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Report to Congressional Requesters

July 2003

SEC AND CFTC FINES FOLLOW-UP

Collection Programs Are Improving, but Further Steps Are Warranted

GAO-03-795

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GAO Accountability • Integrity • Reliability

Highlights

Highlights of GAO-03-795, a report to House Ranking Minority Members of congressional committees

Why GAO Did This Study

Collecting fines ordered for violations of securities and futures laws helps ensure that violators are held accountable for their offenses and may also deter future violations. The requesters asked GAO to evaluate the actions the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) have taken to address earlier recommendations for improving their collection programs. The committees also asked GAO to update the fines collection rates from previous reports.

What GAO Recommends

SEC should (1) develop a strategy for referring older cases to Treasury for collection and (2) implement a reliable system to help manage all cases. SEC generally agreed with the facts presented and agreed to implement the recommendations made.

What GAO Found

SEC and CFTC have improved their collection programs since GAO issued its 2001 fines report. While it was too early to fully assess the effectiveness of their actions, SEC could be doing more to maximize its use of Treasury's collection services. SEC has implemented regulations, procedures, collections guidelines, and controls for using the Treasury Offset Program (TOP), which applies payments the federal government owes to debtors to their outstanding debts. However, SEC has been focusing on referring to TOP those delinquent cases with amounts levied after its new collections guidelines went into effect. The agency has not developed a formal strategy for referring older cases, reducing the likelihood of collecting monies on what could be more than a billion dollars of delinquent debt. Further impeding collection efforts, SEC does not have a reliable system for tracking monies owed on these older cases and therefore could not determine which cases were not being referred to TOP. SEC has drafted an action plan for a new system to track all cases with a monetary judgment. Once the system is in place, the agency should have a tool for identifying all cases, including older delinquent cases that can be referred to TOP. However, SEC has not established a time frame for fully implementing the plan.

GAO's calculations for closed cases (collection actions completed) showed that regulators' collection rates on fines imposed between 1997 and August 2002 equaled or exceeded those from 1992 to 1996. Recalculating the rates to include closed and open cases (collection actions ongoing) affected SEC's and CFTC's collection rates, primarily because of a few large uncollected fines.

Collection Rates for Fines Levied on Open and Closed Cases and Closed Cases for 1997–August 2002

	Open and closed cases	Closed cases
Securities and futures regulators	**Percentage collected**	**Percentage collected**
SEC	40%	94%
CFTC	45	99
American Stock Exchange	87	95
Chicago Board Options Exchange	98	99
Chicago Board of Trade	94	95
Chicago Mercantile Exchange	96	97
Chicago Stock Exchange	91	100
NASD	66	95
National Futures Association	67	75
New York Mercantile Exchange	83	100
New York Stock Exchange	100	100

Source: GAO analysis of regulators' data, except NASD, which calculated its own rates.

www.gao.gov/cgi-bin/getrpt?GAO-03-795.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Davi D'Agostino at (202) 512-8678 or dagostinod@gao.gov.

Contents

Letter

1

Results in Brief 3
Background 6
SEC and CFTC Have Taken Steps to Improve Their Collection Programs, but SEC Has Not Ensured That All Eligible Cases Are Referred to FMS and TOP 8
SEC and CFTC Have Taken Steps to Improve Their Oversight of SROs' Sanctioning Practices, but Some Concerns Remain 14
We Calculated Collection Rates in Two Different Ways to Provide a More Complete Picture of Collection Efforts 19
Conclusions 27
Recommendations 28
Agency Comments and Our Evaluation 28

Appendixes

Appendix I: Scope and Methodology 30
Appendix II: Comments from the Securities and Exchange Commission 36
Appendix III: Securities Regulators' Collection Rates for Open and Closed Cases by Calendar Year 39
Appendix IV: Futures Regulators' Collection Rates for Open and Closed Cases by Calendar Year 42
Appendix V: GAO Contacts and Staff Acknowledgments 45
GAO Contacts 45
Acknowledgments 45

Tables

Table 1: Collection Rates for Fines Levied on Closed Cases for 1997–August 2002 and 1992–96 20
Table 2: Collection Rates for Fines Levied on Open and Closed Cases and Closed Cases for 1997–August 2002 21
Table 3: SEC's Collection Rates 39
Table 4: The American Stock Exchange's Collection Rates 39
Table 5: The Chicago Board Options Exchange's Collection Rates 40
Table 6: The Chicago Stock Exchange's Collection Rates 40
Table 7: NASD's Collection Rates 41
Table 8: NYSE's Collection Rates 41
Table 9: CFTC's Collection Rates 42
Table 10: The Chicago Board of Trade's Collection Rates 42

Table 11: The Chicago Mercantile Exchange's Collection Rates 43
Table 12: NFA's Collection Rates 43
Table 13: The New York Mercantile Exchange's Collection Rates 44

Figures

Figure 1: SEC's Actual Collection Rates for Open and Closed Cases, 1997–August 2002, and Adjusted Collection Rates for Selected Years 22
Figure 2: CFTC's Actual Collection Rates for Open and Closed Cases, 1997–August 2002, and Adjusted Collection Rates for Selected Years 24
Figure 3: NASD's Collection Rates for Open and Closed Cases, 1997–2002 26

Abbreviations

CFTC	Commodity Futures Trading Commission
DPTS	Disgorgement and Penalties Tracking System
FBI	Federal Bureau of Investigation
FMS	Financial Management Service
NFA	National Futures Association
NYSE	New York Stock Exchange
SEC	Securities and Exchange Commission
SRO	self-regulatory organization
TOP	Treasury Offset Program

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G A O
Accountability * Integrity * Reliability

United States General Accounting Office
Washington, D.C. 20548

July 15, 2003

The Honorable John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

The Honorable Barney Frank
Ranking Minority Member
Committee on Financial Services
House of Representatives

The Honorable Paul E. Kanjorski
Ranking Minority Member
Subcommittee on Capital Markets, Insurance,
and Government Sponsored Enterprises
Committee on Financial Services
House of Representatives

Collecting fines ordered for violations of securities and futures laws helps ensure that violators are held accountable for their offenses and may also deter future violations. While previous GAO reports[1] found that securities and futures regulators collected most of the fines imposed, the reports also identified weaknesses in the collection programs of the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC). These reports made several recommendations to help SEC and CFTC improve their collection programs and their oversight of the sanctioning practices of self-regulatory organizations (SRO).[2]

[1]U.S. General Accounting Office, *Money Penalties: Securities and Futures Regulators Collect Many Fines but Need to Better Use Industrywide Data*, GAO/GGD-99-8 (Washington, D.C.: Nov. 2, 1998) and *SEC and CFTC: Most Fines Collected, but Improvements Needed in the Use of Treasury's Collection Service*, GAO-01-900 (Washington, D.C.: July 16, 2001).

[2]SROs have an extensive role in regulating the U.S. securities and futures markets, including ensuring that members comply with federal securities and futures laws and SRO rules. SROs include the national securities and futures exchanges, registered securities and futures associations, registered clearing agencies, and the Municipal Securities Rulemaking Board.

This report responds to your July 30, 2001, request that we evaluate the actions that SEC and CFTC have taken in response to the recommendations made in our earlier fines collection reports. Also, as agreed in a September 5, 2002, meeting with your staff, we are updating the collection rates from our earlier reports. Our objectives were to (1) evaluate SEC's and CFTC's actions to improve their collection programs, (2) assess these agencies' efforts to enhance their oversight of the SROs' sanctioning practices, and (3) calculate the fines collection rates for SEC, CFTC, and nine securities and futures SROs[3] for 1997–2002.[4]

To evaluate SEC's and CFTC's actions to improve their collection programs, we reviewed relevant debt collection regulations, guidelines, procedures, controls, and laws; analyzed data related to their debt collection actions; and interviewed officials of these agencies and of the Financial Management Service (FMS) of the U.S. Department of Treasury. To assess SEC's and CFTC's efforts to enhance their oversight of the SROs' sanctioning practices, we interviewed agency officials and reviewed related data. To calculate the fines collection rates for 1997–2002 for all the SROs except NASD, we used data provided by SEC, CFTC, and the regulators for fines levied from January 1997 through August 2002. Because of the way its financial system was designed, NASD's calculations are based on fines invoiced through December 2002. Limitations on SEC's data reliability affect the accuracy of calculations related to its collections activities as well as its overall fines collection rates. Appendix I contains a full description of our scope and methodology.

[3]The nine SROs include the American Stock Exchange, Chicago Board Options Exchange, Chicago Board of Trade, Chicago Mercantile Exchange, Chicago Stock Exchange, NASD, National Futures Association, New York Mercantile Exchange, and New York Stock Exchange.

[4]All years in this report are calendar years.

Results in Brief

SEC and CFTC have continued to improve their collection programs since we issued our 2001 fines report, but SEC needs to make additional improvements to its program. First, SEC amended its debt collection regulations to allow cases to be referred to FMS's Treasury Offset Program (TOP).[5] SEC also implemented procedures, collections guidelines, and a collections database—the latter to aid in tracking and referring to FMS, including TOP, those cases with fines and disgorgements[6] levied after the guidelines went into effect. It was too soon to assess the effectiveness of SEC's strategy related to these post-guidelines cases, because most of them were not yet eligible for referral. In contrast, SEC did not have a formal strategy—one that prioritized cases based on their collection potential and established time frames for their referral—for cases with fines and disgorgements levied before the guidelines went into effect.[7] Further impeding collection efforts on these pre-guidelines cases, SEC's original system for tracking all cases with money judgments, the Disgorgement and Penalties Tracking System (DPTS), was unreliable. Because DPTS was unreliable, SEC could not determine which pre-guidelines cases were not being referred to FMS and TOP or the amounts associated with them—potentially well over a billion dollars. SEC has drafted a two-phase action plan for replacing DPTS by the end of fiscal year 2003 but has not established a time frame for implementing the computer system for the second phase. In addition, SEC has developed procedures for making timely responses to offers presented by FMS to settle a violator's debt, and CFTC has implemented procedures designed to ensure the timely referral of delinquent cases to FMS. However, only four cases had been processed under each agency's procedures as of April 2003, an insufficient number to assess their effectiveness.

SEC and CFTC have also taken some actions to improve their oversight of the SROs' sanctioning practices, but SEC has not yet used the SROs' data to analyze these practices. In response to our 1998 recommendation, SEC has been inputting the SROs' data into its database for use in analyzing

[5]Under TOP, FMS identifies federal payments, such as tax refunds, that are owed to individuals and applies the payments to their outstanding debt. All cases referred to FMS for collection are also eligible for referral to and servicing under TOP.

[6]Disgorgement is a type of sanction that requires violators to give up profits obtained as a result of violating the law.

