Enforcement Data for Calendar 2020

Released August 19, 2021

Introduction

In June 2018, the staff of the Committee on Capital Markets Regulation (the "**Committee**") released a report entitled *Rationalizing Enforcement in the U.S. Financial System* (the "**Enforcement Report**").[1] The Enforcement Report comprehensively overviewed and assessed the public enforcement system for the U.S. financial system, including its structure, 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 Enforcement Report also made nineteen recommendations aimed at enhancing the transparency, efficiency, and rationality of the enforcement system.

As part of the report, Committee staff compiled data on enforcement actions by agencies with jurisdiction over financial markets and the financial system from 2000 to 2016,[2] including the number of enforcement actions, the total monetary sanctions imposed, and the median and mean monetary sanctions imposed on individual and entity defendants. The Enforcement 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 thereafter. The Committee staff has updated this data annually 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 through calendar year 2020.

The enforcement data for 2020 departs from previously observed trends in important ways. After fluctuating within a stable range since 2012, the total number of enforcement actions fell to a new post-crisis low. Meanwhile, after steadily declining from their post-crisis peak, total monetary sanctions rose sharply for the first time since 2014. Although mean and median monetary sanctions are generally within their post-crisis historical ranges, one important exception is the sharp rise in median monetary sanctions imposed by bank regulators on entity defendants in 2020. This significant increase appears to follow from a fall in the number of small monetary sanctions as well as a broader increase in the size of sanctions overall.

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[1] COMMITTEE ON CAPITAL MARKETS, *Rationalizing Enforcement in the U.S. Financial System* (June 2018), https://www.capmktsreg.org/wp-content/uploads/2018/10/Rationalizing-Enforcement-in-the-US-Financial-System.pdf.

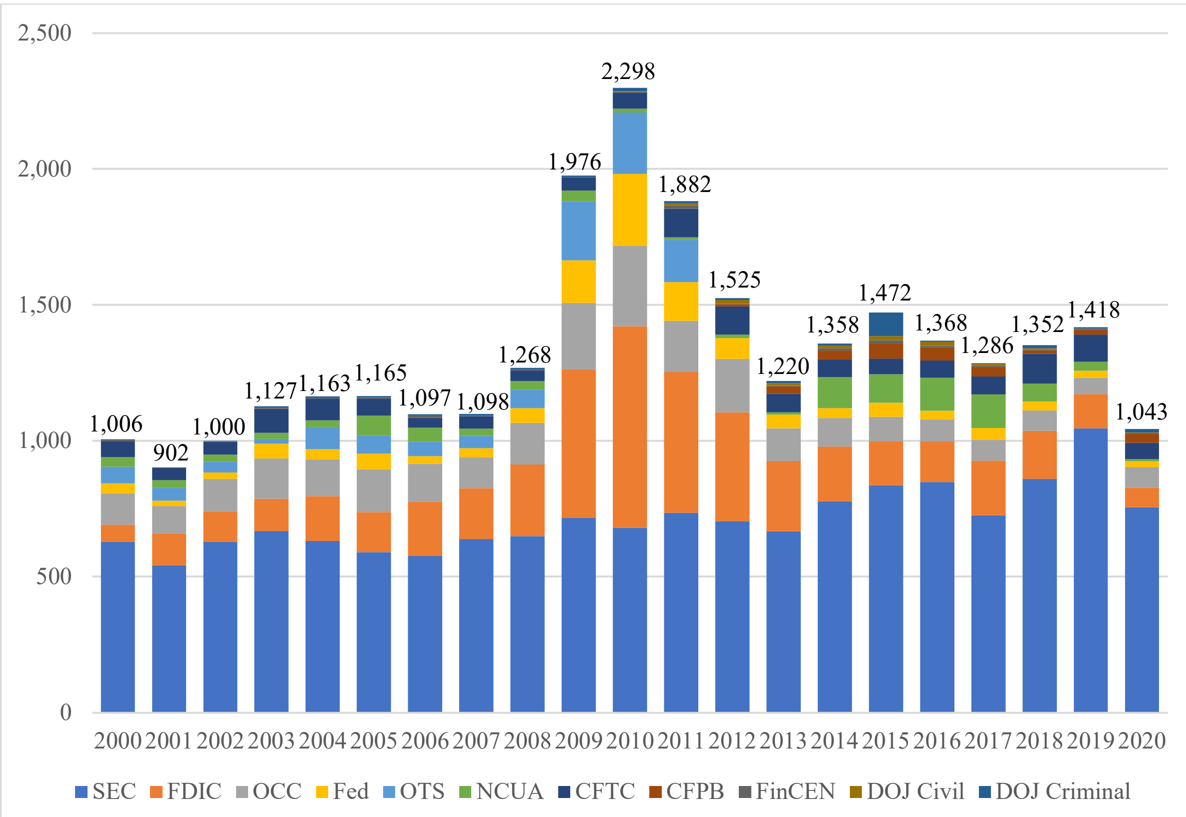
[2] Data was collected on enforcement actions by the Commodity Futures Trading Commission ("**CFTC**"), Consumer Financial Protection Bureau ("**CFPB**") , Department of Justice ("**DOJ**") , Federal Deposit Insurance Corporation ("**FDIC**"), Federal Reserve ("**Fed**"), Financial Crimes Enforcement 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**").

