

Insights

SEC OFF-CHANNEL COMMUNICATIONS ENFORCEMENT SWEEP CONTINUES – SETTLEMENTS BY 12 FIRMS AND ASSESSMENTS OF OVER \$63 MILLION IN PENALTIES

Jan 27, 2025

On January 13, 2025, the U.S. Securities and Exchange Commission (the “SEC”) [announced](#) settled charges against twelve firms for recordkeeping failures related to off-channel communications – *i.e.*, failure to maintain business texts transmitted on personal devices. The monetary penalties per firm generally ranged from \$12 million to \$4 million. The penalty for one of the settling firms was limited to \$600,000 because it had self-reported to the SEC.

These settlements resulted from the SEC Division of Enforcement’s ongoing Initiative to Investigate Off-Channel Communications at Registered Entities. As indicated in the SEC’s [announcement](#) of its 2024 enforcement results:

“In fiscal year 2024, the Commission brought [off-channel] [recordkeeping cases](#) resulting in more than \$600 million in civil penalties against more than 70 firms...Since December 2021, the initiative has resulted in charges against more than 100 firms and more than \$2 billion in penalties.”

The number, frequency and magnitude of these settlements dramatically underscore the SEC’s relentless focus on this type of recordkeeping violations. See our prior client alert on the topic [here](#).

The January 2025 settlements highlighted 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.

As with the earlier settlements, the firms involved in the January 2025 settlements admitted that their off-channel communications were records required to be maintained under applicable securities laws. They also agreed to generally standardized settlement terms. In addition to the substantial fines, these firms were censured and agreed to significant undertakings, including a requirement that their internal auditors conduct a separate audit that comprehensively reviews the firms' off-channel communications compliance. It is worth noting that, unlike certain earlier settlements, the settlements by these firms did not include a requirement that they engage an independent compliance consultant.

These enforcement actions and substantial penalties once again 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 consider engaging 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.

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