



THE COMPLIANCE COLLECTIVE

TEXTING TROUBLES - TACKLING THE MOUNTING LEGAL AND COMPLIANCE RISKS OF BUSINESS COMMUNICATIONS ON PERSONAL PHONES

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Who We Are



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The Compliance Collective

- This webinar is a part of our monthly webinar series, “The Compliance Collective”
- The webinar series is hosted by a team of cross-disciplinary Perkins Coie lawyers who provide a monthly overview and discussion forum on a critical hot topic in ethics and compliance. Each topic provides a look at emerging issues and offers creative solutions to potential compliance problems.
- ***The webinar is hosted at the same time each month: 3rd Thursday at 10:00 a.m. PT/12:00 p.m. CT/1:00 p.m. ET***
- ***Sign up on [our website](#) to receive invitations to our future webinars!***



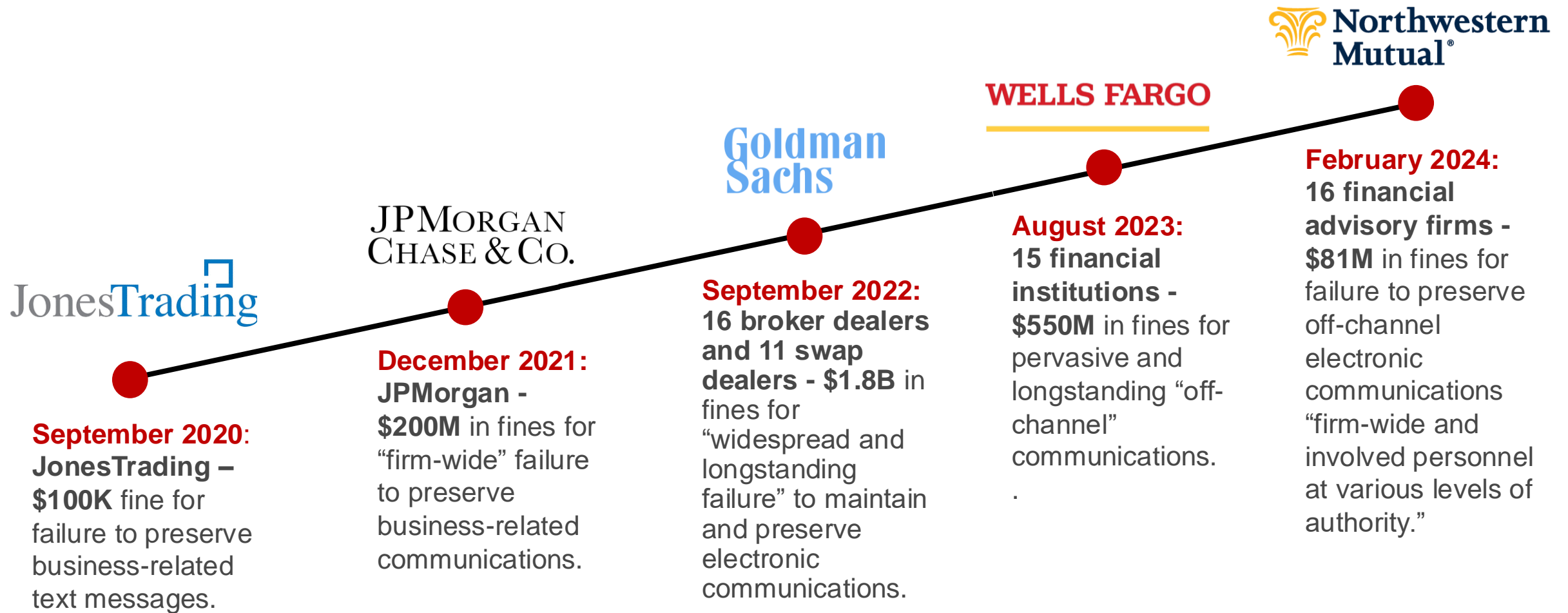
Agenda

- Off-channel communications / personal devices have become a hot topic in recent years
- Implications for cooperation in government investigations
- Implications and considerations for civil litigation
- Implications for employees
- Recommendations for navigating these challenges

