Gottschall, Newman and Roberts in Compliance Cosmos: 'What to Do About Business-Related Text and WhatsApp Messages'

By Kurt L. Gottschall, Tim Newman | October 5, 2023

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Haynes Boone lawyers Kurt Gottschall, Timothy Newman, and Payton Roberts authored an article in *Compliance Cosmos* on implementing corporate compliance programs regarding text and WhatsApp messages.

Read an excerpt below:

Over the past year, US financial regulators have announced game-changing enforcement cases and corporate cooperation guidelines to prompt businesses to retain, review, and—if subpoenaed—produce employees' business-related text messages on both personal devices and within so-called ephemeral messaging apps such as WhatsApp, Snapchat, Telegram, Confide, and many others. The ephemeral apps are particularly ubiquitous, and many employees mistakenly believe that their messages will disappear almost magically, leaving no trace. But the technical reality is not that simple, presenting innumerable challenges for legal and compliance staff. This article highlights the recent regulatory scrutiny concerning messaging and offers practical considerations for companies of all sizes.

Recent regulatory enforcement and policy guidance

As we described in our Off-Channel Communications Client Alert, in September 2022, the U.S. Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) filed 16 enforcement actions against some of the nation's largest financial firms for not preserving or reviewing text or ephemeral messages. In these cases, regulators imposed more than $2 billion in penalties, required admissions, and ordered significant remedial undertakings. Regulators brought these cases based upon the statutory obligations of broker–dealers, investment advisers, and commodity pool operators to preserve certain documents for inspection and review business communications as part of their routine supervision of employees.

To read the full article in *Compliance Cosmos*, click here.

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