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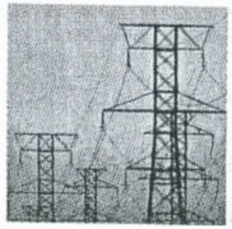
DEALS & DEAL MAKERS C3



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Chasing Fraud, Then Chasing Cash

Regulators Struggle to Collect Fines; 'We Need to Do Better'

BY JEAN EAGLESHAM

It is easier for regulators to get their man than it is to get their money.

Since late 2005, the Securities and Exchange Commission and Commodity Futures Trading Commission have ordered $12.3 billion in penalties for alleged wrongdoing. The total includes fines, the return of ill-gotten profits and repayment of restitution to investors.

But more than $4.5 billion hasn't been paid yet, according to the two agencies. The SEC is owed $3.78 billion, while the CFTC hasn't collected $752 million in fines alone.

The unpaid amounts represent three-fourths of fines imposed by the CFTC over the period of five fiscal years that ended last September. The SEC has failed to get 33% of the punishment doled out by the agency during the same period.

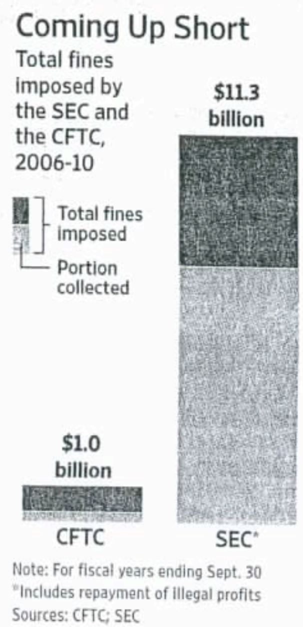
"We need to do better," Bart Chilton, one of the five commissioners who run the CFTC, said via email in response to questions.

SEC spokesman John Nester said the agency's collection efforts continue "to pay enormous dividends." Last year, officials "returned two dollars to harmed investors for every dollar Congress spent on the entire SEC budget."

The payment figures show what happens to securities-enforcement cases long after headlines trumpeting regulatory crackdowns on fraud and other wrongdoing have faded.

"It's one thing to impose fines and hang up the scalps," said James Cox, a law professor at Duke University in Durham, N.C. "It's quite another to collect the money."

The SEC's recent track record



is roughly in line with previous years' records. The agency has collected $7.55 billion of $11.33 billion in fines and disgorgement, or repayment of ille-

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gal profits, in the past five fiscal years. The period includes the financial crisis.

At the CFTC, officials have gotten just $257 million of the $1 billion in fines imposed by the agency.

From 2002 to 2005, the CFTC collected about half of what it was owed, according to figures from the agency.

The agency doesn't track whether its disgorgement and restitution penalties are paid by individuals or firms pursued by the CFTC.

Mr. Chilton said CFTC officials have worked hard to improve the agency's collection rate.

"But, frankly, we need to do a better job to get more money back in the hands of defrauded investors," he said in his email.

In comparison, the Financial Industry Regulatory Authority, a self-policing regulator for Wall Street, has collected 96%, or $233 million, of the $242 million in fines it imposed during the past five fiscal years.

SEC and CFTC officials face daunting challenges when trying to get their hands on what the agencies are owed.

For example, CFTC officials say the agency isn't allowed to consider the ability of an individual or firm to pay when it seeks court approval for financial penalties.

They say the amounts sought by the CFTC are aimed at deterring future wrongdoing and maximizing recoveries of losses for investors.

Larger firms are more likely to pay up quickly than smaller firms, which often lack the financial cushion to come up with thousands or even millions of dollars.

In 2008, the SEC and CFTC filed civil charges against **Safevest** LLC, alleging the Laguna Hills, Calif., firm was running a bogus commodity-futures trading program that targeted Christian communities across the U.S.

The CFTC announced in 2009 that it "obtained more than $25 million in civil monetary penalties" in a court order from Safevest and the firm's two principals, Jon G. Ervin and John V. Slye.

Thomas Seaman, appointed by the SEC in 2008 to track down Safevest's assets, said in an interview that he has recovered "essentially nothing. This was a true Ponzi scheme."

Mr. Ervin has pleaded guilty to one criminal count of fraud and is awaiting sentencing. His lawyer, Dean Steward, said it is pointless for the SEC and the CFTC to try to levy civil penalties on Mr. Ervin.

"The reality is, Mr. Ervin is flat broke....You can't get blood out of a turnip," Mr. Steward said.

Mr. Slye hasn't admitted any wrongdoing and is due to go on trial next year.

"Mr. Slye has pleaded not guilty, because he's not guilty," said lawyer Michael Khouri.

Gregory Mocek, the CFTC's director of enforcement from 2002 to 2008, said it is a "good question whether it's a proper use of the commission's limited resources to continue to pursue these [Ponzi] cases on a civil basis, rather than simply refer them to the criminal authorities."

Mr. Mocek is now a partner at law firm **Cadwalader, Wickersham & Taft** LLP.

CFTC spokesman Steven Adamske declined to comment.

SEC and CFTC officials refer some penalties that are overdue by more than six months to the Treasury Department for collection.

That agency sends collection letters and hires outside debt collectors.

Just $1 million of the $812 million in claims inherited from the CFTC in the past five years has been collected, according to the Treasury Department.

On SEC claims, Treasury officials got $3 million out of $1.3 billion.

'The reality is, [my client] is flat broke,' said a lawyer for a man who owes money to the CFTC. 'You can't get blood out of a turnip.'

Treasury officials said unpaid penalties from the two securities-enforcement agencies are especially hard to collect, partly because penalties can be imposed without regard to ability to pay.

Overall, the Treasury Department collects about $52 in delinquent obligations for every $1 it spends to pursue such debts, according to the agency.

Some experts said the SEC and the CFTC could improve their collection rates by shutting down fewer small frauds. Such a move likely would be fraught with political peril.

"A lot of these SEC and CFTC cases are pretty small potatoes," said Mr. Cox, the Duke professor. "But the agencies come under pressure, from members of Congress who have voters that have been scammed, to go after these schemes."