

**SEC / JonesTrading Settlement: Fined for Failing to Preserve Text /
Other Electronic Communications (November 2020)**

The recent settlement entered into by JonesTrading, a broker-dealer registered with the Securities and Exchange Commission (“SEC”), illustrates in a highly visible manner the risks that SEC-registered firms, including investment advisers and broker-dealers, incur by failing to retain text messages and other electronic communications relating to the registrant’s business.

The facts of the JonesTrading matter are straightforward. The firm restricted employees from conducting business over text message or on personal devices, and employees were required annually to attest to their compliance with those policy restrictions. In relation to a third-party subpoena that was served on JonesTrading, the SEC learned that certain of the firm’s employees had conducted firm business using at least one text-messaging application, and that both JonesTrading compliance staff and senior firm managers were aware of this fact (in fact, some of these persons had themselves used text messages for that purpose). Some of these personnel were also aware that the text messages, although relating to the firm’s business, were not retained within JonesTrading’s record-retention application. At the same time, no senior manager or compliance staff took any action to address this problem. The SEC learned of the gap in JonesTrading’s records and record-retention policies and procedures when the firm was unable to produce the requested texts. To settle the matter, JonesTrading agreed to pay a fine of \$100,000.

The order in this case makes the following points clear:

1. A text communication, depending on the substance of the communication, may be considered a business communication subject to Section 17(a) and Rule 17a-4 and therefore will have to be retained by the registrant;
2. A registrant should clearly communicate with its employees regarding the requirements of the firm’s record-retention requirements;
3. A registrant should clearly communicate that its policies and procedures apply to all associated persons of the broker-dealer, including compliance staff and senior managers;
4. Conduct that actually or potentially violates the securities laws and / or firm policies and procedures must be reviewed and promptly and appropriately addressed; and
5. Rule-violations may be identified by the SEC or FINRA in indirect ways, and not necessarily only through a routine examination of the broker-dealer (e.g., through a branch exam).

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