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SEC Fines J.P. Morgan Securities for Recordkeeping Failures

"As technology changes, it's even more important that registrants ensure that their communications are appropriately recorded and are not conducted outside of official channels in order to avoid market oversight"

- SEC Chair Gary Gensler, December 17, 2021, Press Release

In December, J.P. Morgan Securities LLC ("JPMS") admitted to "widespread and longstanding" failures by the firm and its employees, to maintain and preserve written business-related communications made on employee's personal devices and agreed to pay $125 million to resolve SEC charges. Rule 204-2 under the Adviser's Act (the "Books and Records Rule") requires advisers to keep, among other records, all communications sent and received by supervised persons relating to securities business matters for at least five years. Furthermore, advisers must be able to provide required books and records promptly upon request by the SEC.

- What Happened: The SEC's order found that from January of 2018 through November of 2020, employees often discussed JPMS business matters on personal devices via text messages, WhatsApp messages, and personal emails while none of such communications were preserved by JPMS as required by federal securities laws. The failures were so widespread that even senior supervisors and managing directors responsible for implementing and enforcing JPMS' policies used their personal devices to communicate about the firm's securities business.

- The SEC fined JPMS $125 million, the largest record-keeping fine to date. The financial industry giant was also fined $75 million by the CFTC. JPMS agreed to hire a compliance consultant to conduct a review of the firm's compliance policies and procedures, training procedures, and an assessment of the surveillance programs of employee communications.

As a result of the findings in this investigation, the SEC has commenced additional investigations of record preservation practices at financial firms.

Advisers should ensure policies and procedures require employees to use only archived communication channels for business purposes, as text messages, instant messaging, personal emails, and videoconference chats on platforms such as Zoom are often difficult, or even impossible to archive due to technical limitations. Advisers should also ensure employees receive at least annual training on communications policies and procedures to help mitigate the risk of conducting securities related business on platforms that cannot be preserved or reviewed. Finally, advisers should periodically surveil communications archives to assist in detecting and mitigating prohibited practices among supervised persons.

About HighCamp Compliance

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