UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100697 / August 14, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6648 / August 14, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21993

In the Matter of **Hilltop Securities Inc.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Hilltop Securities Inc. ("Respondent" or "HTS").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("Offer") that the Commission has determined to accept. Respondent admits the facts set forth in Section III below, acknowledges that its conduct violated the federal securities laws, admits the Commission's jurisdiction over it and the subject matter of this proceeding, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. The federal securities laws impose recordkeeping requirements on broker-dealers and registered investment advisers to ensure that they responsibly discharge their crucial role in our markets. The Commission has long said that compliance with these requirements is essential to investor protection and the Commission's efforts to further its mandate of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

2. These proceedings arise out of HTS's identification—and self-report—of widespread failures of certain HTS personnel, including at senior levels, to adhere to certain of these essential requirements and Respondent's own policies. Using their personal devices, these personnel communicated both internally and externally by text messages, which were not an approved written communications platform ("off-channel communications").

3. After HTS's compliance staff identified business-related electronic communications on a non-approved platform on personal devices, HTS conducted an internal investigation and self-reported the facts to Commission staff. Respondent proactively identified key documents and facts, which assisted the Commission staff in efficiently investigating the conduct. Prior to contacting the Division of Enforcement, Respondent also undertook significant remedial measures relating to its recordkeeping practices, policies and procedures, and related supervisory practices.

4. From at least August 2019, HTS personnel sent and received off-channel communications that were records required to be maintained under Exchange Act Rule 17a-4(b)(4) related to HTS's broker-dealer business and with respect to HTS's investment advisory business, off-channel communications that were required to be maintained under Advisers Act Rule 204-2(a)(7) related to recommendations made or proposed to be made and advice given or proposed to be given. Respondent did not maintain or preserve the substantial majority of these written communications. Respondent's failures were firm-wide and involved personnel at various levels of authority. As a result, HTS violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, and Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

5. HTS's supervisors, who were responsible for supervising junior personnel, routinely communicated off-channel using their personal devices. In fact, senior managers and officers responsible for supervising junior personnel themselves failed to comply with Respondent's policies by communicating using non-HTS approved methods on their personal devices about HTS's broker-dealer and investment adviser businesses.

6. Respondent's widespread failure to implement a system reasonably expected to determine whether personnel were following its policies and procedures that prohibit such off-

---

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

channel communications led to its failure to reasonably supervise its personnel within the meaning of Section 15(b)(4)(E) of the Exchange Act and Section 203(e)(6) of the Advisers Act.

7. During the time period that HTS failed to maintain and preserve off-channel communications that its personnel sent and received related to the broker-dealer and investment adviser businesses, HTS received and responded to Commission subpoenas for documents and/or records requests in numerous Commission investigations. As a result, HTS's recordkeeping failures likely impacted the Commission's ability to carry out its regulatory functions and investigate violations of the federal securities laws across these investigations.

8. After HTS initiated a review of its recordkeeping efforts, HTS identified failures and self-reported its conduct, and further enhanced its ongoing programs of remediation. As set forth in the Undertakings below, HTS will retain an independent compliance consultant to review and assess HTS's remedial steps relating to its recordkeeping practices, policies and procedures, related supervisory practices, and employment actions.

Respondent

9. **Hilltop Securities Inc.** is a Delaware corporation with its principal office in Dallas, Texas, and is registered with the Commission as a broker-dealer and investment adviser. It is a wholly owned subsidiary of Hilltop Securities Holdings, LLC, a Delaware limited liability company.

Recordkeeping Requirements under the Exchange and Advisers Acts

10. Section 17(a)(1) of the Exchange Act and Section 204 of the Advisers Act authorize the Commission to issue rules requiring, respectively, broker-dealers and investment advisers to make and keep for prescribed periods, and furnish copies of, such records as necessary or appropriate in the public interest, for the protection of investors or, with respect to the Exchange Act, otherwise in furtherance of the purposes of the Exchange Act.

11. The Commission adopted Rule 17a-4 under the Exchange Act and Rule 204-2 under the Advisers Act pursuant to this authority. These rules specify the manner and length of time that the records created in accordance with Commission rules, and certain other records produced by broker-dealers or investment advisers, must be maintained and produced promptly to Commission representatives.

12. The rules adopted under Section 17(a)(1) of the Exchange Act, including Rule 17a-4(b)(4), require that broker-dealers preserve in an easily accessible place, originals of all communications received, and copies of all communications sent, relating to the broker-dealer's business as such. These rules impose minimum recordkeeping requirements that are based on standards a prudent broker-dealer should follow in the normal course of business.

