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A Long Winter's Nap? SEC Off-Channel Communications Enforcement May Draw to a Close: Holland & Knight

The SEC's wave of enforcement actions concerning "off-channel" communications did not abate in 2024. In total, the SEC announced more than 70 firms agreed to pay more than a half-billion dollars combined to settle charges for recordkeeping failures, including the first enforcement actions for recordkeeping violations against municipal advisors. In this penultimate installment of *Season's Readings*, we take a look at what drove these settlements this year and what may happen to the so-called "WhatsApp initiative" once there is a new driver at the SEC Division of Enforcement's helm.

Background

Rule 17a-4(b)(4) of the Securities Exchange Act of 1934 (Exchange Act) generally obligates exchange members and registered broker-dealers to maintain originals of all communications received and copies of all communications sent by them in an easily accessible format. Registered investment advisors are subject to similar, albeit narrower, record retention requirements under Rule 204-2(a)(7) of the Investment Advisors Act of 1940 (Advisors Act).

In 2021, the SEC and U.S. Commodities Future Trading Commission (CFTC) began investigating financial institutions' off-channel communications and, specifically, text and instant messages sent and received by employees on their personal devices. Since then, over 100 entities – including broker-dealers, investment advisors, municipal advisors and credit rating agencies – have been charged with violations of the recordkeeping requirements under the Exchange Act and Advisors Act and paid more than $3 billion in civil penalties.

Continue reading.

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