

Report Highlights Need for More Robust Corporate Record-Retention Strategy

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Following Van Ness Feldman's November 2022 alert, [Mitigating the Rising Risk from Corporate Use of Third-Party Apps](#), compliance messaging company Global Relay released a detailed report describing trends across financial service organizations regarding compliance with regulatory archiving and recordkeeping requirements for electronic communications data. As the report notes, "WhatsApp, SMS/text messages, and social media platforms are now essential tools in the era of 'always-on' business communication. However, using these channels within regulated environments requires careful consideration of how firms can continue to capture business data outside of familiar legacy architectures."

According to the Global Relay report, the most popular third-party communications platforms monitored and captured by financial services organizations are LinkedIn, Bloomberg Chat, X (formerly Twitter), and MS Teams, suggesting that these platforms are prominent in traditional business-related communications. With recently [increased focus from the U.S. Department of Justice](#) on corporate policies and procedures governing the use of personal devices and third-party messaging platforms, corporate compliance departments are reviewing their programs and strategies with regard to business communications across third-party platforms and devices.

Furthermore, recent regulatory enforcement actions against numerous firms highlight the growing importance of having robust communications and data retention strategies. Enforcement activity is anticipated to increase. Last month, for instance, investment bank Piper Sandler & Co. said it expects to pay a \$15 million penalty to resolve an investigation by the Securities and Exchange Commission (SEC) tied to unapproved employee use of personal texts and chat apps to conduct business. In September 2023, the SEC [announced combined penalties of \\$79 million](#) levied against ten firms for failure to maintain and preserve electronic, "off-channel" communications using personal text messages. In August 2023, an [SEC press release](#) reported a combined settlement for penalties of \$298 million from eleven firms for similar noncompliance. Even more notably, the August 2023 press release touted that the Commission had brought 30 enforcement actions and ordered over \$1.5 billion in penalties to drive home the message that "[c]ompliance with the books and records requirements of the federal securities laws is essential to investor protection and well-functioning markets." These cases and characterization are indicative of the Commission's aggressive posture toward enforcement of recordkeeping rules going forward.

For More Information

Van Ness Feldman's Litigation and Investigations team provides strategic counsel to corporations on best practices and policies to mitigate risk in the face of evolving federal regulations. For more information on how you can ensure your company is in compliance with third party messenger apps, please contact [Mike Farber](#), [Justin Panitchpakdi](#), [Paul Libus](#) or any other member of our [Litigation and Investigations](#) team.

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