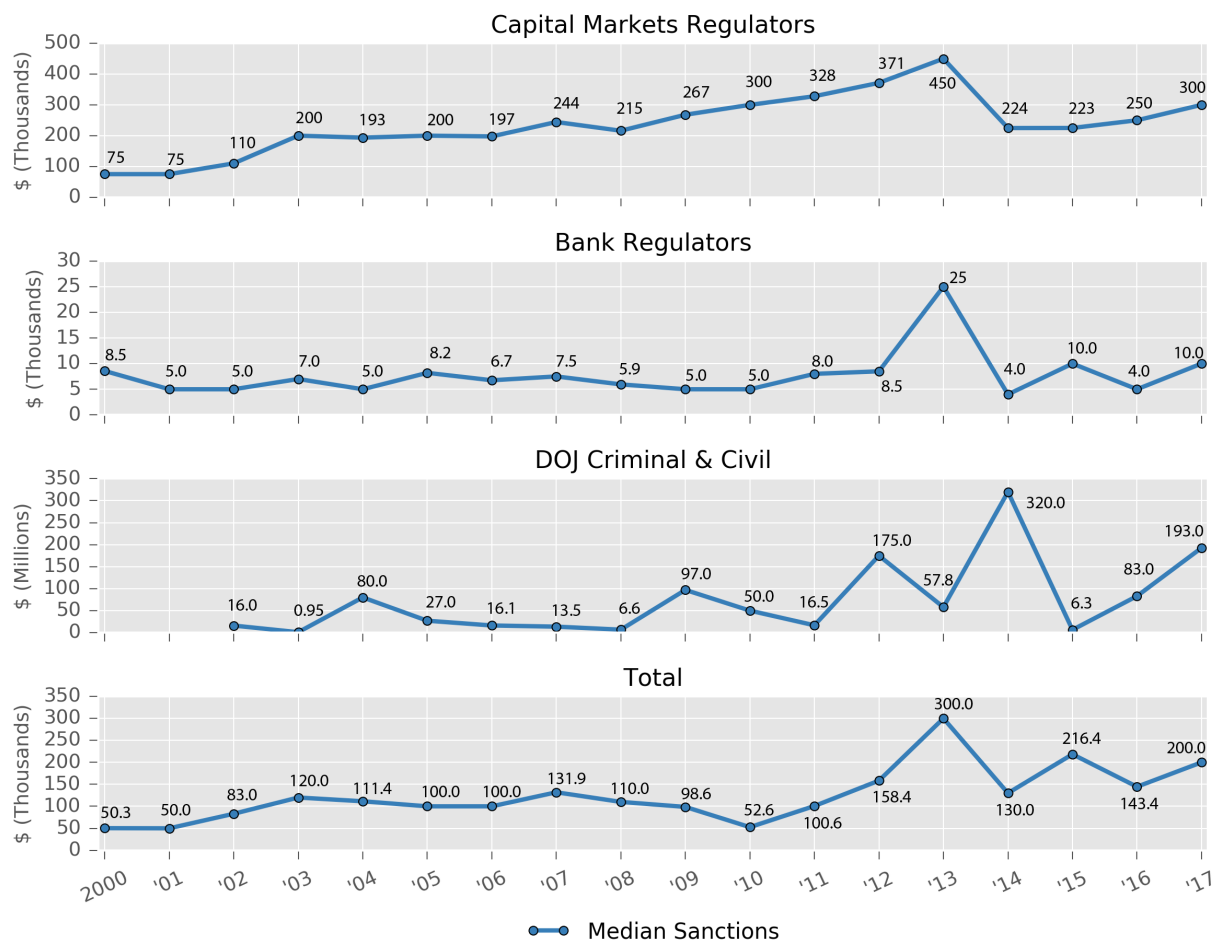
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<sup>4</sup> The capital markets regulators are the SEC and CFTC.

<sup>5</sup> The bank regulators are the CFPB, FDIC, Fed, NCUA, OCC, and OTS

<sup>6</sup> 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.

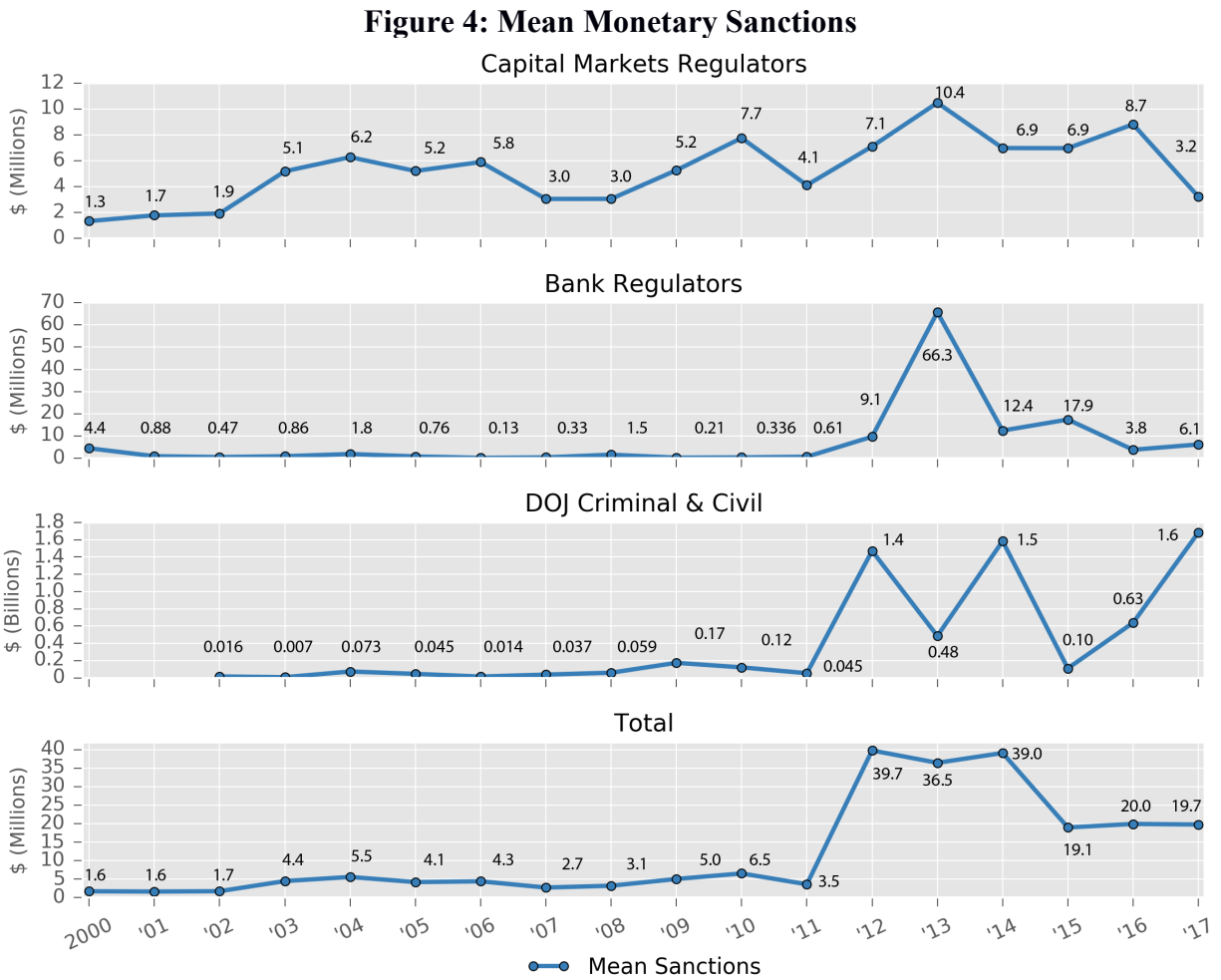
**Figure 3: Median Monetary Sanctions**



**Figure 3** shows that data for 2017 continues to reflect previously existing trends. For example, the median monetary sanction imposed by capital markets regulators are at levels higher than before the financial crisis. While 2014 and 2015 marked a 50% decline from the peak in 2013 after over a decade of constant increases, 2017 shows that the increase in 2016 from 2015 was not a one-year outlier. Median sanctions imposed by capital markets regulators (the SEC and CFTC) increased 20% in 2017 over 2016 levels. Median monetary sanctions imposed by bank regulators also increased from 2016 to 2017, but 2017 levels remained below \$10,000. That is consistent with the prior 17-year period, except for 2013 when median sanctions jumped to \$25,000.

Median sanctions imposed on financial institutions in DOJ actions also rose in 2017 to \$193 million, a 132% increase from 2016. The median sanctions in 2017 were the second highest during the period, exceeded only by the \$320 million median in 2014. When examining the median monetary sanction of all of the agencies, one can see that the 2017 amount was 33% lower than the peak in 2013, but remained roughly two times higher than the typical median sanction amount prior to the financial crisis over approximately \$100,000.

**Figure 4** on the next page 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.

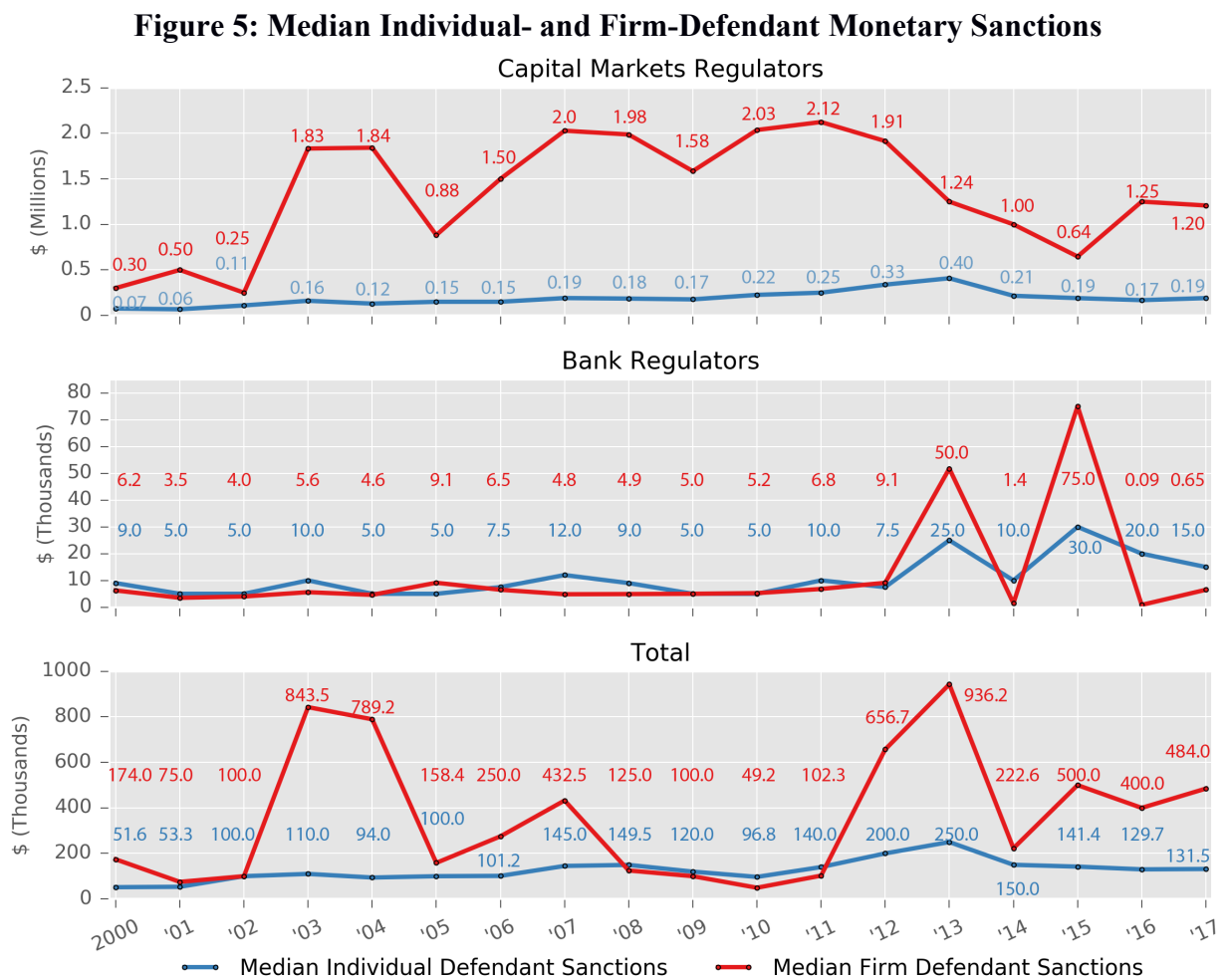


**Figure 4** is notable in several respects. First, the overall mean monetary sanction imposed by all of the agencies (\$19.7 million) remained basically flat in 2017 compared to 2016. This amount has declined from the 2012-2014 period when the DOJ settled numerous financial crisis era cases and the banking regulators entered into the 2013 independent foreclosure review settlements for over \$8.5 billion. However, the mean monetary sanction in 2017 remained four to five times greater than the mean sanction that was imposed in the period from 2002 to 2008 in the run up to the financial crisis.

The data also shows that the overall mean monetary sanction amount is higher than pre-crisis levels due to DOJ cases and cases by bank regulators, not due to capital markets regulators. The mean DOJ sanction hit a record high in 2017, exceeding prior peaks in 2012 and 2014. The Deutsche Bank and Credit Suisse settlements, which totaled \$12.5 billion were the drivers behind the spike in the DOJ mean. Bank regulators’ mean monetary sanction increased to \$6.1 million in 2017 from \$3.8 million in 2016.

By contrast, the mean monetary sanction imposed by capital markets regulators declined by over 60% in 2017 to levels last seen in 2007 and 2008. In fact, the mean monetary sanction amount was lower than in the 2003-2006 period, which followed a series of public company accounting scandals.

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** shows the median monetary sanctions imposed against firm and individual defendants by capital markets regulators and bank regulators.<sup>7</sup>



**Figure 5** shows that, overall, firm defendants typically face larger median monetary sanctions than do individual defendants. That remained true in 2017 as median firm-defendant

<sup>7</sup> 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.

sanctions were \$484,000 compared to \$131,000 for individual defendants. Overall median firm sanctions have held steady for the past three years, but are 48% 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 2017 amount of \$131,500 falls within the normal historical range of \$100,000 to \$150,000.

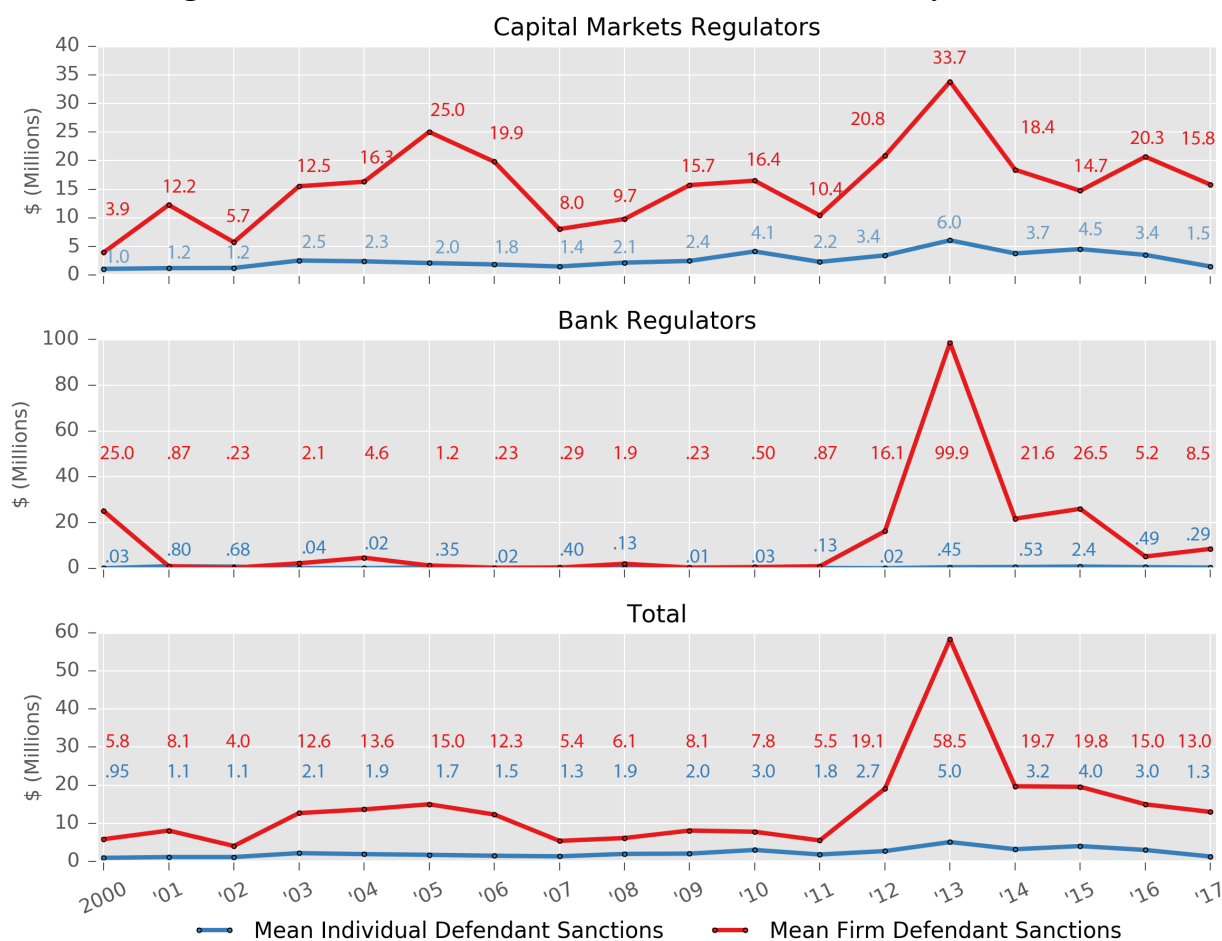
The median sanctions imposed by capital markets regulators exhibit similar characteristics. Median firm-defendant sanctions in 2017 were ten times higher than the median individual-defendant monetary sanction. Median individual-defendant sanctions of \$190,000 fell within the historical range whereas median firm-defendant sanctions of \$1.2 million actually fell below the typical range of \$1.6 million to \$2 million seen from 2003 to 2012.

Meanwhile, bank regulator median individual-defendant sanctions declined 25% from 2016 to 2017. However, the median \$15,000 sanction remained higher than the \$5,000 to \$12,000 range observed prior to 2012. Firm-defendants' median sanctions by bank regulators remained very low in 2017 as they were in 2016. 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 million in 2017 down 33% from \$1.5 million in 2016.

**Figure 6** on the next page 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 ten times larger than the mean individual defendant monetary sanctions. Overall, in 2017, firms faced mean sanctions of \$13 million compared to \$1.3 million for individuals. Capital markets regulators in 2017 imposed mean sanctions on firms more than ten times higher than on individuals and bank regulators imposed mean firm defendant monetary sanctions almost 30 times higher than mean individual defendant monetary sanctions.

Mean individual defendant monetary sanctions in 2017 were consistent with historical norms, if not below normal. The overall mean individual defendant monetary sanction of \$1.3 million was the lowest since 2007 and 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 \$1.5 million in 2017 was the lowest since 2007 and the \$290,000 mean sanction imposed by bank regulators was within the range of \$1,000 to \$40,000 seen from 2000 to 2011.

Mean firm defendant monetary sanctions also exhibited a continued downtrend since peaking in 2013. Overall, the \$13 million mean sanction in 2017 was over 75% lower than the peak of \$58.5 million in 2013 and was down 13% from 2016. 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 \$15.8 million was down 23% from 2016. And while bank regulators saw the mean firm defendant monetary sanction increase over 60% to \$8.5 million, it still represented a decline of over 90% 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 2017 reinforces trends previously observed in the enforcement data from 2000 to 2016. Enforcement activity as measured by new actions and total monetary sanctions have been declining for several years and that decline continued in 2017. However, enforcement activity remains substantially above pre-financial crisis levels. Moreover, while median and mean monetary sanctions have also declined in the past several years, they remain historically elevated compared to pre-financial crisis levels. Similar trends hold for median and mean firm and individual sanctions.

It will be important to analyze the 2018 enforcement data once calendar year 2018 closes. Almost 70% of 2017 monetary sanctions resulted from just two settlements. Thus, if the total number of cases continues to decline and such large settlements are not repeated, we may see a substantial decline in total monetary sanctions in 2018. Moreover, 2018 data will enable us to observe whether median and mean defendant sanctions continue to stabilize or whether a new downward or upward trend emerges.