

September 24, 2020

## SEC Fines Broker-Dealer \$100,000 for Failing to Retain Text Messages

by [Lauren C. Jackson](#)

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The Securities and Exchange Commission (“SEC”) entered an [order](#) (“Order”) yesterday against a broker-dealer for failing to retain text messages relating to the firm’s business. [1] The firm was fined \$100,000. The firm’s policies restricted employees from conducting business over text message or on personal devices, and employees annually attested to their compliance with those policies. However, according to the Order, when the SEC issued a third-party subpoena to the broker-dealer, it found that the broker-dealer’s employees had conducted firm business using text messages, persons in the firm’s compliance department and management knew that text messages were sometimes used for discussing firm business (indeed, those persons had themselves used text messages for that purpose), and those text messages were not retained within the firm’s regulatory records repository and therefore could not be produced in response to the third-party subpoena. The case serves as a helpful reminder to firms to be vigilant in ensuring that communications, including those conducted over text message or otherwise, utilizing an employee’s personal device be retained in compliance with applicable recordkeeping requirements (e.g., Rule 17a-4 and Rule 204-2).

If you have any questions about recordkeeping requirements or the regulation of broker-dealers or investment advisers, please feel free to contact us.

By the ***Investment Management and Broker-Dealer Team*** at Kilpatrick Townsend & Stockton

### Footnotes

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1 - Jonestrading Institutional Services, LLC, Release No. 89975, Sept. 23, 2020, available at <https://www.sec.gov/litigation/admin/2020/34-89975.pdf>.