

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98078 / August 8, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21554

In the Matter of

Moelis & Company LLC,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, 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”) against Moelis & Company LLC (“Respondent” or “Moelis”).

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 these proceedings, 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, 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 finds¹ that:

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.

Summary

1. The federal securities laws impose recordkeeping requirements on broker-dealers 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 the widespread and longstanding failure of Moelis employees throughout Moelis, including at senior levels, to adhere to certain of these essential requirements and Moelis' own policies. Using their personal devices, these employees communicated both internally and externally by personal text messages, or other text messaging platforms such as WhatsApp ("off-channel communications").

3. From at least January 2019, Moelis employees sent and received off-channel communications that related to the business of the broker-dealer operated by Moelis. Respondent did not maintain or preserve the substantial majority of these written communications. Respondent's failure was firm-wide, and involved employees at all levels of authority. As a result, Moelis violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder.

4. Moelis' supervisors, who were responsible for supervising junior employees, routinely communicated off-channel using their personal devices. In fact, senior executives and managing directors responsible for supervising junior employees themselves failed to comply with Moelis' policies by communicating using non-Moelis approved methods on their personal devices about Moelis' broker-dealer business.

5. Moelis' widespread failure to implement its policies and procedures that prohibit such communications led to its failure to reasonably supervise its employees within the meaning of Section 15(b)(4)(E) of the Exchange Act.

6. Commission staff uncovered Moelis' misconduct after commencing a risk-based initiative to investigate the use of off-channel and unpreserved communications at broker-dealers. Moelis initiated a review of its recordkeeping failures and began a program of remediation. As set forth in the Undertakings below, Moelis will retain an independent compliance consultant to review and assess Moelis' remedial steps relating to its recordkeeping practices, policies and procedures, related supervisory practices, and employment actions.

Respondent

7. Moelis is a Delaware limited liability company with its principal office in New York, and is registered with the Commission as a broker-dealer. It is an indirect subsidiary of Moelis & Company, a global financial services firm incorporated in Delaware and headquartered in New York.

Recordkeeping Requirements under the Exchange Act

8. Section 17(a)(1) of the Exchange Act authorizes the Commission to issue rules requiring broker-dealers 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 otherwise in furtherance of the purposes of the Exchange Act.

9. The Commission adopted Rule 17a-4 pursuant to this authority. Rule 17a-4 specifies the manner and length of time that the records created in accordance with other Commission rules, and certain other records produced by broker-dealers, must be maintained and produced promptly to Commission representatives. 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 Moelis' 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.

10. 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).

Moelis' Policies and Procedures

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

12. Moelis employees were regularly trained 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.

13. Messages sent through firm-approved communications methods were monitored, subject to review, and archived. Messages sent through unapproved communications methods, such as WhatsApp and other unapproved applications on personal devices, were not monitored, subject to review or archived.

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

15. Moelis, however, failed to implement a system of follow-up and review to determine that supervisors were reasonably following Moelis' policies. While permitting employees to use approved communications methods, including on personal phones, for business communications, Moelis failed to implement sufficient monitoring to assure that its recordkeeping and communications policies were being followed.

Moelis' Recordkeeping Failures Across Its Brokerage Business

16. 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. Moelis cooperated with the investigation by voluntarily interviewing a sampling of senior personnel, and gathering and reviewing messages found on the individuals' personal devices. These personnel included senior leadership, and managing directors from various business units.

17. The Commission staff's investigation uncovered pervasive off-channel communications at all seniority levels of Moelis' broker-dealer. The investigation determined that nearly all broker-dealer personnel sampled had engaged in at least some level of off-channel communications. Overall, these personnel sent and received numerous off-channel communications, involving other Moelis personnel, Moelis' broker-dealer clients, and other participants in the securities industry. Within Moelis, significant numbers of personnel, including senior executives and managing directors participated in off-channel communications.

18. From at least January 2019, Moelis personnel sent and received off-channel messages that concerned the broker-dealer's businesses.

19. For example, from October 2021 to May 2022, a senior executive of Moelis exchanged numerous off-channel business-related messages with about thirty (30) Moelis colleagues, as well as additional investment banking clients, and personnel at other financial services firms. Within Moelis, the senior executive communicated off-channel with other senior executives and junior employees under his supervision.

20. In addition, from October 2021 to May 2022, another senior executive of Moelis exchanged numerous off-channel business-related messages with Moelis colleagues, about twenty-eight (28) clients and other market participants, and personnel at other financial services firms. Within Moelis, the senior executive communicated off-channel with over thirty (30) Moelis employees, including junior employees under his supervision.

Moelis' Violations and Failure to Supervise

21. As a result of the conduct described above, from at least January 2019 through the date of this Order, Respondent willfully² violated Section 17(a) of the Exchange Act and Rule

² "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act "means no more than that the person charged with the duty knows what he is doing." *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)).

