SEC Enforcement Case Summary
Twelve Firms including Private Fund Advisers to Pay More Than $63 Million for Recordkeeping Failures

On January 13, 2025, the Securities and Exchange Commission (***SEC***) announced charges against nine institutional investment managers and advisers to private funds and three broker-dealers for failures by the firms and their personnel to maintain and preserve electronic communications, in violation of recordkeeping provisions of the Investment Advisers Act of 1940 (***Advisers Act***), as well as failure to reasonably supervise to prevent and detect violations of compliance policies and procedures. The cases provide insights into steps that advisers can take to confirm their compliance program is reasonably designed to prevent off-channel communication policy failures and recordkeeping violations, including by conducting reviews and testing of the effectiveness of policies and procedures and the use of electronic communications systems.

As part of the settlements, the firms agreed to take remediation actions as outlined in the orders by conducting comprehensive internal audits of their electronic recordkeeping policies and procedures to ensure that all required records, including those found on personal devices, are preserved in accordance with the recordkeeping requirements of the Advisers Act and whether their supervisory, surveillance and/or monitoring and testing programs can reasonably ensure that business communications are preserved as required. In particular, the advisers agreed to review and assess: (i) policies and procedures and the use of personal devices to determine whether there are technological and/or behavioral restrictions needed to prevent the risk of unapproved use of personal devices in work conditions (e.g., travelling, site visits); (ii) training regarding off-channel communications and the use of personal or company-issued devices; (iii) any requirements that personnel periodically self-certify they have preserved all required records including off-channel communications in accordance with policies and procedures; (iv) whether the surveillance program measures implemented are reasonably designed to ensure compliance, including on personal devices; and (v) what technology systems are being utilized and how the firm plans to track new electronic communications systems use, as well as whether current processes and systems fulfill recordkeeping and surveillance obligations for electronic communications, including on personal devices. Additionally, the SEC appears to be spotlighting the importance of the need for internal remedial action and enforcement of a firm's policies and procedures in also requiring that the internal audits include a comprehensive review of the advisers' framework for addressing non-compliance with their electronic communications policies and procedures. This part of the audit is to include, among other things, an evaluation of which persons were in violation and why, how the firm determined which personnel failed to comply with policies and procedures, the nature of the penalties imposed against them, and whether penalties had been issued consistently across business lines and seniority within the firm. The firms agreed to pay civil penalties totaling approximately $63.1 million, as outlined below.

- Blackstone Alternative Credit Advisors LP, Blackstone Management Partners L.L.C., and Blackstone Real Estate Advisors L.P. – $12 million
- Kohlberg Kravis Roberts & Co. L.P. – $11 million
- Charles Schwab & Co., Inc. – $10 million
- Apollo Capital Management L.P. – $8.5 million

- Carlyle Investment Management L.L.C., Carlyle Global Credit Investment Management L.L.C., and AlpInvest Partners B.V. – $8.5 million
- TPG Capital Advisors LLC – $8.5 million
- Santander US Capital Markets LLC – $4 million
- PJT Partners LP (self-reported) – $600,000

As a result of its investigations, the SEC found that off-channel communications had taken place not only via text message but also through personal email, chat programs such as WhatsApp, and other unapproved messaging apps and platforms, on both company-issued and personal devices (cell phones). According to the orders, although the firms had supervisory controls in place, including keyword surveillance, training on off-channel communications, and self-attestations regarding archiving, they failed to obtain, archive, or monitor numerous off-channel communications according to the orders.

These settlements provide deeper insight into the nature of the messages underlying the investment advisers' violations of Section 204 of the Advisers Act and Rule 205-2, which requires registered investment advisers to create and maintain records of:

- any recommendation made or proposed to be made, and any advice given or proposed to be given;
- any receipt, disbursement or delivery of funds or securities;
- the placing or execution of any order to purchase or sell any security; and
- predecessor performance and the performance or rate of return of any or all managed accounts, portfolios, or securities recommendations.

The SEC orders highlight off-channel communications sent and received among colleagues internally, and messages with external market participants, and they also detail the following specific examples of communications that the SEC found were not maintained under the Advisers Act as required:

- Two partners exchanging messages on an unapproved platform concerning the specific pricing, within the range previously approved by the investment committee responsible for a client's investments, at which the adviser should bid for the client to participate in a transaction.
- Two partners exchanging messages on an unapproved platform concerning whether the adviser should offer to have one or more of its private fund clients buy into the junior tranche of a transaction.
- A partner using WhatsApp to communicate with the senior executive of a third-party entity about a potential transaction.
- A partner exchanging a number of messages on an unapproved platform with colleagues about a proposed recommendation to increase a position for a client.
- A partner exchanging messages with a colleague on an unapproved platform about the terms and execution of a securities transaction for a client.
- A managing director in a credit strategy exchanging messages with an insurance company regarding the disbursement of funds related to a transaction.
- A partner exchanging messages with another partner about the performance of an investment vehicle.
- Written updates from a managing director concerning placing of trades.

One case involving a broker-dealer is instructive in that it highlights a technology breakdown resulting in recordkeeping failures. The broker-dealer issued company devices for business communications, and personnel were allowed to use such devices for business-related text messages if they filled out a form

to “opt-in,” allowing the broker-dealer to track and archive the text-enabled devices and archive the messages. The broker-dealer’s procedure was to contact the telecommunications provider when an opt-in approval was granted, and the provider would enable text messaging and archiving, which was disabled by default. Due to an error at the provider, text messages were inadvertently turned on by default. Because approximately 1,700 personnel had not obtained opt-in approval for texting, the messages sent and received on those devices were not retained. According to the order, the firm had no internal procedure to help ensure that every text-enabled phone issued to an employee had a corresponding online firm approval and that texts sent through those phones were being retained.

In another case involving an investment adviser to private funds, the order highlighted the firm’s use of a monitoring tool that detected the use of WhatsApp by employees, including a partner who was communicating externally regarding a potential transaction. A senior member of the compliance department met with the partner and discussed numerous aspects of the firm’s compliance program, including its prohibition on the use of off-channel communication platforms. However, the partner did not receive the same form of written policy reminder that other employees whose off-channel use of systems was identified by the surveillance tool received. For six months following the meeting, the same partner continued to exchange business-related messages with other partners via unapproved platforms. Two other partners suggested that all three partners set their mobile devices to delete messages after 30 days—an action which, according to the order, would have violated the adviser’s recordkeeping policy.

Similar to prior enforcement in this area, this January 2025 enforcement involved personnel at multiple levels of authority, including senior managers, strategy managers, and leadership such as managing directors and partners. Another common theme among these and earlier off-channel enforcement cases is that advisers are expected to actively test their policies and procedures to ensure messages are archived as required, they should not rely on self-certification without another form of independent verification such as testing of the archive or periodic interviews with staff. Firms may also be expected to consult regularly with staff to understand which communications systems are utilized for business purposes and consider whether adjustments to the policies and procedures are warranted to add new approved systems and otherwise bring policies in line with actual business practices. Archiving tests should also be performed to ensure systems are set up and functioning correctly. If there is widespread use of off-channel communications, advisers should endeavor to obtain, archive, and as appropriate monitor the communications. If policies prohibit or limit off-channel communications, firms should be mindful to take actions that consistently address policy violations at all levels of the organization.

See Summary – https://www.sec.gov/newsroom/press-releases/2025-6