[7]According to SEC officials, although SEC currently has no formal strategy regarding pre-guidelines cases, all eligible debts will ultimately be referred to FMS and TOP.

violations and disciplinary sanctions. These analyses should help SEC identify any disparities among SROs and find ways to improve their disciplinary programs. However, technological problems have hampered SEC's ability to complete the analyses. SEC officials told us that the agency expects to initiate its first analysis during the summer of 2003. They also said that the agency plans to develop a new disciplinary database to collect and analyze data on sanctions in a timelier manner but has not established a date for implementing it. Also, consistent with our 2001 recommendation, SEC and CFTC have been monitoring readmission applications but have not yet received any from barred individuals. We found, however, that SEC, CFTC, the National Futures Association (NFA), and NASD have controls designed to ensure that inappropriate readmissions of barred individuals do not occur. Further, while examining the application review process, we found weaknesses in controls over fingerprinting that could result in inappropriate admissions to the securities and futures industries. But we did not determine the extent to which these weaknesses resulted in inappropriate admissions.

We calculated the fines collection rates in two ways in order to provide a more complete picture of the regulators' collection activities. The collection rates for closed cases (those for which all possible collection actions had been completed) for SEC,[8] CFTC, and the SROs from January 1997 to August 2002 showed that the regulators had collected between 75 and 100 percent of the fines imposed and that they had either improved their performance over the 1992-96 period or maintained a 100-percent performance rate.[9] Broadening the analysis to include open cases (those for which collection actions were ongoing) had the greatest impact on SEC's and CFTC's collection rates. Including open cases, they collected 40 and 45 percent, respectively, of the total dollar amount of fines levied. However, the differences in the rates were largely explained by a few large uncollected fines. According to regulators, large fines are more difficult to collect than small ones, and a few large uncollected fines can significantly affect an agency's collection rate. The rates for the SROs changed much less when adding open cases because the SROs generally had fewer and smaller uncollected fines. According to SRO officials, SROs that were exchanges had higher collection rates in part because they could sell a member's "seat," or membership, to pay fines, giving members an incentive to pay their fines quickly. As discussed in a previous report,[10] these results underscore the limitations of using the collection rate alone to measure the effectiveness of collection efforts. That is, the rate can be significantly influenced by factors that are beyond regulators' control. Nonetheless, examining the rates and the factors influencing them can be a starting point for obtaining an understanding of regulators' performance.

This report makes three recommendations to SEC for improving its tracking and referral of delinquent cases to FMS and TOP and for completing its analysis of SROs' disciplinary sanctions. It also makes a recommendation to SEC and CFTC for improving controls over the fingerprinting of industry applicants. We received comments on a draft of this report from SEC and CFTC. Both agencies generally agreed with the

[8]Although DPTS was unreliable, we used the system because it was the only available source of data on SEC's collection efforts.

[9]The closed case collection rate for 1992-96 appeared in our 1998 fines report (GAO/GGD-99-8).

[10]U.S. General Accounting Office, *SEC Enforcement: More Actions Needed to Improve Oversight of Disgorgement Collections*, GAO-02-771 (Washington, D.C.: July 12, 2002).

facts we presented and agreed to implement the recommendations we made. SEC's written comments are reprinted in appendix II.

Background

The regulatory structure of the U.S. securities markets was established by the Securities Exchange Act of 1934, which created SEC as an independent agency to oversee the U.S. securities markets and their participants. Similarly, in 1974 the Commodity Exchange Act established CFTC as an independent agency to oversee the U.S. commodity futures and options markets. Both agencies have five-member commissions headed by chairpersons who are appointed by the President of the United States for 5-year terms. Among other things, the commissioners approve new SEC and SRO rules and amendments to existing rules. They also authorize enforcement actions. SEC and CFTC are headquartered in Washington, D.C. SEC has a combined total of 11 regional and district offices; CFTC has 5 regional offices.

Within SEC and CFTC, the divisions of enforcement are responsible for investigating possible violations of the securities and futures laws, respectively. With their commissions' approval, they litigate or settle actions against alleged violators in federal civil courts and in administrative actions. Typically, enforcement staff investigate alleged violations of law, prepare a memorandum for the commissioners that describes alleged violations, and, if appropriate, make recommendations for further action. When the commissions decide that a case warrants further action, they can authorize filing a civil suit against the alleged violator in federal district court or instituting a proceeding before an administrative law judge. If either the court or the administrative law judge finds that a defendant has violated securities or futures laws, it can issue a judgment ordering sanctions such as fines and disgorgements and, in the case of futures violations, restitution; it can also bar or suspend violators from the securities and futures industries.

The collection process for delinquent debt begins when all or part of a fine or disgorgement becomes delinquent because the violator has failed to pay some or all of the amount due by the date ordered by the court or administrative law judge. If the court or administrative law judge has not specified a payment date and no stay has been entered, SEC considers the debt delinquent 10 days after the court enters the judgment. CFTC officials told us that absent an appeal, they consider the debt delinquent 15 or 60 days after the administrative law judge or court entered the judgment in administrative and civil cases, respectively. SEC and CFTC collect

delinquent monetary judgments primarily through post-judgment litigation, negotiating payments with defendants, and making referrals to the Department of Treasury or the Department of Justice.

In accordance with the Debt Collection Improvement Act of 1996, SEC and CFTC have each entered into an agreement with the Department of Treasury to improve collections. Under this act, federal agencies are required to submit all nontax debts that are 180 days delinquent to Treasury's FMS.[11] The act also requires that FMS either take appropriate steps to collect the debt or terminate collection actions. In addition to using traditional methods to collect these debts, such as sending demand letters and hiring private collection agencies, FMS can use TOP. Under TOP, FMS identifies federal payments, such as tax refunds, that are owed to individuals and applies the payments to their outstanding debt. All cases referred to FMS for collection are also eligible for referral to and servicing under TOP. FMS also uses collection agencies to negotiate compromise offers with individual debtors. A compromise offer is an agreement between a federal agency and an individual debtor, in which the federal agency agrees to discharge a debt by accepting less than the full amount. Once the collection agency negotiates a compromise offer with a debtor, it forwards the offer to FMS. In the absence of an agreement between FMS and the federal agency to approve compromise offers on its behalf, FMS refers the offer to the federal agency for final approval.

The U.S. securities and futures markets are regulated under their respective statutes through a combination of self-regulation (subject to federal oversight) and direct federal regulation. This regulatory scheme was intended to give SROs responsibility for administering their own operations, including most of the daily oversight of the securities and futures markets and their participants. Two of the SROs—NASD and NFA—are associations that regulate registered securities and futures firms and oversee securities and futures professionals, respectively. The remaining SROs include national exchanges that operate the markets where securities and futures are traded. These SROs are primarily responsible for establishing the standards under which their members conduct business; monitoring the way that business is conducted; and bringing disciplinary actions against their members for violating applicable federal statutes, their own rules, and the rules promulgated by their federal regulator. SROs can impose fines and other sanctions against members that

[11] 31 U.S.C. § 3711 (g)(1).

violate securities or futures laws or SRO rules, as applicable, through their enforcement and disciplinary processes. Some SROs' disciplinary proceedings are decided by a hearing panel, which examines the evidence and decides on the appropriate sanction. SROs' actions are usually initiated by a customer complaint, a compliance examination, market surveillance, regulatory filings, or a press report.

SEC and CFTC Have Taken Steps to Improve Their Collection Programs, but SEC Has Not Ensured That All Eligible Cases Are Referred to FMS and TOP

SEC and CFTC have taken actions to improve their collection programs, addressing the three recommendations in our 2001 fines report. However, it was too early to assess the effectiveness of their actions. After we made our first recommendation, SEC took various steps, among them, implementing collections guidelines that were intended to ensure that eligible delinquent cases are referred to FMS, including TOP. But SEC's actions have not ensured that all eligible cases are referred. To address our second recommendation, SEC developed procedures for responding to compromise offers submitted by FMS within 30 days. To address our third recommendation, CFTC implemented procedures for ensuring the timely referral of delinquent cases to FMS for collection.

SEC Has Implemented Regulations, Procedures, Guidelines, and a Collections Database, but Its Actions Have Not Ensured the Referral of All Eligible Cases to FMS and TOP

SEC implemented regulations, related procedures and guidelines, and a collections database intended to ensure that eligible delinquent cases are referred to FMS, including TOP, as required by the Debt Collection Improvement Act of 1996. However, SEC has focused on referring post-guidelines cases, and it was too early to assess the effectiveness of SEC's strategy as it related to these cases. In contrast, SEC did not have a formal strategy for referring pre-guidelines cases and, further impeding its collection efforts, it did not have a reliable agencywide system for tracking monies owed in these cases. Recognizing that its system was unreliable, SEC has drafted a two-phase action plan under which it will implement a centralized agencywide tracking system for all delinquent debt. However, it has not established a time frame for fully implementing the computer system for the second phase of the plan.

SEC's Strategy Has Focused on Referring Post-Guidelines Cases, but It Is Too Early to Assess the Effectiveness of This Strategy

We recommended in our 2001 report that SEC take steps to ensure that regulations allowing SEC's delinquent fines to be submitted to TOP be adopted so that SEC would benefit from the associated collection opportunities. At the time of our review, SEC officials had told us that they

had rewritten their rules for using TOP but that they could not estimate when the rules would be approved by the commission or implemented.

After we made our recommendation, SEC amended its debt collection regulations.[12] In April 2002, SEC implemented related procedures to allow cases to be forwarded to TOP. Consistent with the Debt Collection Improvement Act of 1996, the procedures required that cases be referred to FMS after they had been delinquent for more than 180 days. SEC subsequently issued additional guidelines and implemented a collections database that were intended to ensure that eligible delinquent post-guidelines cases are referred to FMS, including TOP, within 180 days of becoming delinquent. SEC imposed the more stringent requirement on itself in recognition of the enhanced probability of collecting monies ordered on newer cases.

The guidelines provided more detailed instructions for staff on how to pursue collections, specifying steps for referring eligible delinquent cases to FMS, including TOP, within 180 days. According to an agency official, the guidelines went into effect agencywide on September 2, 2002. SEC also created a collections database for all post-guidelines fines and disgorgement cases that is maintained by headquarters and each regional or district office, as applicable. The database tracks actions that staff have taken to recover debt on delinquent cases, including preparing cases for referral to FMS, and is used to help ensure that staff are following the new collections guidelines. SEC officials told us that the agency was tracking only post-guidelines cases because the database had limited storage capacity and could become unstable if too many cases were added. In addition, the agency has assigned attorneys and administrative staff to every office to maintain the database and its related collection activities for delinquent cases, including ensuring that eligible cases are referred to FMS and TOP in a timely manner. According to an agency official, these staff received training on using the guidelines in the fall of 2002.

It was too early to fully assess the effectiveness of SEC's strategy for tracking, collecting, and referring post-guidelines cases, because most of these cases were not yet 180 days delinquent. Based on a judgmental sample of 66 cases, we identified 4 delinquent fines and disgorgement cases

[12]"Debt Collection—Amendments to Collection Rules and Adoption of Wage Garnishments Rules," Securities and Exchange Commission, Release No. 34-44965, 66 Fed. Reg. 54125 (Oct. 26, 2001).

valued at $4 million that were eligible for referral as of March 31, 2003. We found that SEC had referred two of the four cases within the 180-day time frame and was preparing the other two for referral.

SEC Did Not Have a Formal Strategy for Referring Pre-Guidelines Cases

Although SEC had developed controls to better ensure that eligible post-guidelines cases were promptly referred to FMS and TOP, it had not developed a formal strategy for referring eligible pre-guidelines cases. Such a strategy would include prioritizing cases based on their collection potential and establishing time frames for making the referrals. Further impeding its collection efforts, SEC's original system for tracking monies owed in pre-guidelines cases—DPTS—was not reliable. As a result, SEC could not identify all the cases that had not been referred to FMS and TOP. SEC officials told us that the agency's April 2002 procedures applied to the pre-guidelines cases and that agency attorneys had followed these procedures in referring some pre-guidelines cases to Treasury. But SEC did not know the extent to which the procedures were being followed or whether eligible cases were not being referred. They explained that the attorneys would know the status of the cases assigned to them but that no agencywide information was available. They also told us that they expected all eligible cases to be referred to FMS and TOP eventually but noted that they had not prioritized the cases for referral or established time frames for referring them.

Neither we nor SEC could determine with any certainty the extent to which eligible pre-guidelines cases were not being referred to FMS and TOP due to the unreliability of DPTS. Using DPTS, the only information available, we identified about 900 pre-guidelines cases valued at about $2.8 billion that were 180 days past due and that might be eligible for referral. As of January 31, 2003, almost 54 percent of these cases were over 3 years old based on their judgment date, which, in the absence of better data, we used as a rough proxy for the delinquency date. SEC officials emphasized that these numbers do not accurately reflect the number of pre-guidelines cases eligible for referral to FMS and TOP. They said that some of the cases were ineligible for referral because they were on appeal, in post-judgment litigation, or had a receiver appointed to marshal and distribute assets. In addition, many cases might already have been referred for collection. SEC officials also pointed out that our calculations of the age of cases were inaccurate because we relied on the judgment date rather than the delinquency date, which is not tracked in DPTS. We recognize that many factors affect the accuracy of DPTS, including some that might not be mentioned here. However, we are reporting these numbers as the best information available.

SEC Had an Action Plan for Replacing DPTS but Had Not Established a Time Frame for Full Implementation of the Plan

Both GAO and SEC have recognized DPTS's lack of reliability. Our 2002 disgorgement report and a January 2003 report commissioned by the SEC Inspector General found that DPTS was not complete and accurate and could not be relied upon for financial accounting and reporting purposes. Recognizing that the agency did not have a system that provided an accurate assessment of levied amounts and payments (among other things), SEC developed a draft action plan for implementing a new system to replace DPTS. The April 2003 draft plan calls for implementing a comprehensive centralized system for tracking, documenting, and reporting on fines and disgorgements ordered, paid, and disbursed in SEC enforcement actions. The agency had been taking steps to address the milestones in the plan. If the plan is effectively implemented, the agency should have a tool for accurately identifying uncollected pre-guidelines cases for referral to FMS and TOP for collection.

SEC's action plan has been divided into two phases. In the first phase, SEC is tentatively scheduled to replace DPTS by the end of fiscal year 2003. SEC officials described the replacement system as a comprehensive case tracking, record-keeping, and reporting system for fines and disgorgements ordered, paid, and distributed. They said that the system will be integrated with a database maintained by the Division of Enforcement. The replacement system is intended to, among other things, maintain the data on debt needed for general reporting and management purposes. According to SEC officials, one benefit of the replacement system will be to assist the agency in managing its delinquent cases. However, SEC will continue to rely on its new collections database, which tracks collection efforts on post-guidelines cases, to ensure the timely referral of these cases to FMS and TOP until phase two of the action plan is implemented. In phase two, SEC plans a comprehensive upgrade to its case tracking system, which will be integrated with several other databases, including the new collections database. SEC expects to begin the requirements analysis for the phase two computer system in fiscal year 2004 but has not established a milestone for completing this analysis. After the requirements analysis is complete, SEC plans to establish an implementation date for the system.

SEC Has Implemented Procedures for Responding to Compromise Offers in a Timely Manner

We recommended in our July 2001 report that SEC continue to work with FMS to ensure that compromise offers presented by FMS are approved in a timely manner. Our recommendation resulted from a finding that SEC did not always respond to compromise offers promptly and that as a result some debts had never been collected. For example, we reported that FMS waited from between 42 and 327 days for SEC's decisions on three

compromise offers. But by the time SEC made its decisions, the debtors no longer had the money to pay the amounts specified in the compromise offers. To address this concern, in April 2001 FMS proposed securing delegation authority from SEC—that is, permission to approve compromise offers that SEC did not respond to within 30 days.

In response to our recommendation, SEC took several steps to ensure that compromise offers are approved in a timely manner. First, in July 2001 SEC implemented procedures specifying the actions required to address a compromise offer, including a schedule to ensure that a decision is made within 30 days. For example, within 5 days of receiving an offer, SEC staff are to have made a final decision on whether to recommend the offer to the commission for approval. SEC also implemented controls to monitor the status of offers. When it receives a compromise offer from FMS, SEC enters the offer into a system that tracks information such as the date the offer was made, the name of the attorney reviewing the offer, the date the offer was referred to the commission for a final decision, and the date of the final decision. The Division of Enforcement's chief counsel monitors the status of offers based on weekly reports generated from this system to ensure that follow-up action is taken to address any problems. Finally, SEC has designated two staff to respond to FMS inquiries about the status of compromise offers.

It is still too early to determine the effectiveness of SEC's actions. As of April 22, 2003, SEC had received four compromise offers from FMS under its new procedures. SEC and FMS data showed that SEC had responded to three of the offers within the 30-day guideline and to one offer within 40 days. The late offer represented a debt of $1.6 million, and the settlement offer was for $50,000. SEC staff told us that the agency ultimately rejected the offer, at least in part because of the disparity between the amount offered and the amount owed. SEC officials attributed the delay in responding to this offer to scheduling conflicts caused by the holiday season. The officials told us that the agency was in touch with FMS before the end of 30 days to indicate, on an informal basis, that the reply to the compromise offer would be delayed and that the offer would be rejected. FMS officials told us that they did not view SEC's late response to this offer as a problem—that is, the delay did not represent weaknesses in agency policies, procedures, or controls. They said that SEC had shown marked improvement in responding to compromise offers and that as a result FMS was no longer seeking delegation authority from SEC.

CFTC Implemented Procedures for Ensuring the Timely Referral of Delinquent Debt to FMS

We recommended in our 2001 report that CFTC take steps to ensure that delinquent fines were promptly referred to FMS, including creating formal procedures that addressed both sending debts to FMS within the required time frames and requiring all of the necessary information from the Division of Enforcement on these debts. Our recommendation flowed from a finding in an April 2001 report by CFTC's Inspector General showing that CFTC staff were not referring delinquent debts to FMS in a timely manner, potentially limiting FMS's ability to collect the monies owed. The report also noted that CFTC's collection procedures had not been updated to address referrals to FMS and, among other examples, identified a fine in the amount of $7 million that had not been referred to FMS for more than 2 years because of inadequate communication between CFTC's Division of Enforcement and its Division of Trading and Markets.

As we recommended, CFTC has improved its procedures for referring its debt to FMS in a timely manner and has taken steps to ensure that it has all the necessary enforcement information before making the referral. CFTC updated its collection procedures and implemented them in July 2002. They now include specific requirements for referring debt to FMS within 180 days of the date that the debt became delinquent. CFTC also implemented controls to ensure that it has identified all delinquent debt eligible for referral. For example, CFTC management reviews quarterly reports on the status of cases to ensure that all debts are referred to FMS within 180 days. According to CFTC officials, the agency's shift of all debt collection responsibility from its Division of Trading and Markets to its Division of Enforcement streamlined its debt referral process.

Although it is too early to fully assess the effectiveness of CFTC's actions, our review of CFTC's data on uncollected cases indicated that the agency had been referring all eligible debt to FMS within 180 days. As of April 24, 2003, CFTC had had four delinquent cases dating from the time its procedures went into effect. Using FMS's data, we confirmed that the cases had been referred to FMS within 123 days. Also, a review of CFTC's data of all delinquent cases levied before the procedures went into effect showed that CFTC had referred all eligible cases to FMS for collection. FMS officials told us that CFTC had been making debt referrals with complete information on all its cases.

SEC and CFTC Have Taken Steps to Improve Their Oversight of SROs' Sanctioning Practices, but Some Concerns Remain

SEC and CFTC have taken steps to address our two recommendations for improving their oversight of SROs' sanctioning practices. But SEC has not fully implemented our 1998 recommendation that it analyze industrywide data on SRO-imposed sanctions to examine disparities and help improve disciplinary programs. The agency has experienced technological problems that have hampered its ability to complete these analyses. In addition—and consistent with our 2001 recommendation—SEC and CFTC have been monitoring readmission applications to the securities and futures industries. However, at the time of our review neither had received any applications since changing their fine imposition practices. Also, SEC, CFTC, NASD, and NFA have controls designed to ensure that inappropriate readmissions do not occur. Further, while examining the application review process, we found weaknesses in controls over fingerprinting that could result in inappropriate admissions to the securities and futures industries.

Technological Problems Have Hampered SEC's Ability to Analyze Disciplinary Actions Across SROs

In our 1998 report, we recommended that SEC analyze industrywide information on disciplinary program sanctions, particularly fines, to identify possible disparities among the SROs and find ways to improve SROs' disciplinary programs. We concluded that analyzing industrywide data could provide SEC with an additional tool to identify disparities among SROs that might require further review. We reported in 2001 that SEC had developed a database to collect information on SROs' disciplinary actions.

