

## SEC Enforcement Case Summary

### 26 Firms Pay More Than \$390 Million for E-Comm Recordkeeping Failures

On August 14, 2024, the SEC announced charges against 26 broker-dealers and investment advisers for widespread and longstanding failures by the firms and their personnel to maintain and preserve electronic communications related to their business. The initiative included large household names as well as smaller lesser-known firms, with civil penalties ranging from \$400,000 to \$50 million. Three firms received credit for self-reporting resulting in significantly reduced penalties. The cases resulted from an investigative initiative conducted by the SEC's Division of Enforcement referred to as the "Off-Channel Communications Initiative."

In each case, and similar to prior other recent off-channel enforcement, the firms were faulted for employees at all levels sending unapproved text messages or other business communications through non-approved applications or platforms, often on personal devices. Such communications were not monitored, subject to review, or archived. Firms had written policies and procedures designed to ensure retention of business-related records that specifically prohibited employees from using non-approved platforms. Their policies and procedures also provided for training and submission of periodic self-attestations of compliance. However, firms were charged with failure to implement a system of follow-up and review reasonably expected to determine that all personnel, including supervisors, were following such policies and procedures. Firms also permitted personnel to use approved communications methods on personal phones for business communications, but they failed to implement sufficient monitoring to ensure that their recordkeeping and communications policies and procedures were followed.

In many of the orders, the SEC specifically highlighted that senior team members, charged with supervising junior members, were equally responsible for the infractions, as it has similarly noted in previous enforcement cases. It appears likely that this fact pattern again contributed to the actions against these firms.

Notably, the SEC highlighted in the investment adviser order that the electronic communications that were required to be preserved were "related to an advisory recommendation made or proposed to be made or advice given or proposed to be given."

This enforcement initiative serves as another reminder that SEC examinations and investigations to detect off-channel communications continue, and that the price of delaying or failing to take material steps to ensure that all business-related electronic communications are properly archived and monitored, including actively reviewing reports and monitoring as required by an adviser's policies and procedures, can be significant. Core will continue to assist our clients in considering practical measures to monitor for use of off-channel communications that might not be captured in their electronic archiving systems.

See Summary - <https://www.sec.gov/newsroom/press-releases/2024-98>