SEC Enforcement Case Summary
Enforcement Sweep for Electronic Communication Recordkeeping Failures

On February 9, 2024, the Securities and Exchange Commission (***SEC***) charged 16 firms with widespread and longstanding failures by the firms and their employees to maintain and preserve electronic communications. The sweep involved multiple large well-known financial services firms, including five broker-dealers, seven dually registered broker-dealers and investment advisers, and four affiliated investment advisers. The firms each consented to settled actions with penalties ranging from $1.25 million, for a firm that proactively identified and self-reported its violations, to $16.5 million and combined penalties of more than $81 million. In addition to monetary penalties, each firm agreed to engage an independent compliance consultant to review their supervisory, compliance, and other policies and procedures to ensure that electronic communications, including those found on personal devices, are preserved in accordance with federal securities laws. The compliance consultant's review must further address: employee training, monitoring, and surveillance measures; technological solutions for archiving; prevention, detection, and remedial actions, with a report to the SEC regarding findings and recommendations. Respondents further agreed to a one-year evaluation and report to the SEC with an updated assessment of the firm's program and remedial steps taken within the year. Reporting to the SEC for two years on any discipline imposed by the firm concerning the preservation of electronic communications. The firms further agreed to conduct, document, and report an internal audit regarding the firm's progress with respect to required remedial action, among other corrective actions.

These cases originated from a risk-based initiative to investigate whether broker-dealers were properly retaining business-related messages sent and received on personal devices. The firms were asked to voluntarily interview senior personnel or gather and review communications from the personal devices of samples of senior personnel. In each case, the SEC discovered and the firm admitted that employees sent and received business communications using their personal devices through text messages or other off-channel communications. Each of the firm's policies and procedures did address the retention of business-related records, including electronic communications, and employees were advised that the use of unapproved electronic communications was not permitted. Messages sent through firm-approved communication methods were archived, monitored, and subject to review, while those sent through unapproved communication methods were not. However, the firms were faulted for failing to implement sufficient controls to ensure employees were following the firm's policies. In several cases, the SEC noted that the failure to maintain and preserve electronic records resulted in a failure to produce requested records when responding to SEC subpoena requests.

See Press Release – https://www.sec.gov/news/press-release/2024-18