As of June 30, 2003, according to agency officials, SEC was still inputting information into its database but had not yet completed any analyses because technological difficulties had hampered its ability to collect sufficient data to perform the analyses. First, the database had a limited number of fields and therefore could not capture multiple disciplinary violations or multiple parties in a single case. In October 2002, SEC officials told us that they had addressed this limitation by enhancing the database to incorporate the required fields and were continuing to add disciplinary information to the database. However, in November 2002, the enhanced database failed because it could not support multiple users. SEC repaired the database, and agency officials told us that they expected to complete their first data analyses in the summer of 2003. The analyses are expected to show whether SROs impose similar fines and sanctions for similar violations. An SEC official said that the agency expects these analyses to supplement the information obtained during agency inspections of the SROs' disciplinary programs.

SEC officials told us that the agency is planning to use funds from its fiscal year 2003 budget increase to develop a new disciplinary database that will replace the current one. According to SEC officials, this new disciplinary database is expected to allow SROs to submit data on-line rather than having to send it to SEC to be entered by staff. This streamlined process is expected to reduce data entry errors. An SEC official told us that while planning had begun for the new disciplinary database, no completion date had been established.

SEC and CFTC Have Monitored Readmission Applications and Have Controls Designed to Preclude Inappropriate Readmissions

In our 2001 report, we recommended that SEC and CFTC periodically assess the pattern of readmission applications to ensure that the changes in NASD's and NFA's fine imposition practices do not result in any unintended consequences, such as inappropriate readmissions. NASD and NFA had stopped routinely assessing fines when barring individuals in October 1999 and December 1998, respectively, eliminating the related requirement that the fines be paid as a condition of reentry to the securities and futures industries. These fines had rarely been collected, because few violators ever sought reentry. We were concerned that because barred individuals were no longer required to pay a fine before reentry, they might be more willing to seek readmission.

Consistent with our recommendation, SEC and CFTC have monitored readmission applications. They found, and we confirmed, that no individuals who were barred after the changes in NASD's and NFA's fine imposition practices had applied for reentry. Also, NASD's and NFA's application review processes included controls designed to ensure that inappropriate applications for reentry are not approved. Officials of both SROs told us that as part of their background checks they did a database search against the names of past and current registrants in both industries to determine whether the applicants had a disciplinary history. In addition, both SROs submitted applicants' fingerprints to the Federal Bureau of Investigation (FBI) for a criminal background check. NASD and NFA required all individuals who had been suspended, expelled, or barred to be—at a minimum—sponsored by a registered firm before being considered for readmission. According to a CFTC official, finding a sponsor is difficult, as most firms would not hire an individual with a history of serious disciplinary problems, in part due to increased supervisory requirements and the risk of harming their reputations.

SEC and CFTC were reviewing the applications of all individuals who had been statutorily disqualified from registration, including any barred

individuals, and had the authority to reverse an admission decision made by NASD or NFA, respectively.[13] SEC and CFTC officials told us that they would consider various factors when reviewing a readmission application, including the facts and circumstances of the case, the appropriateness of the proposed supervision, and the prospective employer's ability to provide the proposed supervision. Officials from both agencies told us that if they were to begin receiving a large number of applications from barred applicants, they would reexamine the SROs' fine imposition practices.

Weaknesses in Fingerprinting Controls Could Result in Inappropriate Admissions to the Securities and Futures Industries

While examining the application review process, we found that neither the related statutes, SEC, nor CFTC required the SROs to ensure that the fingerprints sent to the FBI for use in criminal history checks belonged to the applicants who submitted them. Further, in the absence of such a requirement, NASD,[14] the New York Stock Exchange (NYSE),[15] and NFA[16] lacked related controls over fingerprinting, potentially allowing inappropriate persons to enter the securities and futures industries. The securities[17] and futures laws[18] require that applicants to these industries have their fingerprints taken and then sent for review to the FBI as part of a criminal background check. The goal of the criminal background check is to ensure that inappropriate individuals are not granted admission to the securities or futures industries. The statutes also require SRO member

[13]Individuals who have been statutorily disqualified have been expelled or suspended from membership or participation in an SRO or barred and suspended from associating with a member of any SRO.

[14]Although several securities SROs have formal agreements with the FBI under which they may submit fingerprints for a criminal history check, according to an SEC official, the firms typically submit fingerprints to NASD because all industry registrants that do business with the public—the majority of registrants—must also be NASD members.

[15]According to an SEC official, all the securities SROs have similar fingerprinting procedures for accepting and processing fingerprints. Because NYSE is the largest securities SRO that operates a market, and because we wanted to determine how another SRO's procedures might differ from those of NASD and NFA, we included NYSE in our review. According to an SEC official, NASD sends about 300,000 fingerprints to the FBI each year. A NYSE official told us that NYSE sends approximately 40,000.

[16]NFA is responsible for submitting the fingerprints of all futures industry applicants to the FBI. According to an NFA official, for the 12-month period ending June 30, 2003, NFA sent approximately 11,000 fingerprints to the FBI.

[17]15 U.S.C. § 78g (f)(2).

[18]7 U.S.C. § 6n and 17 C.F.R. § 3.10 (1997).

firms to be responsible for assuring that their personnel are fingerprinted. SEC and CFTC rules provide that applicants can satisfy this requirement by submitting fingerprints to the SROs who then send them to the FBI for processing.

However, neither the statutes, SEC, nor CFTC require SROs to ensure that the fingerprints sent to the FBI for use in criminal history checks belong to the applicants who submitted them. In the absence of such a requirement, NASD, NYSE, and NFA have not imposed requirements on member firms to help ensure that the identity of the person being fingerprinted matches the fingerprints being submitted for FBI review. The SROs told us that, consistent with the law, they required their members to be fingerprinted and that these fingerprints were submitted to the FBI for assessment. NYSE officials emphasized that their members were in full compliance with the law and related regulations, which do not require specific controls.

In the absence of specific requirements, firms have taken a variety of approaches to fingerprinting applicants. For example, while SEC and some SROs told us that most firms used their own personnel or police officers to obtain fingerprints, they said that a small number of firms may allow applicants to fingerprint themselves, a practice that provides an opportunity for individuals to perpetrate fraud by submitting someone else's fingerprints instead of their own. According to SEC and CFTC officials, their agencies have trained staff in their headquarters and some regional offices that take fingerprints of their employees using approved fingerprinting kits. An NFA official also stated that NFA headquarters has trained staff that take fingerprints of industry applicants, verifying their identities as part of the process. The FBI also informed us that it suggests using law enforcement or other trained personnel to take fingerprints. SEC and NYSE also said that many reputable businesses provide fingerprinting services and that SRO member firms could contract with these businesses.

In a 1996 CFTC review of NFA's registration fitness program, CFTC recommended that NFA conduct a review to determine the feasibility of adopting controls to ensure that the fingerprints submitted for criminal history checks belonged to the applicant. NFA found that a number of obstacles stood in the way of establishing an effective program to verify fingerprints. According to an NFA official, the agency examined the procedures of the Bureau of Citizenship and Immigration Services of the Department of Homeland Security (formerly the Immigration and Naturalization Service) in responding to CFTC's recommendation. On the basis of this examination, NFA concluded that it would not be cost-effective to replicate the bureau's procedures. For example, unlike NFA, the bureau has fingerprinting sites throughout the country with trained employees to take fingerprints.[19] As part of its review, NFA considered requiring an attestation form, which would include the fingerprinter's name and address and the document used to verify the applicant's identity. Ultimately, however, NFA concluded that such a form could be subject to forgery and would not provide assurance that the fingerprints belonged to the applicant. CFTC accepted NFA's conclusions.

NYSE and NFA officials described other obstacles to establishing controls over fingerprinting. They explained that space limitations on the FBI fingerprint card made it difficult to identify the person taking the fingerprints. Further, they said that the card provided space for the fingerprinter's signature, which is often illegible, but not for the fingerprinter's printed name or the name of another contact who could verify information related to the fingerprints. NYSE officials also said that the FBI could adjust its fingerprint card so that it required more complete contact information for the person taking the fingerprints. An NFA official also told us that because some SROs process registration applications both nationally and internationally, these SROs would not be able to establish enforceable rules regarding who should take fingerprints.

We did not determine the extent to which individuals with a criminal history could submit someone else's fingerprints and thus enter the securities or futures industries undetected. However, SEC and CFTC officials said that the SROs' fingerprinting processes are vulnerable to such

[19]As of February 19, 2003, the bureau had 76 freestanding fingerprinting sites, 54 sites located in its offices, and 46 locations served by mobile routes. It had also designated 45 law enforcement agencies to take fingerprints. NFA officials told us that futures industry applicants were too widely dispersed to travel to the bureau's sites to be fingerprinted, precluding a contractual arrangement with the bureau.

a practice because of the lack of controls for preventing applicants from using someone else's fingerprints as their own. SRO officials said that existing systems were reasonably designed to prevent fraud but were not foolproof, adding that the potential cost of imposing any unduly restrictive requirements was a concern. Some SRO officials said that to the extent they are needed, SEC and CFTC should establish industrywide standards. NFA officials said that since weaknesses in fingerprinting procedures apply equally to the securities and futures industries, SEC and CFTC should establish comparable requirements to ensure that one industry is not at a disadvantage to the other. NYSE officials said that SEC rulemaking would be the most appropriate method for changes to fingerprinting procedures in the securities industry.

We Calculated Collection Rates in Two Different Ways to Provide a More Complete Picture of Collection Efforts

To provide a more complete picture of efforts by securities and futures regulators to collect fines, we calculated the collection rates in two different ways. The collection rates for closed cases (cases with a final judgment order for which all collection actions were completed) for SEC,[20] CFTC, and the SROs from January 1997 to August 2002 showed that the regulators collected most of the fines imposed. Broadening the analysis to include open cases (cases with a final judgment order that remained open while collection efforts continued) had the greatest impact on SEC's and CFTC's collection rates because of a few large uncollected fines. Our analysis of the collection rates highlights a theme introduced in an earlier report that the collection rate alone may not be a valid measure of the effectiveness of collection efforts, because collections can be influenced by factors that are outside regulators' control.[21]

SEC, CFTC, and the SROs Collected Almost All Fines in Closed Cases

SEC, CFTC, and the SROs collected between 75 and 100 percent of all the fines imposed in closed cases. For these cases, collection efforts had ceased either because the fines had been collected in full or in part or were unlikely to be collected and thus had been written off as bad debts. As shown in table 1, SEC and CFTC collected about 94 and 99 percent, respectively, of the total dollars levied in cases closed from January 1997 through August 2002—the period immediately following the one covered in

[20]Due to the unreliability of DPTS data, we could not accurately calculate SEC's collection rates.

[21]GAO-02-771.

our 1998 fines report. These amounts represent an 11 and 18 percentage point increase, respectively, over the rates presented in the 1998 report, which covered the 1992–96 period. CFTC wrote off fewer fines as uncollectible in the more recent period, and almost all of its collected fines were paid in full.

Table 1: Collection Rates for Fines Levied on Closed Cases for 1997–August 2002 and 1992–96

	Total fines on closed cases for 1997–August 2002			Total fines on closed cases for 1992–96
Agencies and securities and futures SROs	**Amount levied**	**Amount collected**	**Percentage collected**	**Percentage collected**
SEC	$186,880,769	$175,446,541	94%	83%
CFTC	163,230,782	161,228,782	99	81
American Stock Exchange	2,406,307	2,286,307	95	75
Chicago Board Options Exchange	3,153,744	3,109,994	99	95
Chicago Board of Trade	3,471,600	3,313,100	95	54
Chicago Mercantile Exchange	3,001,000	2,915,000	97	85
Chicago Stock Exchange	257,500	257,500	100	100
NASD	135,401,570[a]	129,027,116	95	24[b]
NFA	3,449,500	2,569,975	75	27
New York Mercantile Exchange	1,163,294	1,163,294	100	Not Available
NYSE	19,150,667	19,145,667	100	98

Source: GAO analysis of SEC, CFTC, and SRO data, except NASD, which calculated its own rates.

Note: Percentages are rounded to the nearest whole number.

[a]NASD data include cases invoiced from 1997 through 2002.

[b]Calculations may include cases with payment plans, which we were unable to exclude because of the design of NASD's system.

The eight securities and futures SROs for which data were available had the same or higher collection rates on closed cases in the most recent period compared with the earlier period. The Chicago Board of Trade's collection rate showed significant improvement, increasing from 54 to 95 percent of the total dollars levied. Its collection rate for the 1992–96 period was heavily influenced by two large uncollected fines totaling $2.25 million. Excluding those two cases, the rate for this period would have been about 99 percent rather than 54 percent—much closer to the 95 percent rate for the more recent period. NASD's and NFA's rates also showed significant improvement, increasing 71 and 48 percentage points, respectively, over

the rates presented in the 1998 report, which covered the 1992–96 period. However, NASD's and NFA's collection rates improved because, as we have noted, the regulators stopped routinely assessing fines when barring individuals from the securities and futures industry. These fines had been the most difficult to collect, because barred individuals had little incentive to pay them.

Including Open Cases in the Calculations Had the Greatest Impact on SEC's and CFTC's Collection Rates Because of a Few Large Fines

SEC's and CFTC's collection rates were affected more than the SROs' rates when we added open cases to our calculations. As shown in table 2, SEC collected about 40 percent of the total dollars levied in all cases, open and closed, from January 1997 through August 2002—54 percentage points less than its rate for closed cases.

Table 2: Collection Rates for Fines Levied on Open and Closed Cases and Closed Cases for 1997–August 2002

	Total fines on open and closed cases for 1997–August 2002			Total fines on closed cases for 1997–August 2002
Agencies and securities and futures SROs	**Amount levied**	**Amount collected**	**Percentage collected**	**Percentage collected**
SEC	$480,375,353	$190,103,396	40%	94%
CFTC	357,832,773	161,269,894	45	99
American Stock Exchange	2,631,819	2,286,307	87	95
Chicago Board Options Exchange	3,168,744	3,113,809	98	99
Chicago Board of Trade	3,549,350	3,321,600	94	95
Chicago Mercantile Exchange	3,073,585	2,962,585	96	97
Chicago Stock Exchange	284,500	257,500	91	100
NASD	210,568,908[a]	139,607,518	66	95
NFA	4,021,250	2,676,725	67	75
New York Mercantile Exchange	1,422,294	1,177,294	83	100
NYSE	19,151,667	19,146,667	100	100

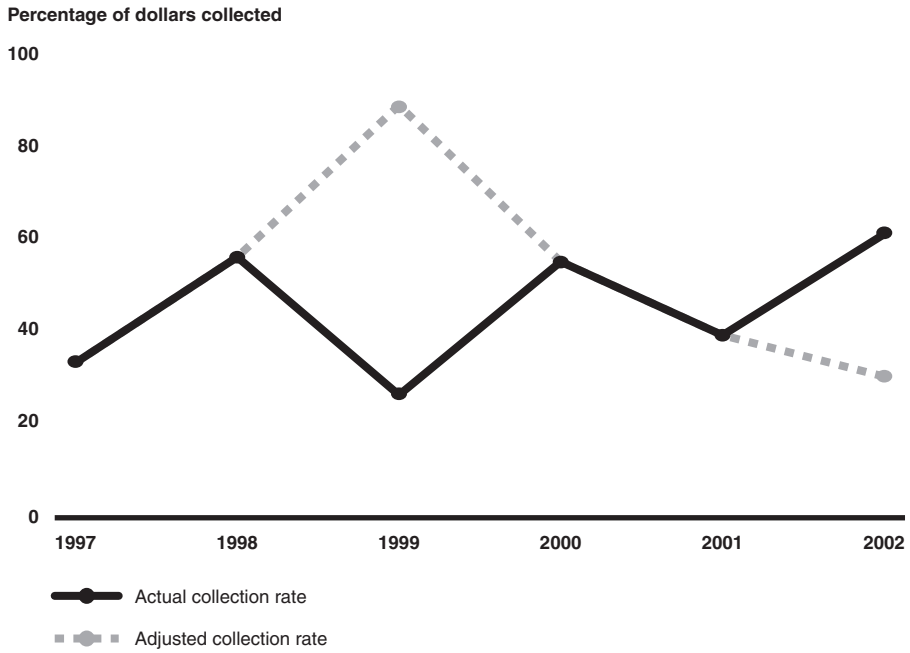
Source: GAO analysis of SEC, CFTC, and SRO data, except NASD, which claculated its own rates.

Note: Percentages are rounded to the nearest whole number.

[a]NASD data include cases invoiced from 1997 through 2002.

We examined SEC's collection rates by year and found that the rates varied greatly over time because of a few large fines. (See appendix III for the collection rates of the securities regulators for open and closed cases by calendar year.) For example, in 1999 SEC collected 26 percent of the total fines levied in that year, but one uncollected fine of $123 million significantly lowered the rate. Had SEC been able to collect this one fine, its collection rate for 1999 would have been 89 percent (fig. 1). Also, in 2002, SEC collected 61 percent of all fines, but approximately half came from two payments made by two violators. Excluding these payments, the reported collection rate for 2002 would have been about 30 percent (fig. 1).

Figure 1: SEC's Actual Collection Rates for Open and Closed Cases, 1997–August 2002, and Adjusted Collection Rates for Selected Years



Source: GAO analysis of SEC's data.

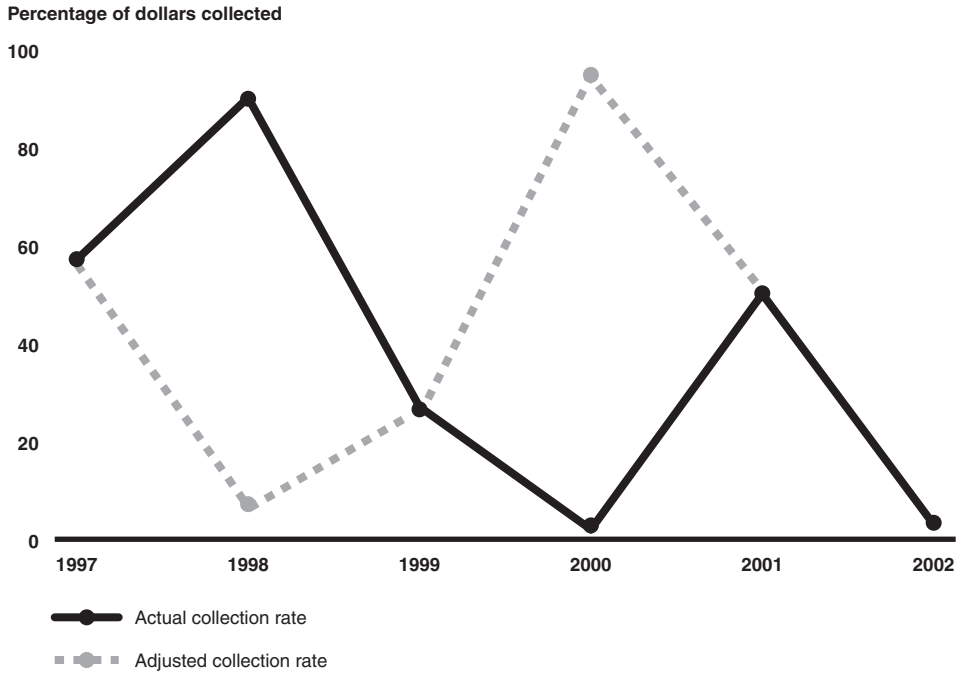
To help control for the influence of large dollar amounts on SEC's collection rates, we analyzed the number of cases paid in full and found that SEC had collected the full amount of the fine in the majority of cases it levied. For the entire period from 1997 through 2001, 72 percent of the fines levied had been paid in full. In 2002, 55 percent of the fines levied were paid

in full. The rate may be lower for 2002 because SEC has had less time—approximately 4 months—to collect on cases levied through August 2002.

CFTC collected about 45 percent of the total dollar amount of the fines it levied over the same period. Like SEC's rate, CFTC's was heavily influenced by a few large fines. A closer review of CFTC's annual rates from January 1997 through August 2002 showed that the regulator collected between 2 and 90 percent of the total fines levied. (See appendix IV for the collection rates of the futures regulators for open and closed cases by calendar year.) But in 2000, when CFTC's collection rate was just 2 percent, our calculations included a single uncollected fine of $90 million. Had CFTC been able to collect this one fine, its collection rate would have been 95 percent (fig. 2). Also, in 1998, when CFTC collected 90 percent of the total dollar amount levied through August 2002, one payment for $125 million heavily skewed the rate (fig. 2). Without this one payment and fine, CFTC's reported collection rate would have been approximately 7 percent (fig. 2).

To help control for the influence that large dollar amounts can have on the rate, we again analyzed the number of cases paid in full. Over the entire period of our study, from 1997 through August 2002, CFTC had collected the full amount in slightly more than 50 percent of the cases it levied. Although CFTC's collection rates over the entire period of our study were relatively low, the agency was actively pursuing collections on all its uncollected cases, primarily through the Departments of Treasury and Justice. CFTC's Chief of Cooperative Enforcement told us that the agency would continue to levy large fines when appropriate, even though large uncollectible amounts could reduce the agency's collection rate. He said that levying fines that are commensurate with the related wrongdoing sends a message to the public that CFTC is serious about enforcing its statutes.

Figure 2: CFTC's Actual Collection Rates for Open and Closed Cases, 1997–August 2002, and Adjusted Collection Rates for Selected Years



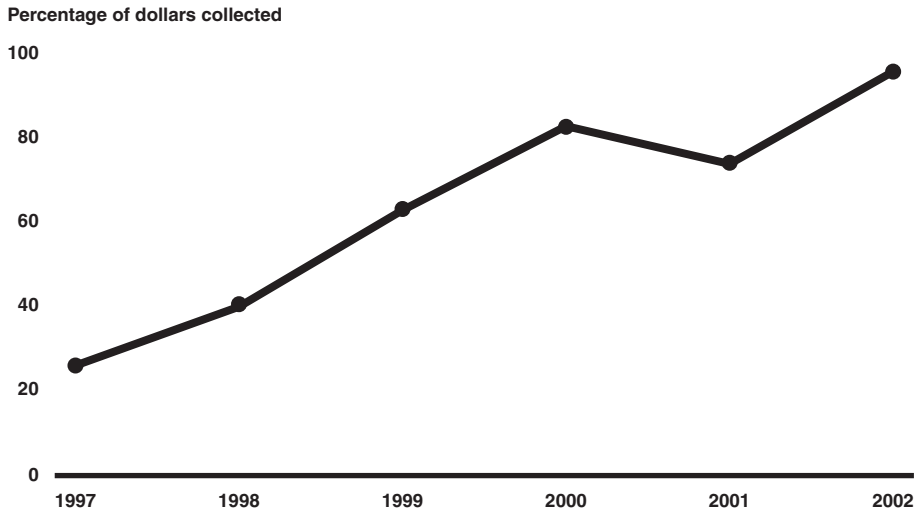
Source: GAO analysis of CFTC's data.

The collection rates for the nine securities and futures SROs were comparable in both sets of calculations (see table 2). When we included open cases in our calculations, these SROs' collection rates decreased slightly, with all but two (NASD's and the New York Mercantile Exchange's) declining between 1 and 9 percentage points. One reason for the relatively small decline was that these SROs generally had fewer and smaller uncollected fines, suggesting that they had been more successful in collecting on all cases than SEC and CFTC. According to an NFA official, one reason that the SROs that operate markets had higher collection rates was that in their role as exchanges they could sell a member's "seat," or membership, to pay off the fine, giving members an incentive to pay their fines. Because other regulators do not have this type of leverage, their rates are typically lower.

NASD's collection rate for closed cases was 95 percent and its rate for open and closed cases was 66 percent—a change of 29 percentage points. NASD's rate for open and closed cases[22] was affected by low collections in 1997 and 1998. As a result, the rates did not necessarily reflect the effects of the changes NASD made to its fine imposition practices in October 1999. As indicated in figure 3, NASD's annual collection rates generally increased from January 1997 through December 2002. In 1997, NASD collected 26 percent of the total dollars invoiced. In 2002, it collected 96 percent—a 70 percentage point increase over 6 years. As we reported earlier, one of the primary reasons for the increases was a change in the way NASD imposes fines. Specifically, NASD stopped routinely assessing fines when barring an individual from the industry, reducing the number of fines it invoiced each year and improving its overall collection rate. Also, in calculating its rate, NASD excluded about $137 million in fines that would be due and payable only if the fined individuals were to reenter the securities industry. The New York Mercantile Exchange's collection rate for open and closed cases was 83 percent—a decline of 17 percentage points from its closed case rate. When we excluded one uncollected $200,000 fine, the collection rate for open and closed cases declined by only 4 percentage points.

[22]Because of the way NASD's financial system was designed, we could not calculate the collection rate with an acceptable degree of accuracy using the approach we applied to other SROs. As a result, we relied on summary information that NASD provided. NASD's calculations use cases invoiced from January 1997 through December 2002; for the other SROs, we used cases levied through August 31, 2002. See appendix I for the potential impact of NASD's invoicing procedures on the amounts collected.

Figure 3: NASD's Collection Rates for Open and Closed Cases, 1997–2002



Source: GAO analysis of NASD's data.

Collection Rates Can Be Influenced by Factors That Are Beyond Regulators' Control

Collection rates are the most widely available—and in some cases the only—measure of regulators' success in collecting fines for violations of securities and futures laws. But external factors over which regulators have no control can skew these rates. Nonetheless, examining the rates and the factors influencing them can be a starting point for obtaining an understanding of regulators' performance and changes to it. Also, in exploring these rates regulators can identify cases that account for a significant share of uncollected debts and decide whether continuing with collection efforts for these cases is worthwhile.

Primary among the external factors affecting collection rates are the large fines and payments that we have been discussing. Just one or two extremely large uncollected fines can lower a collection rate significantly. Similarly, one or two large payments on such fines can raise a collection rate. Other external factors that can influence collection rates include violators' ability to pay and the size of the fines themselves. For example, an SEC official said that some violators who have been barred from the industry cannot pay their fines because their earning capacity has been limited. In discussing CFTC's relatively low collection rate, an agency official told us that the courts, in an attempt to match the gravity of the sanction to the offense, have sometimes imposed fines that are more than what an agency might realistically be able to collect. This official said that

in one case, a court fined a company $90 million—triple the monetary gain from its illegal activities. He also said that in another case, a court assessed fines totaling $4 million against four violators, although CFTC had sought $660,000.

Conclusions

Since our last report, SEC and CFTC have made material improvements to their policies and procedures for collecting delinquent fines that, if followed, should improve collections on debts owed to the federal government. Nonetheless, SEC lacks a formal strategy for collecting on its pre-guidelines delinquent debt. Although the probability of collecting monies ordered on older cases diminishes over time, some portion of these pre-guidelines cases may have collection potential that is being overlooked. Developing a formal strategy that prioritizes pre-guidelines cases based on their collection potential and establishes time frames for their referral to FMS and TOP would improve the likelihood of collecting some portion of the debt associated with these cases, which could be more than $1 billion.

The success of SEC's efforts to collect this debt will be closely related to the timely replacement of DPTS. Phase one of SEC's action plan includes a tentative deadline for replacing DPTS by the end of fiscal year 2003. At that time, SEC will be able to identify all cases eligible for referral to FMS and TOP and develop a strategy for making these referrals. SEC has not yet set a milestone for completing the requirements analysis for phase two of its action plan or established a date to fully implement the computer system that will integrate SEC's now separate databases. We are concerned that, without target dates, progress in implementing phase two could be slowed, affecting SEC's ability to more efficiently address all cases that should be referred to FMS and TOP.

Further, SEC's progress has been slow in the 5 years since we recommended that the agency analyze industrywide information on SRO disciplinary program sanctions, in part because technological problems have hindered its ability to collect sufficient data to perform the analyses. SEC has not yet completed its first analysis and has no schedule for implementing the new disciplinary database intended to replace its current database. Finally, while controls were in place that should keep barred individuals from being readmitted to the securities and futures industries, neither the related statutes, SEC, or CFTC require the SROs to ensure that the fingerprints sent to the FBI for use in criminal history checks belong to the applicants who submit them. In the absence of such a requirement, the SROs lacked related controls that could help prevent inappropriate

admissions to the securities and futures industries. SRO involvement in weighing alternatives for addressing fingerprinting requirements for the securities and futures industries would ensure that concerns about cost-effective solutions are appropriately considered and addressed.

Recommendations

We recommend that the SEC Chairman

- develop a formal strategy for referring pre-guidelines cases to FMS and TOP that prioritizes cases based on collectibility and establishes implementation time frames;
- take the necessary steps to implement the action plan to replace DPTS by (1) meeting the fiscal year 2003 milestone for implementing phase one of the plan, (2) setting a milestone for completing the requirements analysis for phase two of the plan, and (3) establishing and meeting the implementation date for phase two; and
- analyze the data that have been collected on the SROs' disciplinary programs, address any findings that result, and establish a time frame for implementing the new disciplinary database that is to replace the current database.

We also recommend that SEC and CFTC work together and with the securities and futures SROs to address weaknesses in controls over fingerprinting procedures that could allow inappropriate persons to be admitted to the securities and futures industries.

Agency Comments and Our Evaluation

We requested comments on a draft of this report from the Chairmen, or their designees, of SEC and CFTC. SEC officials provided written comments, which are reprinted in appendix II. CFTC provided oral comments. In general, both agencies agreed with the facts we presented and also agreed to implement the recommendations we made. SEC emphasized that it expected to meet its milestone for implementing a replacement database for DPTS by the end of fiscal year 2003 and said that once the new system was in place, the agency would be able to identify delinquent debts that had not been referred to FMS and TOP and set deadlines for making referrals. While SEC said that further milestones for phase two of its action plan will be set at some time in the future, it made no reference to establishing a time frame for implementing its new

disciplinary database. We believe that SEC needs to move quickly to set time frames for both of these projects, because in the absence of dates on which to focus, progress may be delayed. SEC also said that agency staff will contact CFTC to review the possibility of adopting new industrywide fingerprinting standards, including procedures to verify the identities of all individuals who are being fingerprinted. CFTC officials told us that they would work with SEC and the SROs to address our recommendation. Finally, we also received technical comments from SEC and CFTC that we incorporated into the report, as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the Chairmen and Ranking Minority Members of the Senate Committee on Banking, Housing, and Urban Affairs and its Subcommittee on Securities and Investment; the Chairman, House Committee on Energy and Commerce; the Chairman, House Committee on Financial Services and its Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises; and other interested congressional committees. We will send copies to the Chairman of SEC, the Chairman of CFTC, and other interested parties. We also will make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site http://www.gao.gov.

If you have any further questions, please call me at (202) 512-8678, dagostinod@gao.gov, or Cecile Trop at (312) 220-7705, tropc@gao.gov. Additional GAO contacts and staff acknowledgments are listed in appendix V.

Davi M. D'Agostino
Director, Financial Markets and
Community Investment

Scope and Methodology

To evaluate SEC's and CFTC's actions to improve their collection programs, we assessed their responses to our 2001 recommendations that (1) SEC take steps to ensure that regulations allowing SEC fines to be submitted to TOP are adopted; (2) SEC continue to work with FMS to ensure that compromise offers presented by FMS are approved in a timely manner; and (3) CFTC take steps to ensure that delinquent fines are referred promptly to FMS, including creating formal procedures that address both sending debts to FMS within the required time frames and requiring all of the necessary information from the Division of Enforcement on these debts.