13. The Commission previously has stated that these and other recordkeeping requirements "are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial

responsibility standards." Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f), 17 C.F.R. Part 241, Exchange Act Rel. No. 44238 (May 1, 2001).

14. The rules adopted under Advisers Act Section 204, including Advisers Act Rule 204-2(a)(7), require that investment advisers preserve in an easily accessible place originals of all communications received and copies of all written communications sent relating to, among other things: (a) any recommendation made or proposed to be made and any advice given or proposed to be given; (b) any receipt, disbursement or delivery of funds or securities; (c) the placing or execution of any order to purchase or sell any security; or (d) predecessor performance and the performance or rate of return of any or all managed accounts, portfolios, or securities recommendations.

HTS's Policies and Procedures

15. HTS maintained certain policies and procedures designed to ensure the retention of business-related records, including electronic communications, in compliance with the relevant recordkeeping provisions.

16. HTS personnel were advised that the use of unapproved electronic communications methods, including on their personal devices, was not permitted, and they should not use personal email, chats or text messaging applications for business purposes, or forward work-related communications to their personal devices. Starting in October 2019, HTS personnel were advised that they were required to use an approved on-channel platform for business-related communications on any personal device. In January 2021, HTS also made corporate mobile devices available to members of its Executive Committee.

17. Messages sent through HTS-approved communications methods were monitored, subject to review, and, when appropriate, archived. Messages sent through unapproved communications methods, such as text messaging or, after 2019, unapproved applications on personal devices, were not monitored, subject to review or archived.

18. HTS's policies were designed to address supervisors' supervision of personnel training in HTS's communications policies and adherence to HTS's books and recordkeeping requirements. Supervisory policies notified personnel that electronic communications were subject to surveillance by HTS. HTS also had procedures for all personnel, including supervisors, requiring annual self-attestations of compliance.

19. HTS, however, failed to implement systems reasonably expected to determine that all personnel, including supervisors, were following HTS's policies. While permitting personnel to use approved communications methods, including, after 2019, an approved platform on personal phones, for business communications, HTS failed to implement sufficient monitoring to ensure that its recordkeeping and communications policies were being followed.

HTS's Recordkeeping Failures

20. In September 2021, the Commission staff commenced a risk-based initiative to investigate whether broker-dealers were properly retaining business-related messages sent and received on personal devices. In March 2024, HTS voluntarily contacted the staff regarding certain off-channel communications that it had identified related to the business of HTS. HTS cooperated with the staff's investigation by proactively gathering communications from the personal devices of its personnel and responding to the staff's requests for additional information. As reported to the Commission staff, HTS personnel who had engaged in the use of off-channel communications included senior managers and officers across the firm.

21. HTS alerted the Commission staff to numerous off-channel communications at various seniority levels of HTS's broker-dealer and investment adviser businesses. Respondent collected data from a sampling of broker-dealer and investment adviser personnel at various seniority levels and found that most had engaged in at least some level of off-channel communications since August 2019. Overall, these personnel sent and received numerous off-channel communications, involving other HTS personnel and external contacts in the securities industry. As disclosed to the Commission staff, within HTS, a number of senior leaders participated in off-channel communications.

22. From at least August 2019, HTS personnel sent and received off-channel communications that concerned the business of the broker-dealer.

23. For example, from June to December 2022, a Hilltop department head exchanged text messages with a Hilltop managing director regarding the terms and pricing of certain transactions. These messages related to HTS's broker-dealer business as such.

24. From at least August 2019, HTS investment adviser personnel sent and received off-channel communications subject to the record-keeping requirements of Advisers Act Rule 204-2.

25. For example, in October 2022, a Hilltop department head exchanged off-channel communications with a potential advisory client regarding a proposed roll-over investment. These messages related to, among other things, investment advice given or proposed to be given to an HTS investment advisory client.

HTS's Failure to Preserve Required Records Potentially Compromised and Delayed Commission Matters

26. Between August 2019 and the present, HTS received and responded to Commission subpoenas for documents and/or records requests in numerous Commission investigations. By failing to maintain and preserve required records relating to its business, HTS likely deprived the Commission of off-channel communications in various investigations.

HTS's Violations and Failure to Supervise

27. As a result of the conduct described above, from at least August 2019 through the date of this Order, HTS willfully[2] violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder.