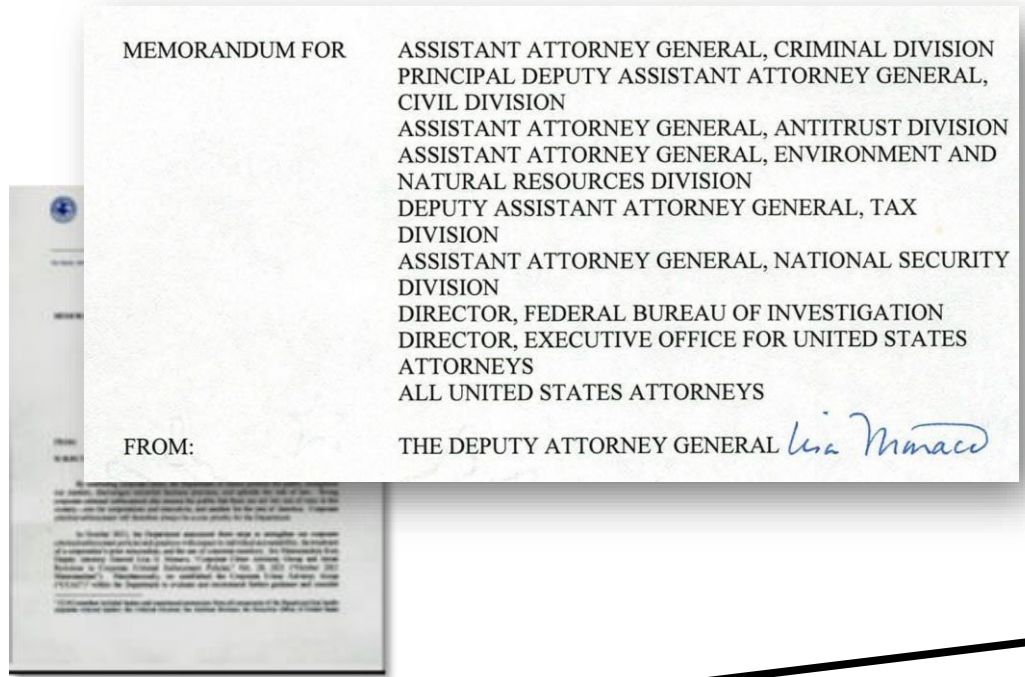


OFF-CHANNEL COMMUNICATIONS

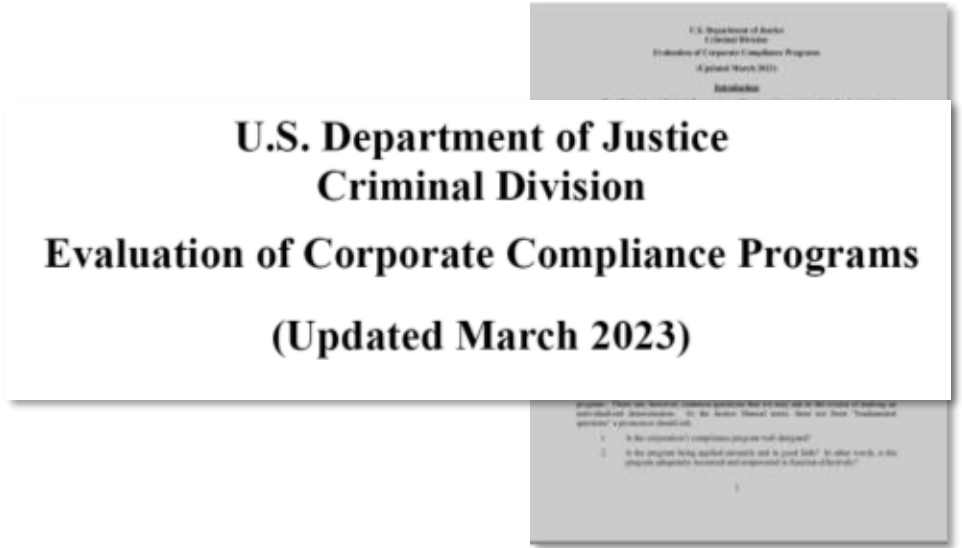
SEC/CFTC Sweep



DOJ Guidance



September 2022:
DOJ Monaco Memo



March 2023:
DOJ Evaluation of Corporate
Compliance Programs

Civil Litigation



- Federal Rule of Civil Procedure 34(a)
 - A party to a civil litigation may serve on any other party a request to produce electronically stored information “in the responding party’s possession, custody, or control”

What Constitutes “Control”?

- When is a party required to produce documents not in its possession?
 - Legal right test
 - Practical ability test
- Company may need to show that it requested the documents from former employees



Implications for Employees



- Company may need to collect employees' text messages to conduct a complete investigation and respond to document demands
- Personal phones contain private and potentially privileged communications
- Foreign privacy laws

Maintaining Employees' Privacy

- Custodian interviews
- Individual counsel where appropriate
- Targeted collections
- Filter for business contacts
- Destroy non-relevant and personal data



Key Takeaways



- Assess technological needs and solutions
- Maintain clear policies
- Train employees
- Monitor compliance
- Discipline violations

Questions?