To assess steps SEC took to ensure that regulations allowing SEC fines to be submitted to TOP were adopted, we reviewed SEC's final regulations and related procedures and collection guidelines. To determine compliance with the new collection guidelines for referring delinquent cases to TOP, we selected a judgmental sample of 66 post-guidelines fines and disgorgement cases using DPTS and obtained information from SEC on the referral status of those cases.[1] Of the 66 cases, four were eligible for referral at the time of our review. We selected cases where judgments or orders were entered after SEC's guidelines took effect, because staff told us they were tracking the referral of those cases. To determine the number, dollar amount owing, and age of the delinquent cases at the agency, we identified all cases with ongoing collections, using DPTS data as of January 31, 2003, and calculated the age from the judgment date (which in the absence of better data, we used as a rough proxy for the delinquency date) to January 31, 2003. Since DPTS was unreliable, the aging analysis provides only a rough estimate of the total number and age of cases. We interviewed SEC and FMS officials to obtain their views on SEC's progress in referring cases to FMS and TOP and information on any impediments to this progress.

To assess SEC's efforts to continue to work with FMS to ensure that compromise offers presented by FMS are approved in a timely manner, we examined SEC's procedures for processing compromise offers. We obtained data from SEC on the four compromise offers FMS submitted to SEC between July 1, 2001, and April 22, 2003, and analyzed the length of time it took for SEC to respond to the compromise offers. We obtained and used FMS's data to validate SEC's response time. We also interviewed SEC and FMS officials to discuss SEC's policies, procedures, and controls and to

[1]We included both fines and disgorgement cases, because the collection guidelines apply equally to both.

obtain information on the agencies' efforts to work together to ensure the timely approval of offers. We also obtained FMS's views on SEC's progress in responding to offers.

To assess steps CFTC took to ensure that delinquent fines are promptly referred to FMS, we reviewed CFTC's collection procedures, which it calls instructions, to ensure that they included time frames for referring cases to FMS and provisions for obtaining all necessary enforcement information. We also reviewed related agency controls. To assess staff's compliance with the revised procedures, we obtained data from CFTC on its only four delinquent cases and analyzed the length of time it took to refer them to FMS. We obtained and used FMS's data to validate that all of CFTC's cases have been transferred within 180 days. We also interviewed CFTC officials to discuss the agency's procedures and controls and obtained FMS's views on CFTC's progress in referring fines.

To assess SEC's and CFTC's efforts to enhance their oversight of the SROs' sanctioning practices, we assessed their responses to our 1998 and 2001 recommendations that (1) SEC analyze industrywide information on disciplinary program sanctions, particularly fines, to identify possible disparities among the SROs and find ways to improve the SROs' programs; and (2) SEC and CFTC periodically assess the pattern of readmission applications to ensure that the changes in NASD's and NFA's fine imposition practices do not result in any unintended consequences, such as inappropriate readmissions.

To assess the status of SEC's efforts to analyze industrywide information on SROs' disciplinary program sanctions, we interviewed SEC officials to discuss the types of analyses planned, any obstacles encountered, and efforts to overcome those obstacles. To assess both SEC's and CFTC's efforts to periodically assess the pattern of readmission applications, we interviewed officials of these agencies to determine the number of readmission applications from barred individuals and reviewed documentation that described the controls used to keep barred applicants from reapplying. We focused our review on permanent bars and application records since NASD and NFA changed their fine imposition practices in October 1999 and December 1998, respectively. To validate both agencies' statements that they had not reviewed any readmission applications from barred individuals since our 2001 report, we obtained the names of barred individuals from NASD and NFA and verified that each individual had not applied for readmission. Specifically, for NASD, we compared the names of over 900 barred applicants who had not been fined against a list of

readmission applications. We focused on these individuals because of concerns that individuals who had been barred and not fined might be more willing to seek readmission than those who had been barred and fined. For NFA, we researched the histories of 32 barred individuals, using NFA's database to validate that none of the individuals had applied for readmission. We examined all barred applicants, including both those who had been fined and those who had not been, because the data did not allow us to distinguish between these groups. To ensure that NFA's and NASD's data were sound, we interviewed agency officials to assess the controls these agencies had over their data systems, such as their processes for entering and updating data, safeguards for protecting the data against unauthorized changes, and any tests conducted to verify the accuracy and completeness of the data. We found that the data were useable for our purposes.

To address concerns that surfaced during our review about controls over the fingerprinting procedures used in criminal history checks, we interviewed officials at NASD, NFA, NYSE, and the FBI and reviewed laws and regulations related to fingerprinting. In addition to NYSE, other SROs that operate markets have agreements with the FBI under which they may submit fingerprints to the FBI for criminal history checks. We limited our review to NYSE because it is the largest SRO that operates a market, and we wanted to determine how another SRO's procedures might differ from those of NASD and NFA.

To calculate the fines collection rates for SEC, CFTC, and nine securities and futures SROs for 1997 through 2002 (all years were calendar years), we focused on these regulators' imposition and collection of fines through their enforcement and disciplinary programs. The nine SROs[2] included the American Stock Exchange, the Chicago Board Options Exchange, the Chicago Board of Trade, the Chicago Mercantile Exchange, the Chicago Stock Exchange, NASD, NFA, the New York Mercantile Exchange, and NYSE. We excluded fines for minor rule infringements such as floor conduct, decorum, and record-keeping violations that normally do not undergo disciplinary proceedings. The exchanges generally referred to these violations as "traffic ticket" violations, and they are handled through

[2]As in our previous reports, we excluded regional securities exchanges that delegated their broker-dealer examination authority to the American Stock Exchange, Chicago Board Options Exchange, NASD, or NYSE because they administered few disciplinary actions. We also excluded some futures exchanges based on the same rationale.

summary proceedings and involve smaller fine amounts. We excluded amounts owed for disgorgement and restitution, except for NASD, because these sanctions are different from fines in that they are imposed to return illegally made profits or to restore funds illegally taken from investors. Due to the way NASD tracked its fines and payments, NASD was unable to exclude disgorgement amounts from its payment data. We also excluded fines that were not invoiced, because they would not be due unless the fined individual sought to reenter the securities industry. All other fines were factored into the rate, including fines dismissed in bankruptcy,[3] to obtain the most complete view possible of the regulators' efforts to discipline violators.[4]

To calculate annual fines collection rates and composite collection rates, we obtained and analyzed data from SEC, CFTC, and all SROs, except NASD, on fines levied from January 1997 through August 2002, and collected through December 2002. NASD's data include fines invoiced from 1997 through 2002. We limited our review to fines levied through August 2002 to allow regulators through December 2002 (4 months) to attempt collections. We calculated the collection rate in two ways. First, we calculated the rate by including only closed cases—that is, cases with a final judgment order for which all collection actions were completed. This approach is consistent with the one used in our 1998 report.[5] Second, to provide a more complete view of regulators' collection activities, we calculated the rate using all closed and open cases—that is, cases with a final judgment order for which collections actions were completed and cases with a final judgment order that remained open while collection efforts continued. For cases with a payment plan, we adjusted the levy amount to the amount owed as of December 31, 2002, because a portion of the original levied amount was not yet due. We could not do this for SEC or NASD because agency data did not specify the amount owed as of December 31, 2002. As a result, SEC's and NASD's rate may be understated.

[3]Provisions of the Sarbanes-Oxley Act of 2002 have amended the federal Bankruptcy Code to prevent individual debtors from discharging in bankruptcy court certain debts, including judgments and settlements that result from violations of federal and state securities laws or regulations. Sarbanes-Oxley Act § 803, amending 11 U.S.C. 523(a).

[4]To the extent that cases were dismissed through bankruptcy proceedings, these cases would be included in the closed case analysis.

[5]GAO/GGD-99-8.

We also used NASD's calculations of its collection rates, because the design of NASD's financial system did not allow us to calculate these rates with an acceptable degree of accuracy using the approach we applied to other SROs. First, according to NASD officials, NASD's calculations used the date a fine was invoiced instead of the date it was levied. Fines were typically invoiced between 15 and 45 days after they were levied. This difference may have had a minor effect, particularly on the annual collection rates. Second, NASD's collection rates represent the total amount collected up to December 31, 2002, on fines invoiced from January 1997 through December 2002 (as opposed to the August 31, 2002, date for the other SROs). Third, because NASD's system could not identify cases on a payment plan, NASD's calculations do not adjust the fine amount to the amount owing as of December 31, 2002, exerting a slight bias toward understating the collection rate. Fourth, NASD's collection rates (1) include disgorgement because NASD was not able to separate such amounts from its payment data and (2) exclude fines that were levied but not invoiced because such fines were not due unless the fined individual sought to reenter the securities industry.

We also assessed the reliability of the data provided by the 11 regulators by asking officials about agency controls for collecting fines and payment data, supervising data entry, safeguarding the data from unauthorized changes, and processing that data. We also asked whether they performed data verification and testing. Although the controls varied across the agencies, each one demonstrated a basic level of system and application controls. We also performed basic tests of the integrity of the data we received from some of the regulators that provided us with individual fines data. We concluded that the data from all of the organizations, except SEC, was sufficiently reliable for the purposes of this report.

The number of errors we and SEC found in DPTS during the course of our work and the findings of the January 3, 2003, report to the SEC Inspector General that the data in DPTS were incomplete and inaccurate led us to conclude that DPTS fines data remain insufficiently reliable to calculate an accurate collection rate. While we cannot be sure of the magnitude or direction of the errors in the DPTS fines data, we are nevertheless reporting the number and dollar value of cases eligible for referral to FMS and TOP, the age of this debt, and SEC collection rates as the best estimates possible at this time.

We did our work in accordance with generally accepted government auditing standards between August 15, 2002, and July 1, 2003. We

performed our work in Boston, Mass.; Chicago, Ill.; New York, N.Y.; and Washington, D.C.

Comments from the Securities and Exchange Commission

DIVISION OF ENFORCEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

July 1, 2003

Ms. Davi M. D'Agostino
Director
Financial Markets and Community Investment
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Re: Draft Report Entitled "Collection Programs Are Improving, but Further Steps Are Warranted"

Dear Ms. D'Agostino:

Thank you for providing us with the opportunity to review and comment on your draft report addressing the Securities and Exchange Commission's collection of fines. The report discusses the SEC's use of collection services provided by Treasury's Financial Management Service; the use of collection guidelines and the handling of pre-guideline cases; and the development and timeframe for implementation of a new system for tracking fines owed to the government. The report also discusses the SEC's analysis of disciplinary sanctions imposed by self-regulatory organizations, and makes a recommendation for improving controls over the fingerprinting of industry applicants.

As the report recognizes, the SEC has implemented regulations, procedures, collections guidelines, and controls for using the Treasury Offset Program (TOP), which applies payments the federal government owes to debtors to their outstanding debts. In addition, the SEC is in the process of replacing its current system for tracking amounts ordered and paid in Commission enforcement actions, with a new system that will track amounts ordered, paid and disbursed and that is integrated with the Division of Enforcement's current case tracking system.