28. As a result of the conduct described above, from at least August 2019 through the date of this Order, HTS willfully violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

29. As a result of the conduct described above, HTS failed reasonably to supervise its personnel with a view to preventing or detecting certain of its personnel's aiding and abetting violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, within the meaning of Section 15(b)(4)(E) of the Exchange Act.

30. As a result of the conduct described above, HTS failed reasonably to supervise its personnel with a view to preventing or detecting certain of its personnel's aiding and abetting violations of Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder, within the meaning of Section 203(e)(6) of the Advisers Act.

HTS's Remedial and Cooperation Efforts

31. In determining to accept the Offer, the Commission considered HTS's self-report, cooperation afforded to Commission staff, and remediation. After identifying off-channel communications, Respondent conducted an internal investigation and self-reported the facts to Commission staff. Prior to approaching Commission staff, since at least August 2019, HTS had begun a program of remediation, which included strengthening its policies and procedures by making investments in new technologies to improve surveillance and retention efforts; increasing the number of trainings and sending firm-wide reminders that emphasized the importance of complying with recordkeeping obligations; making an on-channel texting platform available in October 2019; and providing corporate mobile devices to its Executive Committee members in January 2021. HTS also took proactive steps to collect and preserve off-channel communications.

---

[2] "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers Act "'means no more than that the person charged with the duty knows what he is doing.'" *See Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir 2000) (quoting *Hughes v. SEC*, 174 F.2d *969*, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

Undertakings

32. Prior to this action, HTS enhanced its policies and procedures, and increased training concerning the use of approved communications methods, including on personal devices, and began implementing significant changes to the technology available to its personnel. In addition, HTS have undertaken to:

33. Independent Compliance Consultant.

a. HTS shall retain, within thirty (30) days of the entry of this Order, the services of an independent compliance consultant ("Compliance Consultant") that is not unacceptable to the Commission staff. The Compliance Consultant's compensation and expenses shall be borne exclusively by HTS.

b. HTS will oversee the work of the Compliance Consultant.

c. HTS shall provide to the Commission staff, within sixty (60) days of the entry of this Order, a copy of the engagement letter detailing the Compliance Consultant's responsibilities, which shall include a comprehensive compliance review as described below. HTS shall require that, within ninety (90) days of the date of the engagement letter, the Compliance Consultant conduct:

i. A comprehensive review of HTS's supervisory, compliance, and other policies and procedures designed to ensure that HTS's electronic communications, including those found on personal electronic devices, including without limitation, cellular phones ("Personal Devices"), are preserved in accordance with the requirements of the federal securities laws.

ii. A comprehensive review of training conducted by HTS to ensure personnel are complying with the requirements regarding the preservation of electronic communications, including those found on Personal Devices, in accordance with the requirements of the federal securities laws, including by ensuring that HTS personnel certify in writing on a quarterly basis that they are complying with preservation requirements.

iii. An assessment of the surveillance program measures implemented by HTS to ensure compliance, on an ongoing basis, with the requirements found in the federal securities laws to preserve electronic communications, including those found on Personal Devices.

iv. An assessment of the technological solutions that HTS has begun implementing to meet the record retention requirements of the federal securities laws, including an assessment of the likelihood that HTS personnel will use the technological solutions going forward and a review of the measures employed by HTS to track personnel usage of new technological solutions.

v. An assessment of the measures used by HTS to prevent the use of unauthorized communications methods for business communications by personnel. This assessment should include, but not be limited to, a review of HTS's policies and procedures to ascertain if they provide for any significant technology and/or behavioral restrictions that help prevent the risk of the use of unapproved communications methods on Personal Devices (e.g., trading floor restrictions).

vi. A review of HTS's electronic communications surveillance routines to ensure that electronic communications through approved communications methods found on Personal Devices are incorporated into HTS's overall communications surveillance program.

vii. A comprehensive review of the framework adopted by HTS to address instances of non-compliance by HTS personnel with HTS's policies and procedures concerning the use of Personal Devices to communicate about HTS business in the past. This review shall include a survey of how HTS determined which personnel failed to comply with HTS's policies and procedures, the corrective action carried out, an evaluation of who violated policies and why, what penalties were imposed, and whether penalties were handed out consistently across business lines and seniority levels.