Data Presentation

Number of Actions

Figure 1 illustrates the number of enforcement actions brought by each of the federal agencies identified in the chart from 2000 to 2020.[3]

Figure 1: Total Number of Enforcement Actions



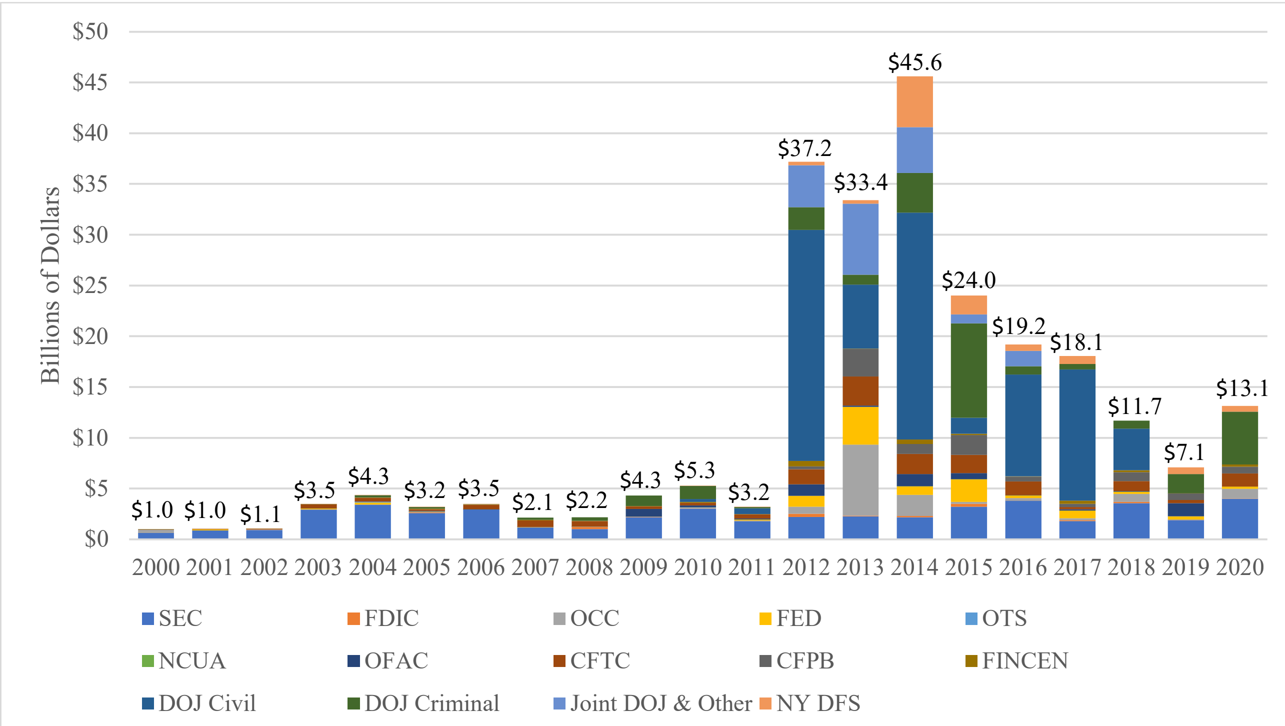
There were 1,043 enforcement actions in 2020, which represents a -26% decline from the prior year and a -55% decline from the post-financial crisis peak. This sharp decline is at least partly attributable to the COVID-19 pandemic, which caused substantial disruption in agency operations and saw agencies relax some requirements that traditionally result in enforcement actions, such as late filings. Consistent with prior years, the SEC is the agency with the higher number of cases (72% of the total), followed by the OCC (7%), FDIC (7%), and OCC (6%), and CFPB (3%), which together represented the vast majority of remaining cases.

[3] 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.

Monetary Sanctions

Figure 2 shows the aggregate amount of monetary sanctions ordered to be paid by the agencies identified in the graph's legend.[4]

Figure 2: Total Monetary Sanctions
(Billions of Dollars)



Covered enforcement agencies imposed $13.1 billion in total monetary penalties in 2020, which is an 85% increase over the prior year but still a -71% decline from the post-financial crisis peak. The increase from 2019 to 2020 is mostly attributable to several large outlier monetary sanctions: whereas there were no sanctions of $1 billion or more in 2019 (the largest was $785 million), there were three such sanctions in 2020, which together accounted for $5 billion. As a result, a small number of actions continue to represent the majority of monetary sanctions, and that disparity is more pronounced than last year. For example, whereas the 10% of actions with the largest monetary sanctions made up 84% of total monetary sanctions imposed in 2019, they represented a 95% of total monetary sanctions imposed in 2020.

[4] 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.

Median Sanctions

In addition to aggregate data, the Enforcement Report explored the median and mean monetary sanctions imposed by capital markets regulators,[5] bank regulators,[6] and DOJ civil and criminal actions against financial institutions.[7] **Figure 3** shows the median sanction against defendants in instances where a monetary sanction was imposed. Median sanctions are useful to analyze because they are not affected by outlier cases with extremely large penalties.

In 2020, median monetary sanctions rose in some sectors and fell in others. Among capital markets regulators, median sanctions were $350,000, which represents a -20% deline from the prior year and a -22% decrease from their 2013 peak.[8] Among bank regulators, median sanctions were $200,000, a +700% increase over the prior year and their 2013 peak. We attribute this large increase to: (i) a sharp fall in the number of small monetary penalties imposed during COVID-19;[9] and (ii) a broad rise in the size of monetary penalties imposed by all bank regulators, particularly on entity defendants.[10] For DOJ criminal and civil actions, median sanctions were $110,521 000, a +99% increase over the prior year but still down -65% from their 2014 peak.

Figure 3: Median Monetary Sanctions
(Thousands of Dollars)

Panel A: Capital Markets Regulators Median Monetary Sanctions ($ thousands)

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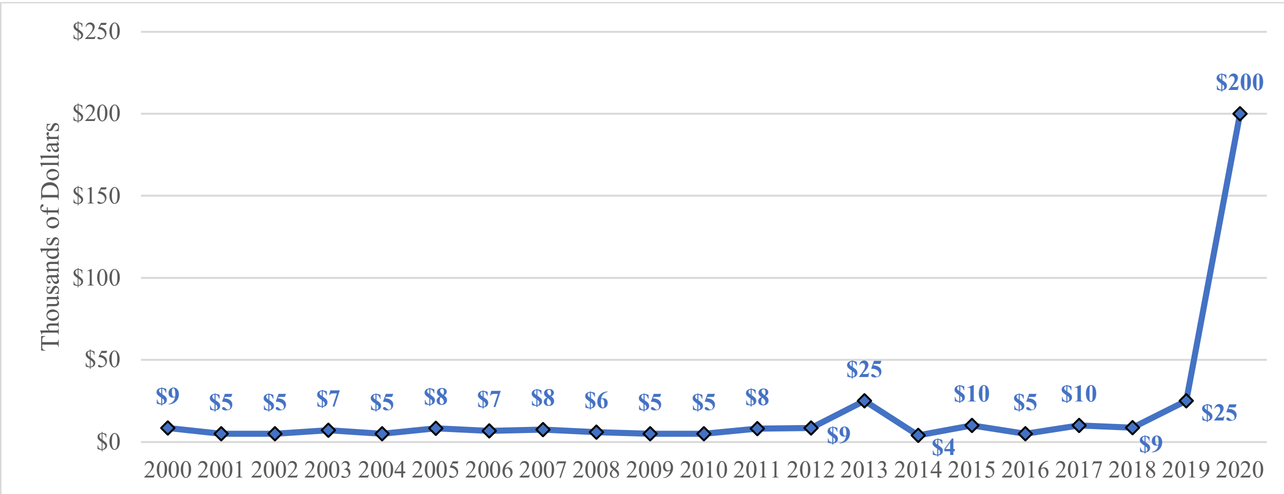
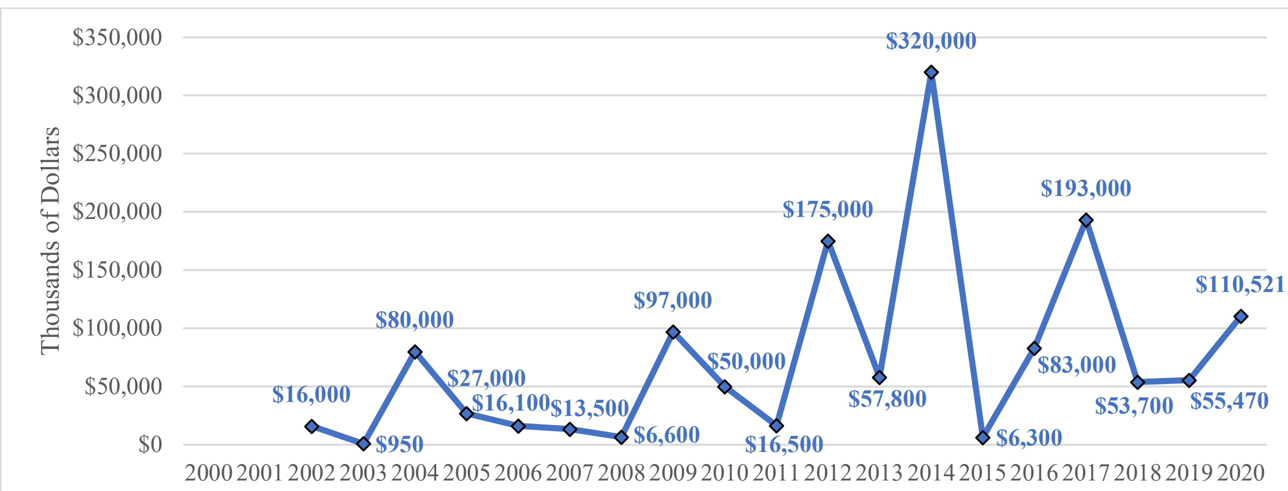
[5] "**Capital markets regulators**" means the SEC and CFTC.
[6] "**Bank regulators**" means the CFPB, FDIC, Fed, NCUA, OCC, and OTS.
[7] The DOJ actions include: (i) all criminal actions against financial institutions (as compiled by the University of Virginia's Corporate Prosecution Registry); and (ii) both civil actions involving the fifty largest U.S. banks and civil actions against financial institutions under the False Claims Act and the Financial Institutions Reform, Recovery and Enforcement Act.
[8] This year-over-year increase is consistent with the SEC's Annual Enforcement Report, which covers the fiscal year ended September 31, 2019, and which also shows a substantial increase in "median money ordered by action" from fiscal year 2018 to fiscal year 2019. SEC actions make up the overwhelming majority of enforcement actions by capital markets regulators. U.S. SEC. & EXCH. COMM'N, *Division of Enforcement: 2019 Annual Report*, 16 (2020), https://www.sec.gov/files/enforcement-annual-report-2019.pdf.
[9] For example, whereas the NCUA imposed 18 small monetary penalties on late filers totalling $9,730 in 2019, the NCUA imposed no monetary penalties at all in 2020.
[10] For example, looking at the size of penalties imposed by bank regulators on *entity defendants*, the 25th quartile rose from $782 in 2019 to $75,375 in 2020, the 50th quartile rose from $28,966 in 2019 to $573,600 in 2020, and the 75th quartile rose from $331,250 in 2019 to $7,199,394 in 2020.

Panel B: Bank Regulators Median Monetary Sanctions ($ thousands)



Panel C: DOJ Criminal and Civil Median Monetary Sanctions ($ thousands)

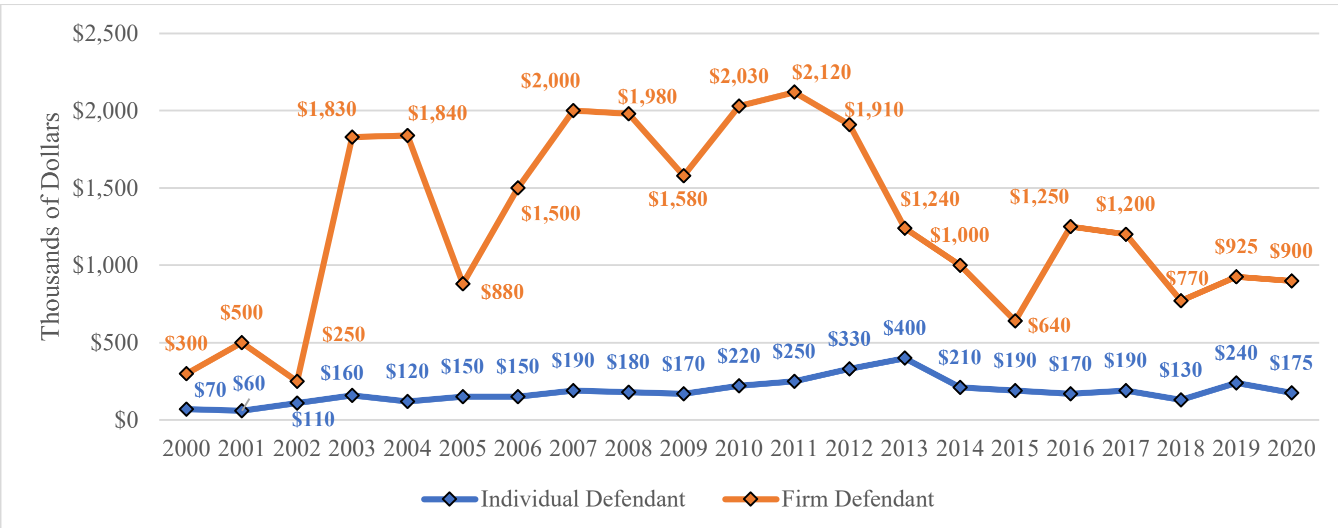


Median Sanctions on Individuals and Firms

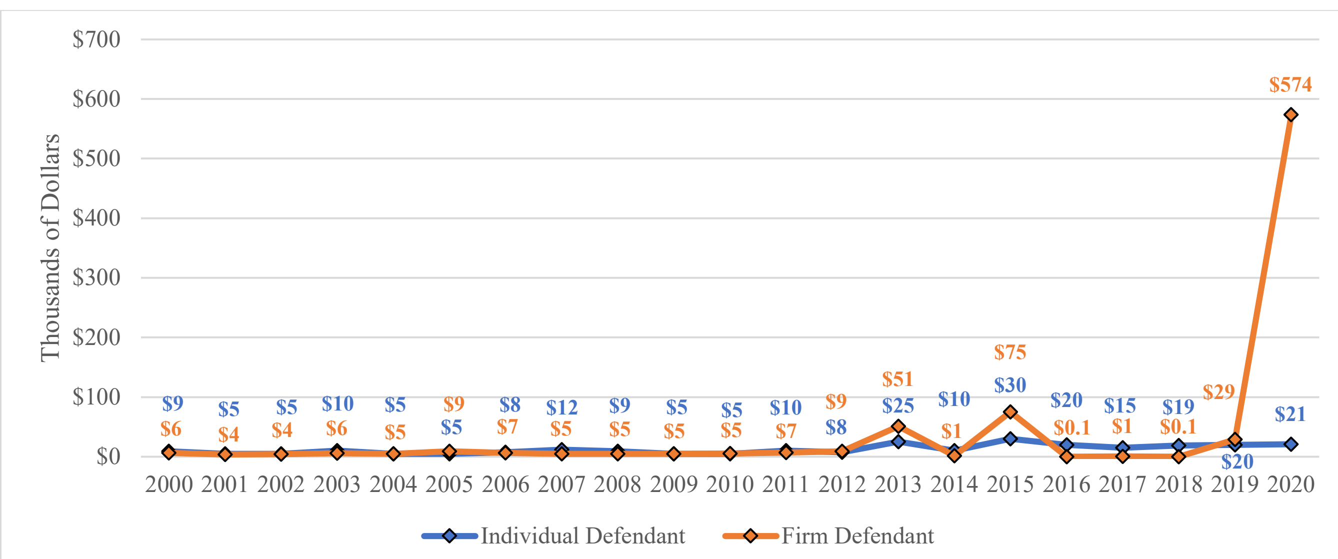
Figure 4 shows the median monetary sanctions imposed against firm and individual defendants by capital markets regulators and bank regulators.[11] Except for median monetary sanctions imposed by bank regulators on entity defendants, which rose sharply for the reasons set forth above, median sanctions were otherwise stable and remained within historical ranges.

Figure 4: Median Individual- and Firm-Defendant Monetary Sanctions
(Thousands of Dollars)

Panel A: Capital Markets Regulators Median Monetary Sanctions ($ thousands)



Panel B: Bank Regulators Median Monetary Sanctions ($ thousands)



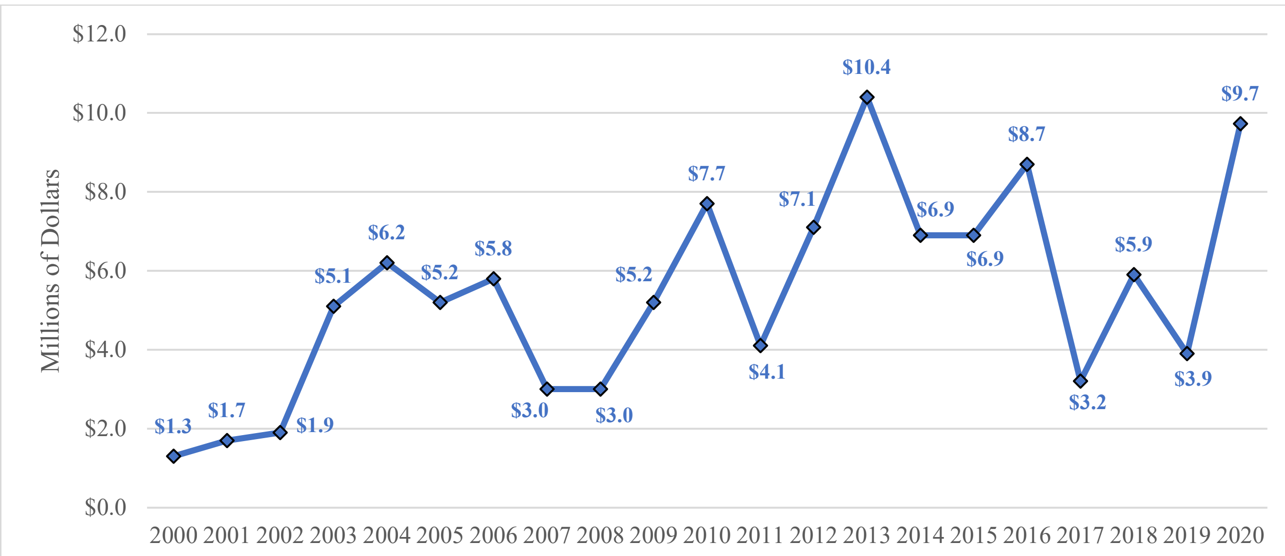
[11] The staff's data on DOJ cases is limited to cases against institutions and therefore we cannot compare firms versus individual monetary sanctions for DOJ cases.

