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MARKETS

Wall Street's Top Cop Takes Harder Line

SEC has more than doubled the typical fine against individuals over the past decade

The SEC, under Chairman Mary Jo White, has levied more civil penalties in the first half of this fiscal year than over any comparable period since at least 2005, according to an analysis by The Wall Street Journal. *PHOTO: ANDREW HARRER/BLOOMBERG NEWS*

By **JEAN EAGLESHAM** and **ANDREA FULLER**
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The Securities and Exchange Commission has ratcheted up its punishment of individuals, more than doubling the typical fine over the past decade amid pressure to prove the agency is tough on Wall Street.

The SEC has stepped up its enforcement activity across the board. The agency levied more civil penalties in the first half of this fiscal year, October through March, than over any comparable period since at least 2005, according to an analysis by The Wall Street Journal of the 4,443 penalties imposed by the SEC since October 2004.

Since the financial crisis, the SEC has been buffeted by critics, with Democrats and others on the left pushing for stricter sanctions on banks and executives. Some Republicans and white-collar defense attorneys believe the pendulum at times has swung too far, leading to a quest for penalties to create a perception of being tough on an unpopular industry.

SEC Chairman Mary Jo White, an independent, took office in 2013 pledging to make "aggressive use" of penalties. The analysis suggests she has done that, at least as far as individual defendants are concerned.

When it comes to firms, the picture is more complicated. While the SEC is bringing more cases, they are generally on a smaller scale and have produced fewer outsize fines. One factor is the agency no longer has any big financial-crisis-era cases.

In the first six months of this fiscal year, median fines on individuals were the highest in a decade, with half the fines exceeding $122,500, the analysis found. That is up from 2005, when half the fines topped $60,000. Accounting for inflation, that is a 66% jump.

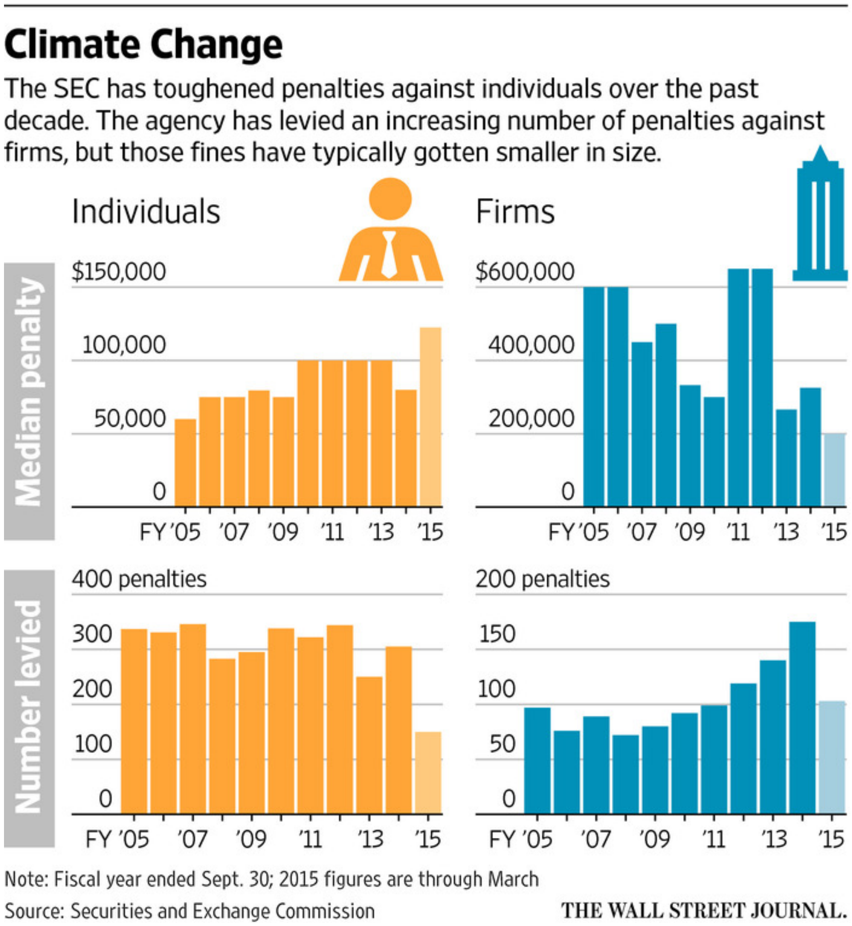
Meanwhile, the median fine paid by firms has fallen sharply over the past decade. In the six months through March, half of agency fines on firms fell below $200,000, down from $600,000 in the 2005 fiscal year.

