

SEC Sanctions a Registered Broker-Dealer for Text Message Recordkeeping Failures

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On Sept. 23, 2020,¹ the SEC released a cease-and-desist order imposing remedial sanctions arising out of the failure of a registered broker-dealer to retain business-related texts with clients, as required by the provisions of Section 17(a) of the Securities Exchange Act and SEC Rule 17a-4(b)(4).

The background to this action is interesting in that the violations were uncovered indirectly. During the course of an unrelated investigation, the SEC requested records from the broker-dealer that indicated the existence of text messages between the firm's representatives and the investigation subject. When the broker was unable to furnish copies of these messages, which also were prohibited by its policies, the SEC's subsequent investigation revealed that several employees in fact were using text messages on personal devices for business communications for a variety of trade order and market communications with clients, and that such activities were known to senior management (who had even participated in certain impermissible text messaging practices themselves). These communications were not retained in the broker's books and records.

As part of a settlement in which the broker-dealer neither admitted nor denied wrongdoing, the firm was required to pay a \$100,000 fine and is subject to a cease-and-desist order. The SEC highlighted that the broker-dealer had taken substantial remedial measures to address its violations, including employee education and implementation of a specialized retention system for employees interested in using personal devices for business communications.

While not involving an investment adviser, this case underscores the increasing importance of attention to personal device text messaging as a firm communication channel, and reaffirms that having written policies and training in this area will not immunize registrants — including registered investment advisers — whose personnel ignore firm and SEC recordkeeping requirements in practice.

This article appeared in the October 2020 edition of SRZ's Private Funds Regulatory Update. To read the full Update, [click here](#).

¹ See SEC matter (Sept. 23, 2020), available [here](#).