Enforcement Data for Calendar 2019

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 2019.

Enforcement data for 2019 generally conforms to previously observed trends: the total number of enforcement actions have declined from their 2010 peak, and they appear to have leveled off slightly above pre-financial crisis levels; total monetary sanctions continue to decline from their 2014 peak, but they also remain above pre-crisis levels. Mean monetary sanctions have also continued to decline from their 2012-2014 highs, whereas median monetary sanctions increased in 2019 but remained within historical ranges. The divergence between trends in mean and median monetary sanctions indicates that there were fewer outlier cases with very large penalties, which we confirmed with our review.

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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.

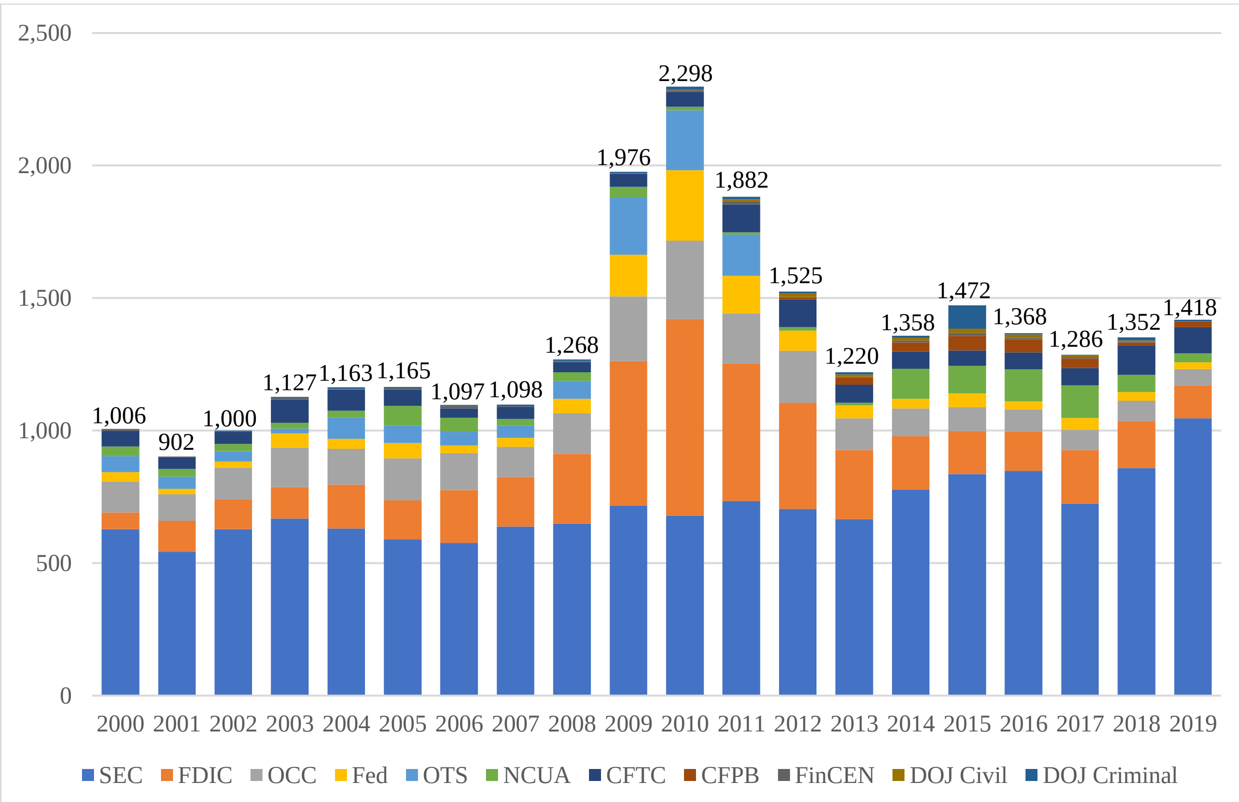
[2] Data was collected on enforcement actions by the Commodity Futures Trading Commission ("**CFTC**"), Consumer Financial Protection Bureau ("**CFPB**") , Department of Justice ("**DOJ**") , Federal Deposit Insurance Corporation ("**FDIC**"), Federal Reserve ("**Fed**"), Financial Crimes Enforcement 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 2019.[3]

Figure 1: Total Number of Enforcement Actions



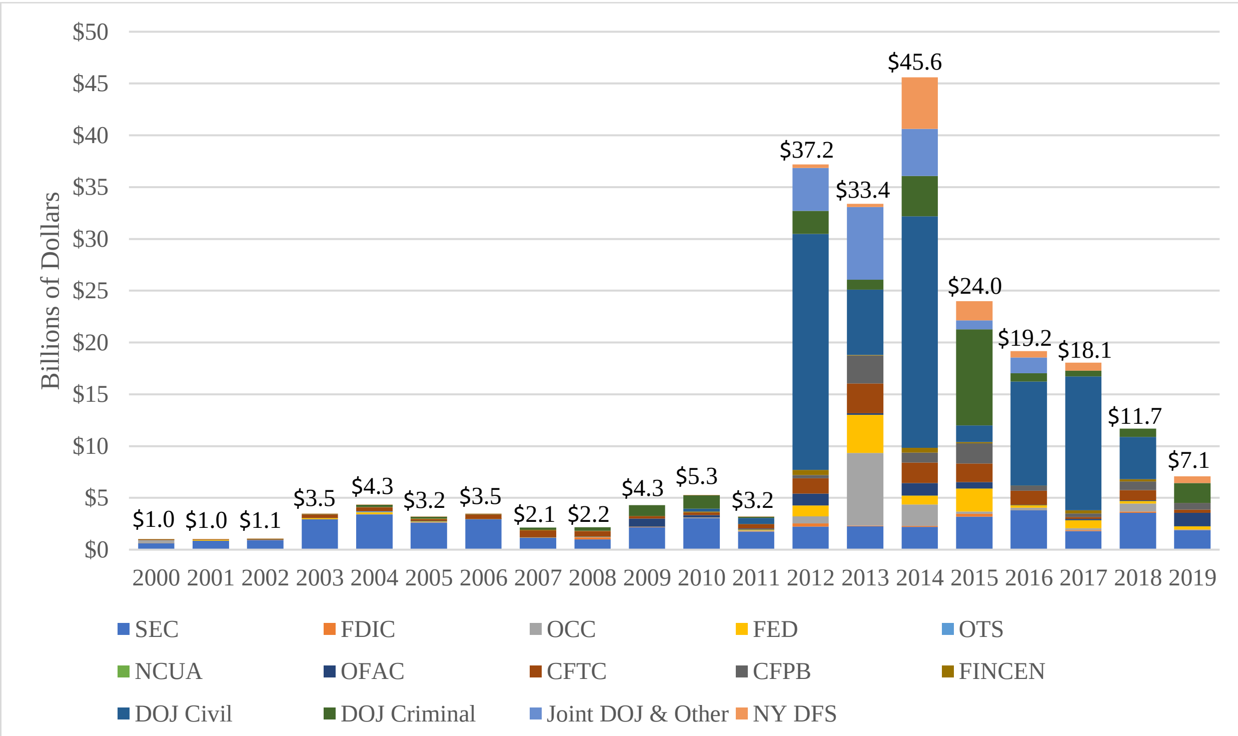
There were 1,418 enforcement actions in 2019, which represents an almost +5% increase over the prior year and a -38% decline from the post-financial crisis peak. Consistent with prior years, the SEC is the agency with the higher number of cases (74% of the total), followed by the FDIC (9%), CFTC (7%), and OCC (4%), and NCUA (2%), 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 $7.1 billion in total monetary penalties in 2019, which is a -39% decline over the prior year and an -84% decline from the post-financial crisis peak. Although a small number of actions continue to represent the majority of monetary sanctions, that disparity is less pronounced than last year. For example, the 10% of actions with the largest sanctions made up over 92% of total monetary sanctions imposed in 2018, however they represented a lesser 84% of total monetary sanctions imposed in 2019.

[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.

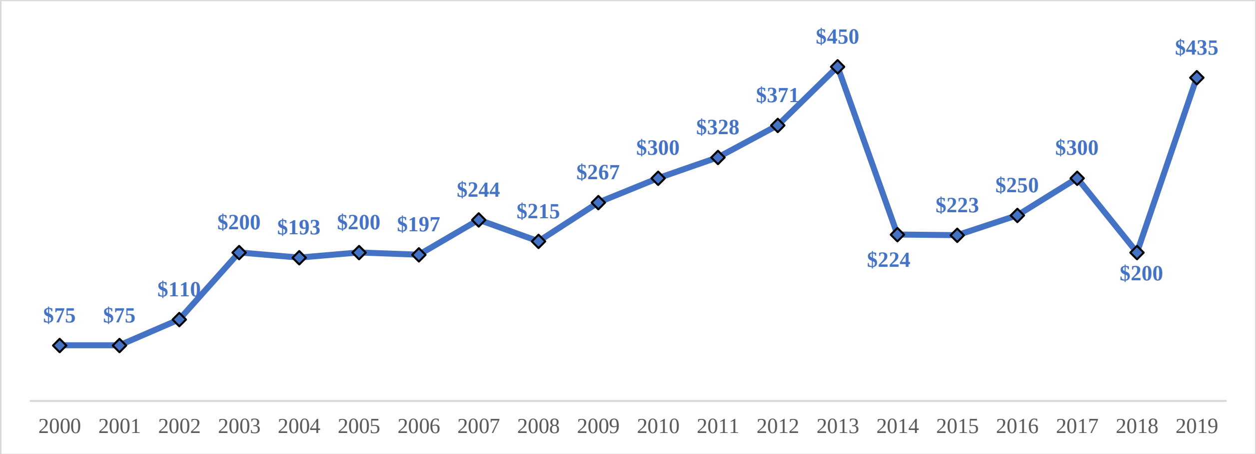
Median Sanctions

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 2019, median monetary sanctions rose at varied rates across agencies. Among capital markets regulators, median sanctions were $435,000, which represents a +118% increase over the prior year and a -3% decrease from their 2013 peak.[8] Among bank regulators, median sanctions were $25,000, a +191% increase over the prior year and the same as their 2013 peak. For DOJ criminal and civil actions, median sanctions were $55,477,000, a +3% increase over the prior year but still down -83% from their 2014 peak.

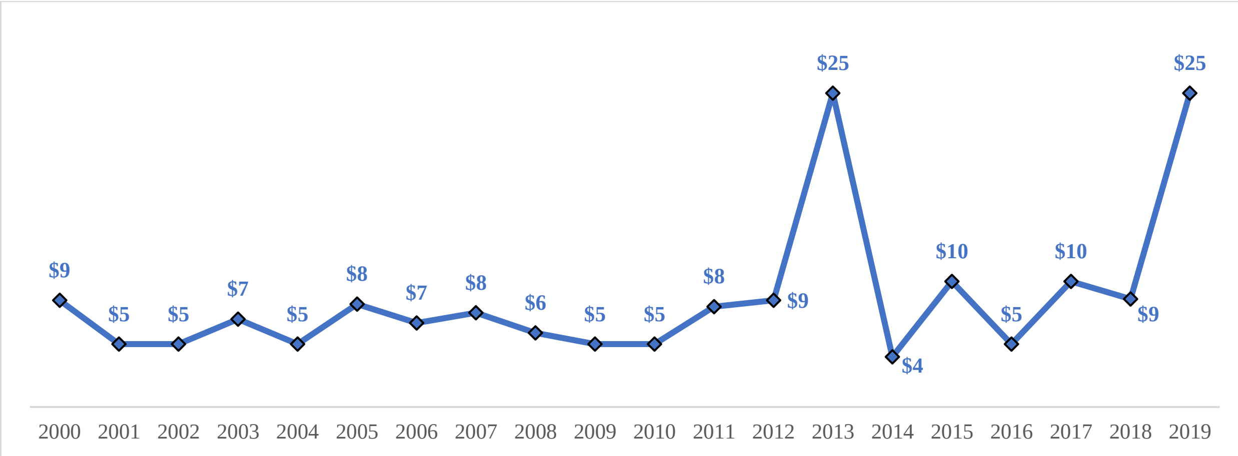
Figure 3: Median Monetary Sanctions
(Thousands of Dollars)

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

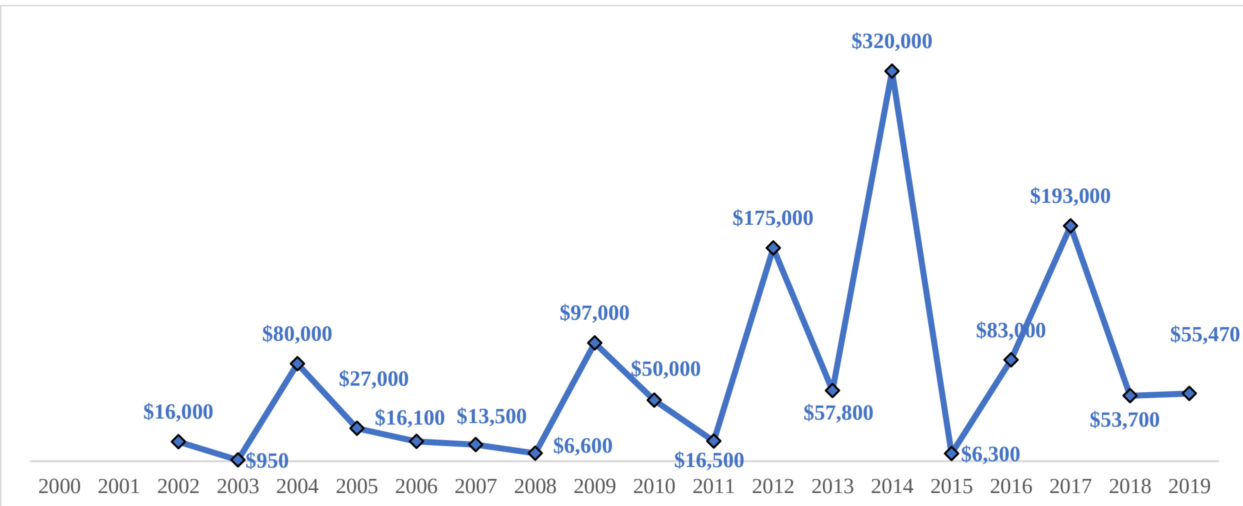


[5] "**Capital markets regulators**" means the SEC and CFTC.
[6] "**Bank regulators**" means the CFPB, FDIC, Fed, NCUA, OCC, and OTS.
[7] The DOJ actions include: (i) all criminal actions against financial institutions (as compiled by the University of Virginia's Corporate Prosecution Registry); and (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.

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



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

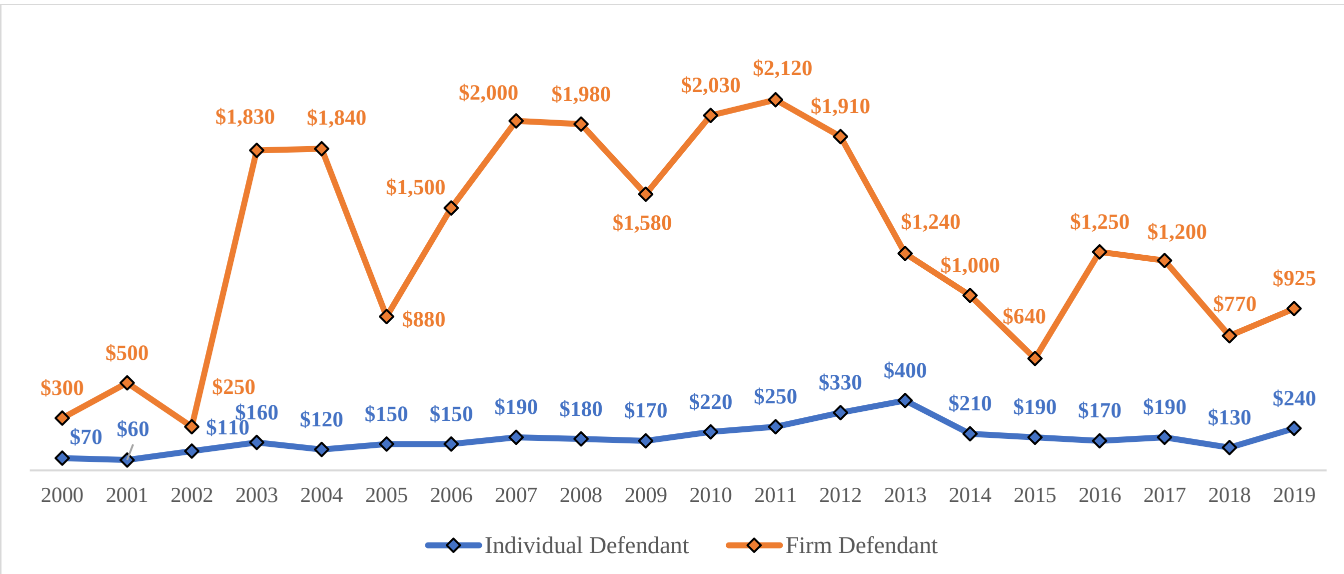


Median Sanctions on Individuals and Firms

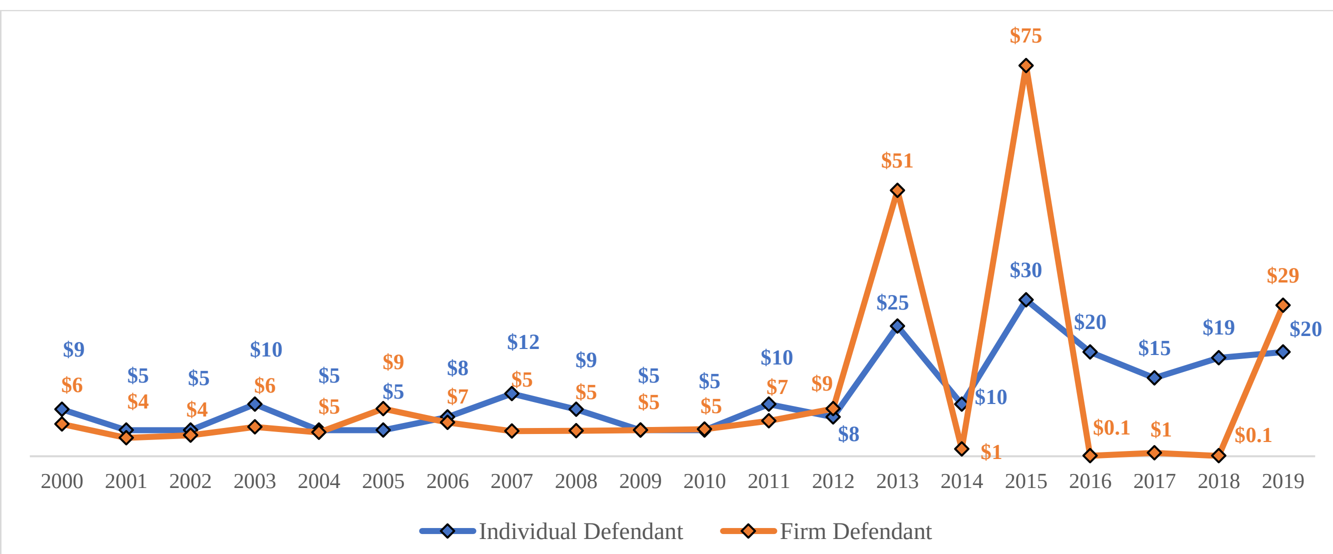
Figure 4 shows the median monetary sanctions imposed against firm and individual defendants by capital markets regulators and bank regulators.[9]

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)



[9] 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.

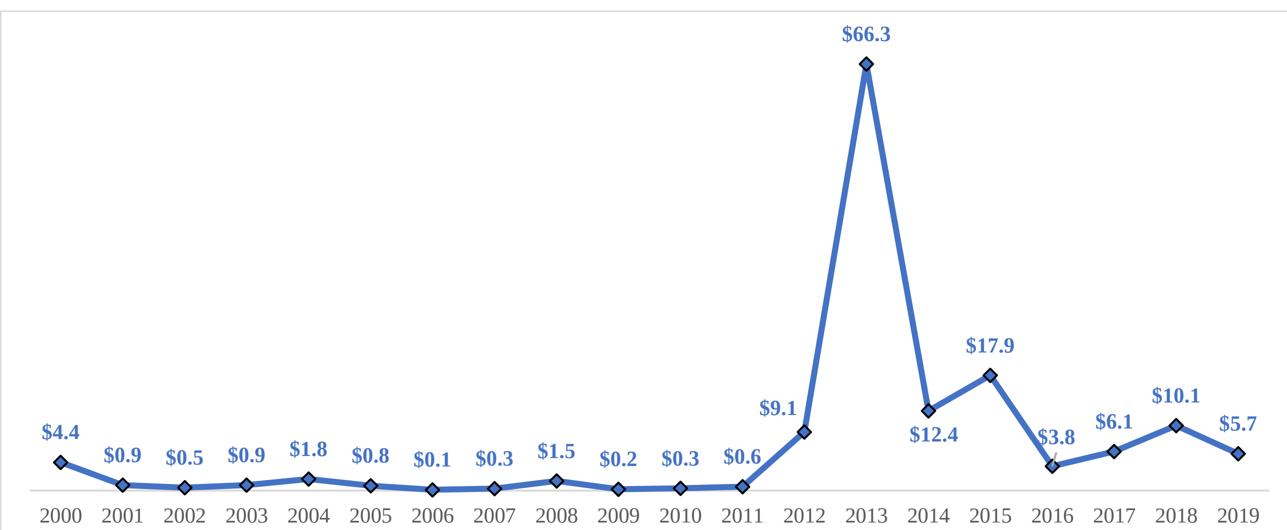
Mean Sanctions

Figure 5 presents the mean monetary sanction against defendants. In 2019, among capital markets regulators, mean sanctions were $3.9 million, which represents a -34% decrease from the prior year. Among bank regulators, mean sanctions were $5.7 million, a -43% decrease from the prior year. As we noted earlier, the decline in mean monetary sanctions is due to the decline in outlier cases with very large penalties.

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)

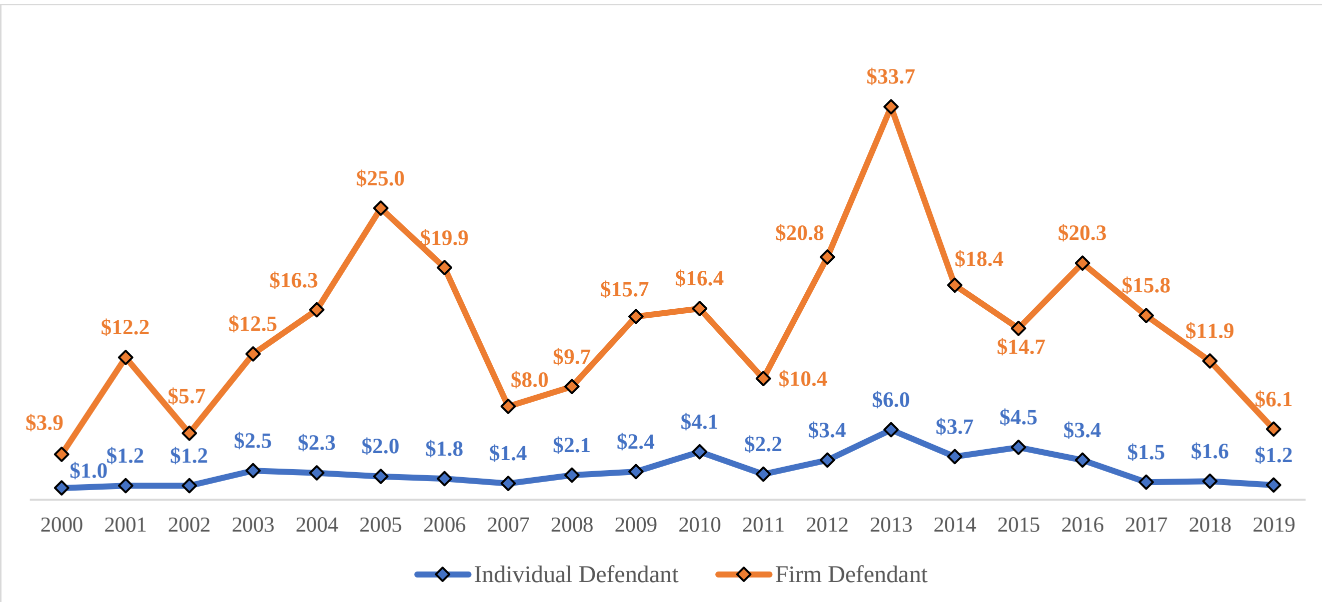


Mean Sanctions on Individuals and Firms

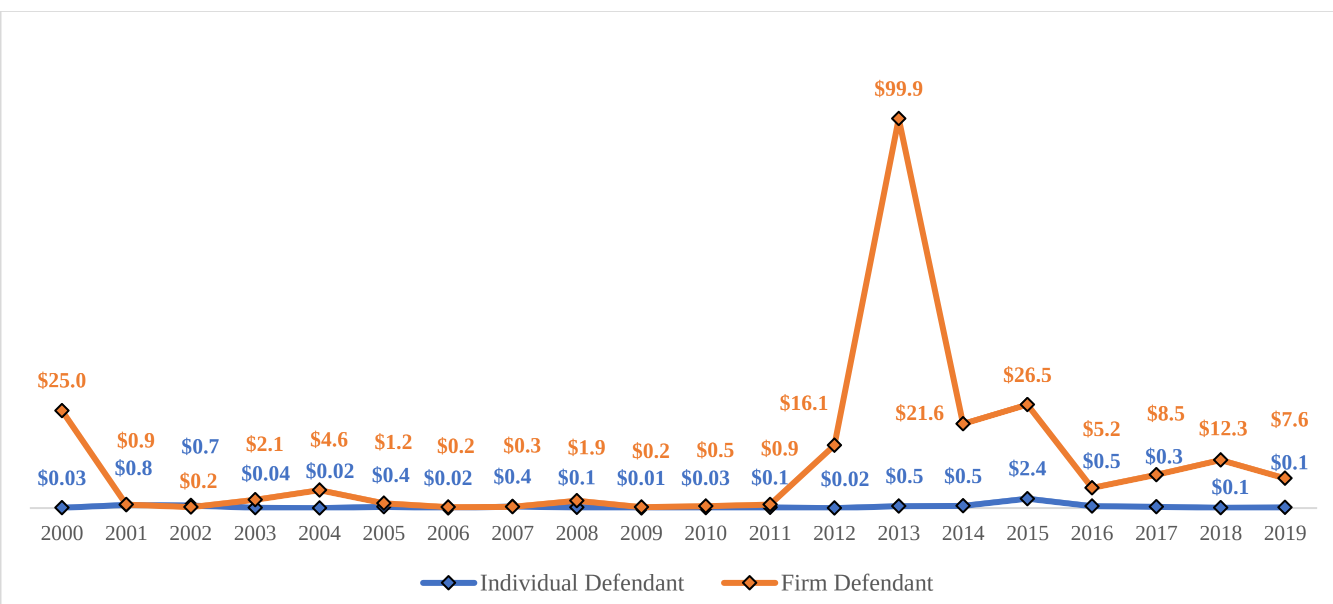
Figure 6 presents the mean monetary sanctions for individual and firm defendants imposed by capital markets and bank regulators with both continuing their decline but remaining above pre-financial crisis levels.

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, enforcement data for 2019 is consistent with recent trends. The total number of enforcement actions brought and the total monetary sanctions imposed have declined considerably from their post-financial crisis peaks in 2010 and 2014, respectively, but they still remain elevated above pre-crisis levels. Similarly, mean monetary sanctions have continued to decline from their 2012-2014 highs. Meanwhile, median monetary sanctions increased notably in 2019 while remaining within the normal historical range. The fall in mean sanctions alongside a rise in median sanctions suggests that there were fewer outlier cases with very large penalties in 2019, which we confirmed with our review.