d. HTS shall require that, within forty-five (45) days after completion of the review set forth in sub-paragraphs 33.c.i. through c.vii. above, the Compliance Consultant shall submit a detailed written report of its findings to HTS and to the Commission staff (the "Report"). HTS shall require that the Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Compliance Consultant's recommendations for changes in or improvements to HTS's policies and procedures, and a summary of the plan for implementing the recommended changes in or improvements to HTS's policies and procedures.

e. HTS shall adopt all recommendations contained in the Report within ninety (90) days of the date of the Report; provided, however, that within forty-five (45) days after the date of the Report, HTS shall advise the Compliance Consultant and the Commission staff in writing of any recommendations that HTS considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that HTS considers unduly burdensome, impractical, or inappropriate, HTS need not adopt such recommendation at that time, but shall propose in writing an alternative policy, procedure, or disclosure designed to achieve the same objective or purpose.

f. As to any recommendation concerning HTS's policies or procedures on which HTS and the Compliance Consultant do not agree, HTS and the Compliance Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by HTS and the Compliance Consultant, HTS shall require that the Compliance

Consultant inform HTS and the Commission staff in writing of the Compliance Consultant's final determination concerning any recommendation that HTS considers to be unduly burdensome, impractical, or inappropriate. HTS shall abide by the determinations of the Compliance Consultant and, within sixty (60) days after final agreement between HTS and the Compliance Consultant or final determination by the Compliance Consultant, whichever occurs first, HTS shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.

g. HTS shall cooperate fully with the Compliance Consultant and shall provide the Compliance Consultant with access to such of HTS's files, books, records, and personnel as are reasonably requested by the Compliance Consultant for review.

h. HTS shall not have the authority to terminate the Compliance Consultant or substitute another compliance consultant for the initial Compliance Consultant, without the prior written approval of the Commission staff. HTS shall compensate the Compliance Consultant and persons engaged to assist the Compliance Consultant for services rendered under this Order at its reasonable and customary rates.

i. For the period of engagement and for a period of two years from completion of the engagement, HTS shall not (i) retain the Compliance Consultant for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the Compliance Consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the Compliance Consultant's present or former affiliates, employers, directors, officers, employees, or agents acting in their capacity as such.

j. The Report by the Compliance Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the Report could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the Report and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as otherwise required by law.

34. One-Year Evaluation. HTS shall require the Compliance Consultant to assess HTS's program for the preservation, as required under the federal securities laws, of electronic communications, including those found on Personal Devices, commencing one year after submitting the Report required by Paragraph 33.d above. HTS shall require this review to evaluate HTS's progress in the areas described in Paragraph 33.c.i through 33.c.vii above. After this review, HTS shall require the Compliance Consultant to submit a report (the "One Year Report") to HTS, and the Commission staff and shall ensure that the One Year Report includes an updated assessment of HTS's policies and procedures with regard to the preservation of

electronic communications (including those found on Personal Devices), training, surveillance programs, and technological solutions implemented in the prior year period.

35. Reporting Discipline Imposed. For two years following the entry of this Order, HTS shall notify the Commission staff as follows upon the imposition of any discipline imposed by HTS, including, but not limited to, written warnings, loss of any pay, bonus, or incentive compensation, or the termination of employment, with respect to any personnel found to have violated HTS's policies and procedures concerning the preservation of electronic communications, including those found on Personal Devices, at least 48 hours before the filing of a Form U-5, or within ten (10) days of the imposition of other discipline.

36. Internal Audit. In addition to the Compliance Consultant's review and issuance of the One Year Report, HTS will also have its Internal Audit function conduct a separate audit(s) to assess HTS's progress in the areas described in Paragraph 33.c.i through 33.c.vii above. After completion of this audit(s), HTS shall ensure that Internal Audit submits a report to HTS and to the Commission staff.

37. Recordkeeping. HTS shall preserve for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of compliance with these undertakings.

38. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

39. Certification. HTS shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certifications and supporting material shall be submitted to Amy S. Cotter, Assistant Regional Director, Division of Enforcement, Chicago Regional Office, 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois 60604, or such other person as the Commission staff may request, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder.

B. Respondent cease and desist from committing or causing any violations and any future violations of Section 204 of the Advisers Act and Rule 204-2 thereunder.

C. Respondent is censured.

D. Respondent shall comply with the undertakings enumerated in paragraphs 33 to 39 above.

E. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $1,600,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying HTS as the Respondent in this proceeding, and the file number of this proceeding; a copy of the cover letter and check or money order must be sent to Amy S. Cotter, Assistant Regional Director, Division of Enforcement, Chicago Regional Office, 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois 60604.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary