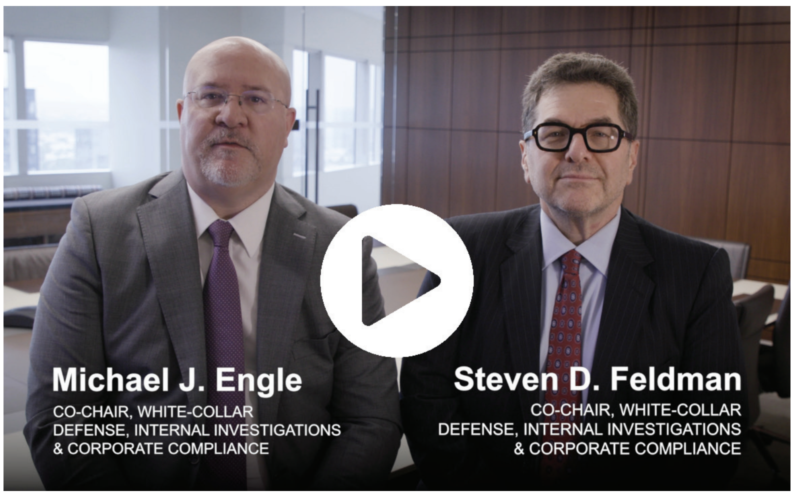
STRADLEY RONON

Stradley White-Collar Insider | October 19, 2023

Welcome to Stradley White-Collar Insider

Welcome Back!



Michael J. Engle and Steven D. Feldman welcome us back to Stradley White-Collar Insider.

Off-Platform & Ephemeral Messaging – Prepare for More Scrutiny

For financial services industry participants and registrants in particular, the focus by various U.S. federal government agencies on "off-platform" and ephemeral messaging has become unmistakable. Below, we discuss the risks associated with the use of messaging for business communications and offer several practical steps companies can take to limit the resulting regulatory and legal exposure.

Background

Over the last decade, we have seen instant messaging grow as a communication method, and migrate from personal use to a tool for business communications as well. For regulated entities, communications using instant messaging create risks that business communications are not preserved pursuant to the books and records provisions applicable to the financial services industry. These unpreserved messages have been given the name "off-platform," or at times, "off-channel" communications, because they occur outside the company's electronic business platform where communications are otherwise preserved. The use of these off-platform communications has been augmented in recent years by the growth of ephemeral messaging applications (apps), such as Signal. Ephemeral messaging is a form of digital communication defined by two characteristics: (1) the automated and timed deletion of a message's content for both sender and recipient; and (2) end-to-end encryption, which prevents third-party access. In addition to these security advantages, popular ephemeral messaging apps such as Signal, Telegram and WhatsApp are highly intuitive modes of communication and allow for the effective exchange of information without the need for significant IT infrastructure. **Read more...**

4C1.1 - U.S. Sentencing Guidelines

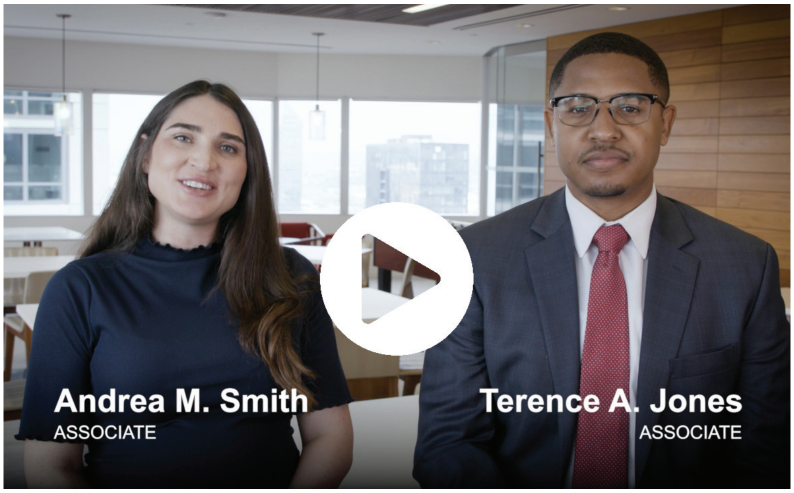
Michael J. Engle discusses 4C1.1 U.S. Sentencing Guidelines.

Cryptocurrency Enforcement: The Ever-Changing Landscape

Overview

The Securities & Exchange Commission (SEC), under current Chairman Gary Gensler, has launched an aggressive enforcement campaign against the cryptocurrency industry. This campaign is without clear rules, as the federal securities laws are silent with respect to cryptocurrency, and the SEC is relying solely upon the United States Supreme Court's decision in *SEC v. Howey Co.*, 328 U.S. 293 (1946) to allege that digital assets are investment contracts, a type of security required to be registered with the agency. Commonly referred to as "regulation by enforcement," the SEC is hoping that by suing cryptocurrency developers and various exchanges, the courts will determine that digital assets are securities and subject to the registration and anti-fraud provisions of the existing federal securities laws. Congress so far has failed to pass legislation relating to this industry, thus leaving a regulatory void, and in the absence of federal legislation, the SEC remains intent to classify cryptocurrency as a security through enforcement proceedings. The landscape of cryptocurrency enforcement is ever-changing and becoming more complex with every new lawsuit and court opinion. **Read more...**

Loss Issues in Federal Sentencing



Andrea M. Smith and Terence A. Jones discuss the loss issues in federal sentencing.

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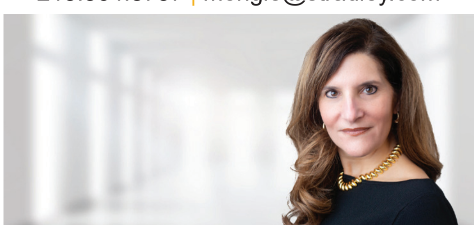

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