Mean Sanctions

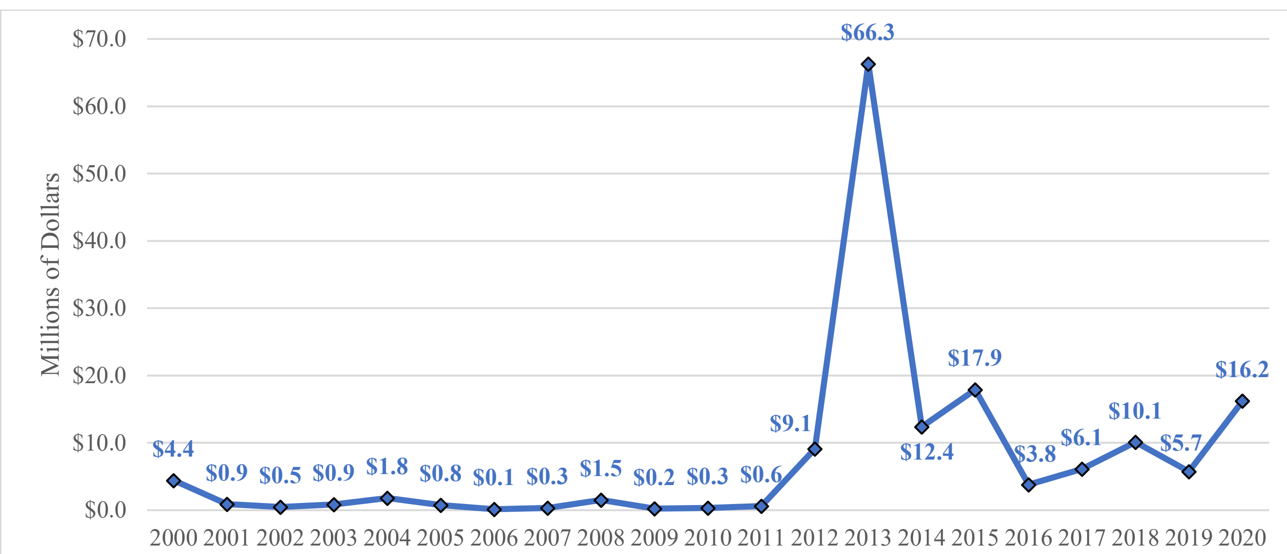
Figure 5 presents the mean monetary sanction against all defendants. In 2020, among capital markets regulators, mean sanctions were $9.7 million, which represents a 149% increase from the prior year. Among bank regulators, mean sanctions were $16.2 million, a 182% increase from the prior year.

Figure 5: Mean Monetary Sanctions
(Millions of Dollars)

Panel A: Capital Markets Regulators Mean Monetary Sanctions ($ millions)



Panel B: Bank Regulators Mean Monetary Sanctions ($ millions)

