



SEC Enforcement Case Summary Off-Channel Communications Sweep Results in \$88M Penalties

In another off-channel communication enforcement sweep, on September 24, 2024, the SEC charged twelve firms, including investment advisers and broker dealers, with failures to maintain electronic communications. The sweep resulted in civil penalties of more than \$88 million ranging from \$35 million against two of the largest firms (Stifel, Nicolaus & Company and the Invesco mutual fund family) to \$0 against one firm that conducted an internal investigation and uncovered its own violations and self-reported to the SEC. As in prior off-channel communications cases, each of the cases involved widespread and longstanding failures by the firms and personnel at all levels, including firm executives, to maintain and preserve electronic communications in violation of relevant books and records provisions of the federal securities laws. Unarchived communications included text messages sent and received on personal devices, as well as unapproved communications platforms, such as WhatsApp. As in prior cases, the SEC noted that the firms failed to produce relevant records requested in SEC subpoenas and examination document requests due to such recordkeeping failures, hindering the SEC's ability to perform its investor protection functions.

In a continued pattern of prior cases, the SEC noted that the firms maintained policies and procedures designed to ensure the retention of business-related records, trained employees on the use of unapproved electronic communications methods, including their personal devices, and required attestations of compliance with such policies and procedures. However, the firms were faulted for failing to implement sufficient monitoring to ensure that their recordkeeping and communications policies, including prohibitions, were actually being followed.

These cases were part of multiple ongoing risk-based enforcement initiatives to investigate the use of off-channel and unpreserved communications at broker dealers and registered investment advisers. We expect such cases to continue. Therefore, we continue to reiterate 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, and considering ways to test for compliance with prohibitions and the veracity of personnel's certifications, can be significant. As technology solutions for archiving electronic communications are now readily available, Standish Compliance strongly encourages clients to proactively identify and archive electronic communications platforms utilized by employees. We will assist 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/2024-144>