17a-4(b)(4) thereunder, which require broker-dealers to preserve for at least three years originals of all communications received and copies of all communications sent relating to its business as such.

22. As a result of the conduct described above, Respondent failed reasonably to supervise its employees with a view to preventing or detecting certain of its employees' 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.

Moelis' Remedial Efforts

23. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Moelis and cooperation afforded the Commission staff.

24. Moelis has taken significant remedial steps to reduce the risk of the misconduct recurring. Among other things, in 2022, prior to being contacted by Commission staff, Moelis made investments in new technologies to facilitate compliant communications by issuing new firm-owned mobile devices to all registered representatives which capture text and WhatsApp messages.

Undertakings

25. Prior to this action, Respondent, enhanced its policies and procedures, and increased training concerning the use of approved communications methods, including on personal devices, and implemented significant changes to the technology available to employees. In addition, Respondent has undertaken to:

26. **Independent Compliance Consultant.**

a. Moelis 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 Moelis.

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

c. Moelis 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. Moelis shall require that, within ninety (90) days of the date of the engagement letter, the Compliance Consultant conduct:

i. A comprehensive review of Moelis' supervisory, compliance, and other policies and procedures designed to ensure that Moelis' 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 Moelis 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 Moelis 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 Moelis 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 Moelis has begun implementing to meet the record retention requirements of the federal securities laws, including an assessment of the likelihood that Moelis personnel will use the technological solutions going forward and a review of the measures employed by Moelis to track employee usage of new technological solutions.

v. An assessment of the measures used by Moelis to prevent the use of unauthorized communications methods for business communications by employees. This assessment should include, but not be limited to, a review of Moelis'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.

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

vii. A comprehensive review of the framework adopted by Moelis to address instances of non-compliance by Moelis employees with Moelis' policies and procedures concerning the use of Personal Devices to communicate about Moelis business in the past. This review shall include a survey of how Moelis determined which employees failed to comply with Moelis 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. Moelis shall require that, within forty-five (45) days after completion of the review set forth in sub-paragraphs c.i. through c.vii. above, the Compliance Consultant shall submit a detailed written report of its findings to Moelis and to the Commission staff (the "Report"). Moelis 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 Moelis' policies and procedures, and a summary of the plan for implementing the recommended changes in or improvements to Moelis' policies and procedures.

e. Moelis 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 Report, Moelis shall advise the Compliance Consultant and the Commission staff in writing of any recommendations that Moelis considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Moelis considers unduly burdensome, impractical, or inappropriate, Moelis 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 Moelis' policies or procedures on which Moelis and the Compliance Consultant do not agree, Moelis 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 Moelis and the Compliance Consultant, Moelis shall require that the Compliance Consultant inform Moelis and the Commission staff in writing of the Compliance Consultant's final determination concerning any recommendation that Moelis considers to be unduly burdensome, impractical, or inappropriate. Moelis shall abide by the determinations of the Compliance Consultant and, within sixty (60) days after final agreement between Moelis and the Compliance Consultant or final determination by the Compliance Consultant, whichever occurs first, Moelis shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.

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

h. Moelis 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. Moelis shall compensate the Compliance Consultant and persons engaged to assist the Compliance Consultant for services rendered under this Order at their reasonable and customary rates.

i. For the period of engagement and for a period of two years from completion of the engagement, Respondent 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) is otherwise required by law.

27. One-Year Evaluation. Moelis shall require the Compliance Consultant to assess Moelis' 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 26.d above. Moelis shall require this review to evaluate Moelis' progress in the areas described in Paragraph 26.c.i-vii above. After this review, Moelis shall require the Compliance Consultant to submit a report (the "One Year Report") to Moelis and the Commission staff and shall ensure that the One Year Report includes an updated assessment of Moelis' 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.

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

29. Recordkeeping. Moelis 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.

30. 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.

31. Certification. Moelis 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 certification and supporting material shall be submitted to Alison R. Levine, Assistant Regional Director, Division of Enforcement, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY, 10004-2616, 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, 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 is censured.

C. Respondent shall comply with the undertakings enumerated in paragraphs 25 to 31 above.

D. Respondent shall within 360 days of the entry of this Order, pay civil penalties of \$10,000,000 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).

Payment shall be made in the following installments:

1. Due within 14 days of the entry of this Order: \$2,500,000;
2. Due within 90 days of the entry of this Order: \$2,500,000;
3. Due within 180 days of the entry of this Order: \$2,500,000; and
4. The remainder within 360 days after the entry of this Order.

Payment shall be applied first to post-order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

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 Moelis as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Thomas P. Smith, Jr., Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, New York 10004-2616.

E. 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