Our specific comments as to the recommendations in the draft report follow:

I. Developing a Strategy for Referral of Pre-Guidelines Cases

The draft report recommends that the SEC develop a strategy for referring pre-guidelines cases to FMS and TOP that prioritizes cases based on collectibility and establishes implementation time frames. The Division of Enforcement's collection guidelines require recording in the collection system, and set out a timeline for (i)

2

sending the notices required for TOP, (ii) making determinations as to collection through additional litigation, and (iii) referring debts to FMS. Those guidelines are necessarily forward looking. The Division's policy continues to be that all disgorgement and civil penalties that remain unpaid for more than 180 days, and that are not being pursued in litigation, must be referred to FMS for collection. In the future, the replacement database will ensure that we can identify outstanding and delinquent debts that have not yet been referred to FMS and TOP. At that time, we will be in a position to set deadlines for mailing TOP notices and making referrals.

II. Meet Milestone for Replacement Database, and Establish Phase Two Milestones

The draft report recommends that the SEC take necessary steps to implement plans for replacing the existing Disgorgement and Penalties Tracking System by (i) meeting the fiscal year 2003 milestone for implementing phase one of the action plan; (ii) setting a milestone for completing the requirements analysis for phase two of the plan; and (iii) establishing and meeting the implementation date for phase two. We are working aggressively to meet the milestone for implementation of a replacement database, and to date we are on track for meeting that milestone. We recognize the critical importance of this replacement database, both to our preparation of auditable financial statements and to collection of delinquent debts. The database will provide information on amounts ordered, paid and disbursed in our open cases and will, we anticipate, provide comprehensive, reliable data necessary to track these debts.

What your report calls phase two of our plan is a long anticipated comprehensive upgrade of the Division's current case tracking system. Again, we emphasize that we intend that the debt tracking system to be completed by the end of fiscal 2003 will meet current needs for tracking these debts; phase two is not intended to make major changes to the new system now being put in place. We anticipate that one of the enhancements of the new system will be to integrate a number of now separate databases into the case tracking system, including the now separate databases devoted to tracking collections. As your report indicates, the requirements phase of this project is scheduled to begin in fiscal 2004. Because of the scope of this project (of which debt tracking is only a part), further milestones have not been set, but will be set in the future.

III. Analyze Data from SRO Disciplinary Programs

The draft report recommends that the SEC analyze the data that has been collected on the SRO's disciplinary programs, address any findings that result, and establish time frames for implementing the electronic system that is to replace the current database system. As always, Commission staff review and analyze SRO disciplinary sanctions and fines during inspections of each of the SRO's disciplinary programs. The staff, however, is inputting the SRO Rule 19d-1 disciplinary data into the disciplinary database. Once the database contains sufficient disciplinary information, the staff will analyze the data and address any findings that result. The staff also is working to develop a new enhanced disciplinary database that will replace the existing database.

3

The draft report also recommends that the SEC, CFTC and the self regulatory organizations work together to address weaknesses in fingerprinting procedures. SEC staff in the Division of Market Regulation will contact the CFTC to review the possibility of adopting new industry-wide fingerprint standards, including procedures to verify that each individual who is being fingerprinted is the individual named on the fingerprint card.

We appreciate the care and thought that is evident throughout your report and recommendations. If we can be of further assistance, please contact me at (202) 942-4540 or Joan McKown at (202) 942-4530.

Yours truly,

Stephen M. Cutler
Director

Securities Regulators' Collection Rates for Open and Closed Cases by Calendar Year

We calculated the collection rates using data from SEC and the SROs, except for NASD, which calculated its own rates (see appendix I for further details). The rates are based on fines levied from January 1997 through August 2002 and include all amounts collected on those fines through December 2002, except for NASD. The fines data listed for each year represent collection activity on the fines levied in each of those years. Percentages were rounded to the nearest whole number.

Table 3: SEC's Collection Rates

Year	Number of fines levied	Percentage of fines paid in full	Amount levied	Amount collected	Percentage of dollars collected
1997	233	80%	$56,302,014	$18,360,390	33%
1998	291	72	47,688,706	26,530,896	56
1999	444	76	195,173,240	50,111,404	26
2000	347	74	38,390,286	21,188,325	55
2001	300	72	61,205,291	24,108,247	39
2002	215	55	81,615,816	49,804,134	61
Total	**1,830**	**72%**	**$480,375,353**	**$190,103,396**	**40%**

Source: GAO analysis of SEC's data.

Table 4: The American Stock Exchange's Collection Rates

Year	Number of fines levied	Percentage of fines paid in full	Amount levied	Amount collected	Percentage of dollars collected
1997	17	88%	$310,000	$237,500	77%
1998	13	85	341,500	309,640	91
1999	8	63	355,000	260,000	73
2000	5	80	217,243	204,167	94
2001	8	88	1,300,000	1,200,000	92
2002	7	71	108,076	75,000	69
Total	**58**	**81%**	**$2,631,819**	**$2,286,307**	**87%**

Source: GAO analysis of the American Stock Exchange's data.

Table 5: The Chicago Board Options Exchange's Collection Rates

Year	Number of fines levied	Percentage of fines paid in full	Amount levied	Amount collected	Percentage of dollars collected
1997	70	99%	$1,048,401	$1,044,901	100%
1998	38	97	463,278	453,278	98
1999	50	96	569,165	561,565	99
2000	38	92	659,400	633,065	96
2001	16	94	340,000	332,500	98
2002	7	100	88,500	88,500	100
Total	**219**	**96%**	**$3,168,744**	**$3,113,809**	**98%**

Source: GAO analysis of the Chicago Board Options Exchange's data.

Table 6: The Chicago Stock Exchange's Collection Rates

Year	Number of fines levied	Percentage of fines paid in full	Amount levied	Amount collected	Percentage of dollars collected
1997	3	100%	$11,000	$11,000	100%
1998	6	100	39,500	39,500	100
1999	8	88	125,000	100,000	80
2000	6	67	87,000	85,000	98
2001	1	100	20,000	20,000	100
2002	1	100	2,000	2,000	100
Total	**25**	**88%**	**$284,500**	**$257,500**	**91%**

Source: GAO analysis of the Chicago Stock Exchange's data.

Table 7: NASD's Collection Rates

Year	Number of fines levied	Percentage of fines paid in full	Amount levied[a]	Amount collected	Percentage of dollars collected
1997	881	64%	$38,782,000	$10,189,309	26%
1998	916	65	27,933,000	11,032,446	39
1999	901	66	42,714,100	26,817,300	63
2000	701	70	14,292,808	11,979,986	84
2001	657	76	16,677,000	12,376,818	74
2002	659	72	70,170,000	67,211,659	96
Total	**4,715**	**68%**	**$210,568,908**	**$139,607,518**	**66%**

Source: NASD.

[a]NASD data include fines invoiced from 1997 through 2002. See appendix I for the potential impact of NASD's invoicing procedures on the amounts collected.

Table 8: NYSE's Collection Rates

Year	Number of fines levied	Percentage of fines paid in full	Amount levied	Amount collected	Percentage of dollars collected
1997	37	100%	$1,637,500	$1,637,500	100%
1998	38	100	3,345,000	3,345,000	100
1999	50	100	4,365,000	4,365,000	100
2000	54	100	4,953,667	4,953,667	100
2001	55	98	3,981,500	3,976,500	100
2002	22	100	869,000	869,000	100
Total	**256**	**100%**	**$19,151,667**	**$19,146,667**	**100%**

Source: GAO analysis of NYSE's data.

Futures Regulators' Collection Rates for Open and Closed Cases by Calendar Year

We calculated the collection rates using data from CFTC and the SROs. The rates are based on fines levied from January 1997 through August 2002 and include all amounts collected on those fines through December 2002. The fines data listed for each year represent collection activity on the fines levied in each of those years. Percentages were rounded to the nearest whole number.

Table 9: CFTC's Collection Rates

Year	Number of fines levied	Percentage of fines paid in full	Amount levied	Amount collected	Percentage of dollars collected
1997	18	67%	$2,767,000	$1,590,000	57%
1998	25	44	140,507,176	126,078,305	90
1999	40	38	86,192,731	22,955,045	27
2000	40	80	97,321,467	2,255,255	2
2001	39	44	15,689,399	7,886,289	50
2002	25	44	15,355,000	505,000	3
Total	**187**	**52%**	**$357,832,773**	**$161,269,894**	**45%**

Source: GAO analysis of CFTC's data.

Table 10: The Chicago Board of Trade's Collection Rates

Year	Number of fines levied	Percentage of fines paid in full	Amount levied	Amount collected	Percentage of dollars collected
1997	53	98%	$334,500	$334,000	100%
1998	31	90	162,000	141,500	87
1999	38	95	1,570,500	1,545,500	98
2000	53	92	545,125	497,125	91
2001	39	90	306,175	273,925	89
2002	42	88	631,050	529,550	84
Total	**256**	**93%**	**$3,549,350**	**$3,321,600**	**94%**

Source: GAO analysis of the Chicago Board of Trade's data.

Table 11: The Chicago Mercantile Exchange's Collection Rates

Year	Number of fines levied	Percentage of fines paid in full	Amount levied	Amount collected	Percentage of dollars collected
1997	16	94%	$811,500	$801,500	99%
1998	21	86	1,053,000	1,032,000	98
1999	25	100	349,500	349,500	100
2000	16	81	183,000	138,000	75
2001	31	97	443,250	433,250	98
2002	11	91	233,335	208,335	89
Total	**120**	**93%**	**$3,073,585**	**$2,962,585**	**96%**

Source: GAO analysis of the Chicago Mercantile Exchange's data.

Table 12: NFA's Collection Rates

Year	Number of fines levied	Percentage of fines paid in full	Amount levied	Amount collected	Percentage of dollars collected
1997	16	94%	$426,500	$401,500	94%
1998	32	47	962,500	450,000	47
1999	21	90	760,500	733,000	96
2000	28	57	1,269,000	638,375	50
2001	24	54	304,250	239,250	79
2002	14	29	298,500	214,600	72
Total	**135**	**61%**	**$4,021,250**	**$2,676,725**	**67%**

Source: GAO analysis of NFA's data.

Table 13: The New York Mercantile Exchange's Collection Rates

Year	Number of fines levied	Percentage of fines paid in full	Amount levied	Amount collected	Percentage of dollars collected
1997	18	100%	$186,100	$186,100	100%
1998	8	75	79,000	39,000	49
1999	15	100	141,000	141,000	100
2000	22	91	396,000	191,000	48
2001	20	95	224,194	224,194	100
2002	14	100	396,000	396,000	100
Total	**97**	**95%**	**$1,422,294**	**$1,177,294**	**83%**

Source: GAO analysis of the New York Mercantile Exchange's data.

GAO Contacts and Staff Acknowledgments

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