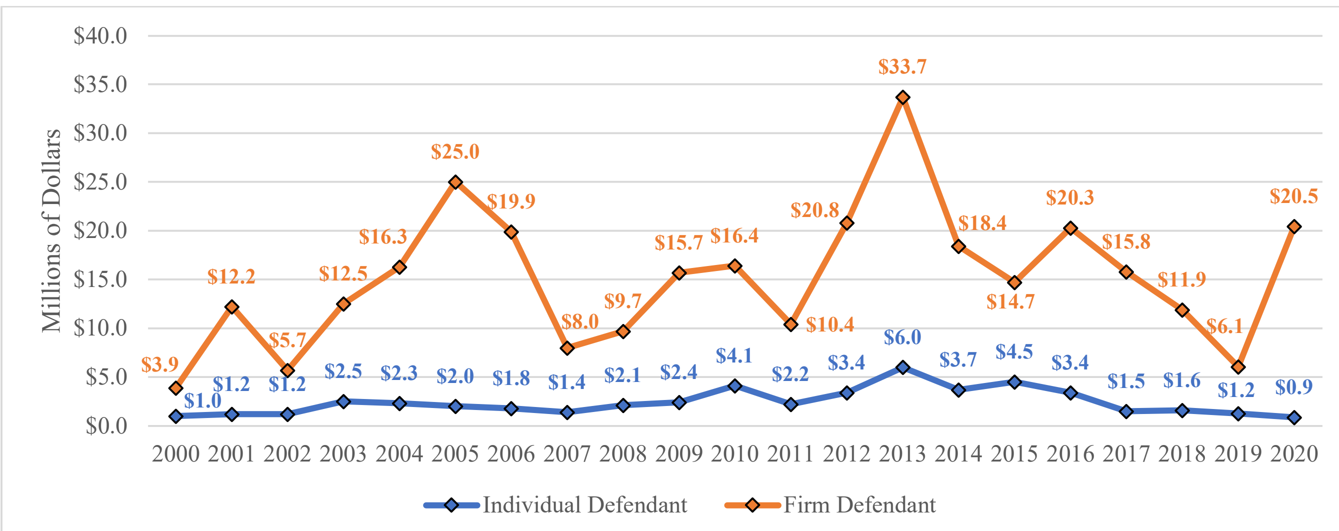


Mean Sanctions on Individuals and Firms

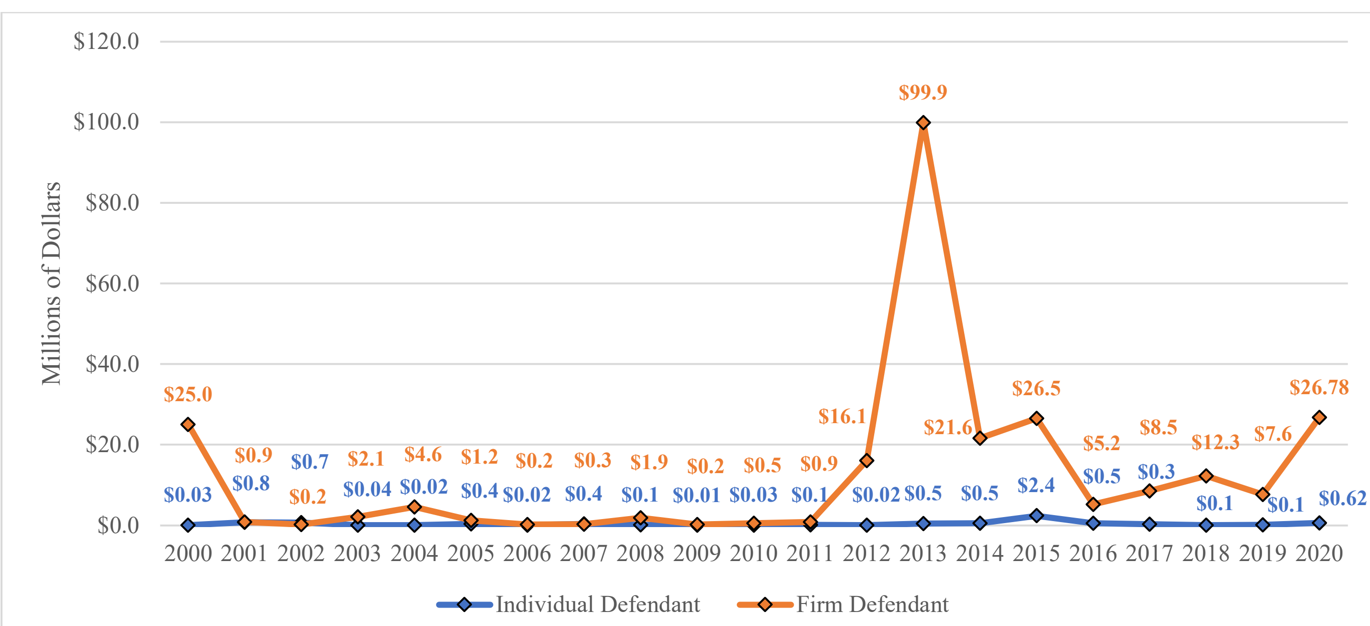
Figure 6 presents the mean monetary sanctions for individual and firm defendants imposed by capital markets and bank regulators, which remain within historical ranges. Although mean monetary sanctions against *individuals* remained relatively stable, mean monetary sanctions against *entities* rose across both capital markets regulators and bank regulaors, returning to levels last seen in 2015-2016 while remaining well below their 2013 peaks. This rise is attributable in part to an increase in large outlier sanctions imposed on entities.

Figure 6: Mean Individual- and Firm-Defendant Monetary Sanctions
(Millions of Dollars)

Panel A: Capital Markets Regulators Mean Monetary Sanctions ($ millions)



Panel B: Bank Regulators Mean Monetary Sanctions ($ millions)



Conclusion

Overall, the enforcement data for 2020 departs from previously observed trends in important ways. After fluctuating within a stable range since 2012, the total number of enforcement actions fell to a new post-crisis low. Meanwhile, after steadily declining from their post-crisis peak, total monetary sanctions rose sharply for the first time since 2014. Although mean and median monetary sanctions are generally within their post-crisis historical ranges, one important exception is the sharp rise in median monetary sanctions imposed by bank regulators on entity defendants in 2020. This significant increase appears to follow from a fall in the number of small monetary sanctions as well as a broader increase in the size of penalties overall.