Despite the 10-year drop in the median fine for firms, legal observers said the longer-term trend remains clear. They point out that in 2002 the biggest SEC fine against a public company in a financial-fraud case was $10 million. In the 10 fiscal years from 2005 through 2014, the agency levied 111 penalties over $10 million on firms, the Journal found.

"What we have seen is penalty creep," said Stephen Crimmins, a former SEC attorney who is now a partner at law firm K&L Gates LLP. "We've had a...ladder up and it's hard for people to walk it down."

Last week, U.S. Sens. Jack Reed (D., R.I.) and Charles Grassley (R., Iowa) introduced a bill to give the SEC latitude to impose even higher civil penalties.

The Journal analyzed all 4,443 penalties imposed by the SEC on firms and individuals from October 2004 through March 2015, using agency data obtained via public records requests. The Journal looked at median fines, rather than averages, which can be skewed by a few large cases.



A former Justice Department prosecutor who later worked at a white-collar defense firm, Ms. White caught fire from Sen. Elizabeth Warren (D., Mass.) last month for a perceived failure to achieve the "bold and unrelenting" enforcement she pledged before taking the helm of the top securities agency. The SEC chairman last week defended her record, saying the SEC brought a record number of enforcement actions and imposed record sanctions in the last fiscal year.

One of Ms. White's highest-profile enforcement initiatives—a "broken windows" strategy of pursuing even small violations—has been criticized by SEC commissioners from both parties. Ms. White has argued the SEC needs to pursue "not just the biggest frauds" but even the smallest infractions, likening it to how police pursuit of low-level street offenses has helped lower the overall crime rate.

Defense lawyers said the political attacks on the SEC's purported enforcement weakness are at odds with what they see as the agency's increasingly hard-line approach to policing. They worry pressure on the agency to prove its credentials may be leading to some unfair settlements.

"It seems that individuals are increasingly bearing the brunt of the commission's desire to show that it's being more aggressive," said Sam Lieberman, a partner in New York at law firm Sadis & Goldberg LLP.

Marc Fagel, a former director of the SEC's San Francisco office who is now a partner at law firm Gibson Dunn & Crutcher LLP, said the agency has been "very aggressive" in demanding both sanctions and industry bars in settlements, at times leading to "questions about whether what they are seeking is reasonable and based on precedent."

The agency didn't make Ms. White available for comment. In a statement, SEC enforcement chief Andrew Ceresney said the agency under Ms. White's leadership has "aggressively enforced the securities laws by bringing impactful cases against individuals and entities across the full spectrum of the securities industry."

In contrast to the clear trend toward higher sanctions for individuals, Ms. White has had a mixed impact on the SEC's enforcement track record against firms.

The SEC is on track to levy its highest-ever number of fines this fiscal year, powered by an increase in actions against firms. The agency imposed 103 penalties on firms in the six months through March, compared with 66 fines in the first half of the previous fiscal year, according to the analysis.

The agency is also levying more sanctions overall on firms and individuals. Its $4.2 billion tally for the fiscal year ended September 2014, including fines and the repayment of illicit profits, was a 22% increase from the previous year. The money goes to either the U.S. government or the victims of the fraud, depending on the case.

But much of the activity is more modest in scope compared with the agency's record-breaking run of cases to punish wrongdoing related to the 2008 economic crisis, according to legal observers. The SEC's financial-crisis work—generating three of its 10 highest corporate fines in the past decade, the Journal found—has been largely finished for at least a year, whereas the Justice Department is still working on potential cases against a number of banks tied to crisis-era behavior, the Journal reported last month.

Legal observers said the current climate isn't conducive to the types of headline-grabbing cases that might silence the SEC's critics, due to the buoyant economy—frauds typically tend to surface in a recession—and lack of an immediate crisis.

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