

U.S. Regulatory Enforcements Against Non-Compliant Electronic Communications

Tightening recordkeeping rules

To preserve market integrity and deter misconduct, the U.S. Securities and Exchange Commission (SEC) and Financial Industry Regulatory Authority (FINRA) have made clear that all financial services firms are required to record their electronic communications, including conversations over evolving, multifaceted channels that are gaining popularity in the industry. From text messages to emails to instant messaging platforms, all conversations relating to “business as such” are expected to be captured. The SEC has been a central defender of these expectations – following a round of widespread recordkeeping failures, **SEC Chair Gary Gensler said:**



Finance, ultimately, depends on trust. By failing to honor their recordkeeping and books-and-records obligations...market participants...have failed to maintain that trust.

Since the 1930s...recordkeeping has been vital to preserve market integrity. As technology changes, it's even more important that registrants appropriately conduct their communications about business matters within only official channels, and they must maintain and preserve those communications.

Regulations for compliant comms capture

Over the years, regulators have continued to update rules and require that firms monitor and capture the breadth of communications platforms more commonly utilized among personnel and clients.

Recent changes include amendments to the Department of Justice’s (DOJ) **Evaluation of Corporate Compliance Programs (ECCP)** with a focus on personal devices, modernization of electronic recordkeeping requirements under **SEC Rule 17a-4** (falling under the Securities Exchange Act of 1934), and the introduction of the **Marketing Rule** to set expectations for marketing and advertising in the era of social media.

The chain of SEC, FINRA, and CFTC enforcement actions against noncompliant communications use

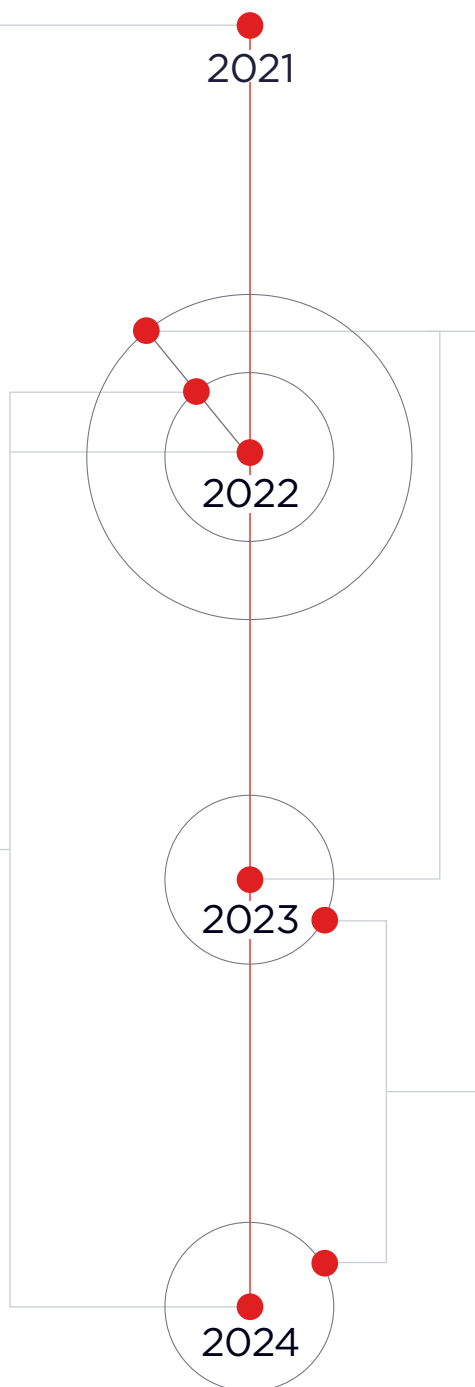
The comms catalyst

In **December 2021**, the off-channel communications crisis commenced. A global investment bank was issued a joint \$200 million fine from both the SEC and Commodity Futures Trading Commission (CFTC) for failing to capture written communications. These messages occurred over platforms like email, text, and unprecedentedly, WhatsApp.

Is the message coming through?

IM channels were mentioned in multiple fines, indicating a shift toward regulatory concentration on recently popularized platforms. Though, a large amount of enforcements called out the improper use of a traditional communication channel – SMS.

- In **September 2022**, FINRA fined a firm and two employees \$1.5 million and \$15,000 respectively for unauthorized text communications. It required that the firm revise its supervisory policies and training to comply with Rule 17a-4.
- In the same month as FINRA, the SEC charged 16 firms a collective \$1.1 billion, and again in **February 2024**, it charged another 16 firms over \$81 million for unauthorized text communications.



IM in the mix

Since this initial enforcement, improper retention of not just text and email, but instant messaging (IM) channels like WhatsApp and Signal, threaded through recordkeeping fines:

- In **September 2022**, the CFTC charged 11 firms with failure to record WhatsApp, text, and Signal communications – totaling over \$710 million.
- Alongside other recurring WhatsApp fines from the CFTC in 2023, the SEC charged 11 firms with failure to record WhatsApp, iMessage, and Signal communications in **August** – totaling \$289 million.

Scrutiny on the socials

Like IM, social media channels offer firms the advantage of an easily accessible, far-reaching tool to catch the attention of new audiences. Yet, when not used ethically or with clients’ best interests in mind, firms can come under fire for violating the Marketing Rule:

- In **September 2023**, the SEC charged nine registered investment advisors (RIA) \$850,000 for violating the Marketing Rule by advertising “hypothetical performance to the general public on their websites,” and again charged five RIAs \$200,000 in **April 2024** for the same reason.

Director of the SEC’s Division of Enforcement, Gurbir Grewal, explained that because of their eye-catching quality, hypothetical performance advertisements could mean a higher risk for “prospective investors whose likely financial situation and investment objectives don’t match the advertised investment strategy.”

In response to a large round of recordkeeping failure fines, **Grewal stated:**



Today’s actions...underscore the importance of recordkeeping requirements: they’re sacrosanct. If there are allegations of wrongdoing or misconduct, we must be able to examine a firm’s books and records to determine what happened.

Looking for a comms capture solution?

Get in touch with Global Relay

Financial firms are under the spotlight more than ever before, and regulators are expecting a performance that lives up to their communications compliance expectations.

Global Relay is your secure, **single-vendor solution** for every step of your compliance journey. From a collaborative messaging app through to a trusted archive and data connectors that assist in ensuring all communications are captured – discover single vendor efficiency and reduce third-party reliance.

To learn more, speak to a specialist: