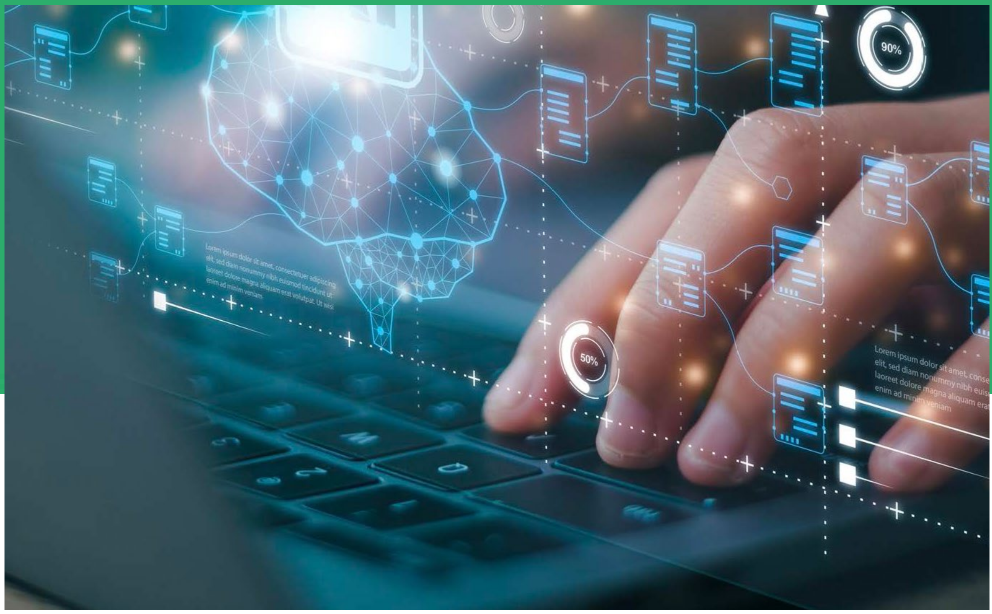



# COMPLIANCE CONSIDERATIONS
# AI NOTETAKERS

THETALAKE

CONFIDENTIAL

# SUBJECT

**This brief sets out the compliance considerations around the capture, retention, and supervision of communications that financial services firms need to consider when using artificial intelligence (AI) notetakers**. It explains the features and capabilities of the tools which generate digital communications, encompassing text and some visual content. Additionally, it outlines the applicable regulations in the U.S., UK and Canada for capturing and supervising communications, depending on how the AI-created content is to be used, its content and whether user populations fall within regulated or non-regulated roles. Finally, we analyze a few use cases for AI notetakers and consider how regulatory compliance mandates apply to those scenarios.

# AI NOTETAKERS & HOW THEY ARE USED

AI notetaker tools are becoming ubiquitous amongst the providers of unified communication and collaboration (UCC) tools - Zoom developed Meeting Summary with AI Companion together with 'PatternAI' which is a 'personal AI Notetaker for Zoom calls' and Microsoft created its Copilot tool. While the likes of AI Companion and Copilot have a range of functionalities, it is the AI notetaker functionality which creates summaries. An AI notetaker will automatically record, transcribe and generate a summary of the call or meeting highlighting who said what together with an overview of the contents of the conversation. The format and contents of the summary may vary from platform to platform. AI notetakers are not "bots" and meeting or call participants do not interact with AI notetakers during meetings. AI notetaker tools are seen as significant productivity enhancers as they can save time and improve efficiency of employees.

The key factors for determining the applicability of regulatory recordkeeping requirements for the use of AI notetakers are the types of issues and decisions processed by the AI notetakers and the identities and regulatory status of external parties with whom the AI notetaker summaries are shared. Another factor that may impact the regulatory requirements and associated compliance considerations of the use of AI notetakers is whether the AI-generated content created is to be used by regulated individuals in the 'front office', non-regulated users in the 'back office' or a combination. These are considered in section 5.

To illustrate, here are some real-world examples of how the tools are used in financial services organizations.

**EXAMPLE A:**

### Non-regulated content/non-regulated user

A firm has an active mentoring program in place to enable junior employees to network and benefit from the skills and experience of senior staff. A junior, non-regulated, employee uses an AI notetaker to summarize a call with her mentor to ensure that all the key learnings are tracked and can be actioned.

**EXAMPLE B:**

## Regulated content/mix of regulated and non-regulated users

An ESMA-regulated firm has an extensive project underway to implement significant regulatory change. The project team includes non-regulated (back office) employees such as IT and legal together with regulated middle and front office staff to ensure all aspects of the regulatory changes are robustly addressed. An AI notetaker is deployed in quarterly firm board meetings as a means of creating meeting minutes capturing the progress made, actions taken, decisions made and to track any outstanding issues.

