

Insights

SEC ENFORCEMENT SWEEP REGARDING OFF-CHANNEL COMMUNICATIONS NETS 26 MORE SETTLEMENTS AND OVER \$390 MILLION IN CIVIL PENALTIES

Aug 14, 2024

On August 14, 2024 the U.S. Securities and Exchange Commission (the “SEC”) [announced](#) settled charges against 26 SEC-registered investment advisers, broker-dealers and dually-registered broker-dealers and investment advisers for extensive recordkeeping failures related to off-channel communications – *i.e.*, failure to maintain business texts transmitted on personal devices. The penalties per firm ranged from \$400,000 to **\$50 million** – a record for this type of violation. As indicated in the SEC’s press release, penalties for three of the firms were significantly reduced as a result of self-reporting. The penalties for the self-reporting firms ranged from \$1.6 million to \$5.5 million.

These settlements resulted from the SEC Division of Enforcement’s ongoing Initiative to Investigate Off-Channel Communications at Registered Entities, as were a number of other recent settlements. See *e.g.*, [SEC Charges Advisory Firm Senvest Management with Recordkeeping and other Failures \(April 3, 2024\)](#); [Sixteen Firms to Pay More than \\$81 Million Combined to Settle Charges for Widespread Recordkeeping Failures \(Feb. 9, 2024\)](#); [SEC Charges 10 Firms with Widespread Recordkeeping Failures \(Jan. 20, 2023\)](#).^[1] The sheer number and magnitude of these settlements dramatically underscore the SEC’s intense focus on this type of recordkeeping violations.

The latest round of settlements focused on a number of factors similar to those present in the earlier settlements:

- the long-standing nature of the failure to keep records of off-channel communications;
- the absence of records of these communications by personnel throughout the firms, including senior management; and
- the absence or inadequacy of systems to review compliance with policies and procedures prohibiting use of these communications.

Not surprisingly, in light of the above violations, the settled charges also included failure to supervise.

The firms admitted that their off-channel communications were records required to be maintained under applicable securities laws and their conduct violated applicable securities laws. They also agreed to standardized settlement terms. In addition to the substantial fines, the firms were censured and agreed to significant undertakings, including engaging an independent compliance consultant with a broad mandate to address, among other things, policies and procedures, training and surveillance programs. The firms also agreed to involve their internal auditors in the required compliance review.

These enforcement actions, and in particular the record-setting penalties, reinforce that SEC-registered investment advisers and broker-dealers should:

- review policies and procedures related to use of personal devices for communications and preservation of these communications, including the possibility of dedicated internal applications for business texts;
- review training materials and frequency of training on these policies and procedures;
- monitor compliance with these policies and procedures, including periodic specific attestations; and
- engage internal audit departments, if applicable, and independent compliance consultants in the review of these policies and procedures.

In the event a firm perceives potential shortcomings, prompt remedial measures should be undertaken in consultation with counsel.

[1] For more information regarding these earlier, related SEC enforcement actions, see BCLP's recent client alerts: [SEC Enforcement Sweep Regarding Off-Channel Communications](#); [Regulators Impose Extraordinary Fine Amounts in Recent Off-Channel Communications Enforcement Actions](#); [On Watch -Do regulators now expect firms to monitor communications using AI?](#)

MEET THE TEAM



Robert M. Crea

San Francisco

robert.crea@bcplaw.com

[+1 415 675 3413](tel:+14156753413)



Lauren A. Ford

Charlotte

lauren.ford@bcplaw.com

[+1 704 749 8930](tel:+17047498930)



Carol R. Schepp

New York

carol.schepp@bcplaw.com

[+1 212 541 2004](tel:+12125412004)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.