**EXAMPLE C:**

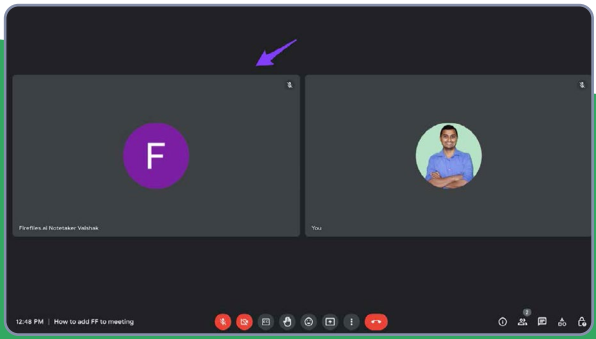
## Regulated content/regulated users

A FINRA-regulated firm uses AI notetaking to improve the productivity of their financial advisers. As a matter of course all calls between financial advisers and clients are summarized by the notetaker saving the financial adviser at least 20 minutes after each call. The adviser sends the post-call summary to each client to summarize the information shared, disclaimers given and decisions made/actions to be taken.

# THE KEY CAPABILITIES OF AI NOTETAKERS THAT GENERATE ELECTRONIC COMMUNICATIONS

Understanding how and where eComms are used is critical for firms to be able to capture and supervise them in accordance with regulatory obligations. An AI notetaker uses generative AI models to synthesize longer messages into short summaries that include key information about the text - specifically an AI notetaker uses the transcript from a conversation as the text input to generate a post meeting summary of what was discussed, as well as identify key action items based on the context of the call.

Most AI note-taking apps require a full meeting or call recording to generate a summary. However, certain tools can generate a meeting summary from a temporary transcript, which is discarded at the end of each call or meeting, even when meetings or calls themselves are not recorded. The format of the output document from the AI notetaker can be chosen either by selecting a template or creating a customized look and feel. Some AI notetakers automatically capture and insert any relevant slides from a presentation that was displayed during a meeting into the meeting notes providing enhanced context for the content of a discussion. AI notetakers support summarization of conversations across multiple languages. So, for example, a conversation in Spanish, Japanese, or Arabic will be analyzed and summarized in that language.


*AI Assistant tools can join web meetings as attendees or be used as a plug-in to record, transcribe, and summarize meeting info.* ***These outputs are considered eComms and need to be compliantly managed.***

# KEY REGULATIONS THAT APPLY TO THE CAPTURE AND SUPERVISION OF Q&A AND POLLING

## Capture and retention requirements

The applicable regulations for capturing, retaining and supervising communications are set out by regulators across the U.S., UK and Canada including the Securities & Exchange Commission (SEC), Financial Industry Regulatory Authority (FINRA), Commodity Futures Trading Commission (CFTC) and National Futures Association (NFA) in the US; the Financial Conduct Authority (FCA) in the UK and the Canadian Investment Regulatory Organization (CIRO).

The precise regulatory requirements around AI notetaker created content are an emerging area of regulation and not yet fully prescribed. The European Securities and Markets Authority's public statement on the use of AI in the provision of retail investment services states that "Importantly, firms' decisions remain the responsibility of management bodies, irrespective of whether those decisions are taken by people or AI". So if senior managers rely on AI notetaker generated summaries in their decision making regarding the business of the firm or investment decisions regarding customers, that content will remain the responsibility of the managers and will fall to be regulated. There could be interpretative leeway in how widely "firms' decisions" are defined and therefore the scope of applicable regulation, but as ESMA has a principles-based approach firms would be well advised to adopt a broad interpretation of the kinds of "decisions" that ESMA would consider in-bounds for regulatory capture and oversight. ESMA is clear however that key to the managerial responsibility is the requirement to put the customer first - "Central to the use of AI in investment services is the unwavering commitment to act in clients' best interest, an overarching requirement which applies irrespective of the tools that the firm decides to adopt in the provision of services."

In Regulatory Notice 24-09, FINRA defined large language models as "a type of Gen AI that use deep learning techniques and large data sets of language to identify, summarize, predict and generate new text-based content" - a definition encompassing AI notetakers. FINRA went on to state that "FINRA intends for its rules and guidance to be technologically neutral and to function dynamically with evolutions in technology and member firms' processes. The rules apply when member firms use AI, including Gen AI or similar technologies, in the course of their business, just as they apply when member firms use any other technology or tool."

Additionally, FINRA's Advertising Regulation FAQs outline specific obligations for communications created by AI, like notetakers:

> "Firms are responsible for their communications, regardless of whether they are generated by a human or AI technology. Accordingly, firms must ensure that AI-generated communications they distribute or make available comply with applicable federal securities laws and regulations and FINRA rules. This obligation includes compliance with supervision requirements, applicable FINRA and SEC recordkeeping requirements, as well as the applicable content standards in FINRA Rules 2210 and 2220 (and for Funding Portals, Rule 200(c)). These content standards generally require that communications be fair and balanced and prohibit the inclusion of false, misleading, promissory or exaggerated statements or claims."

The FINRA supervision requirements are to ‘establish, maintain, and enforce written procedures’ that are reasonably designed to achieve compliance with applicable securities laws and regulations. FINRA Rule 3110(b)(4) requires firms to review incoming and outgoing written (including electronic) correspondence and internal communications. Rules 3110.06 -.09 cover the risk-based review of correspondence and internal communications and the need to evidence the review.

Other requirements which could, depending on the business or customer communication use of the AI notetaker generated content, be applicable include the SEC’s 17a-4 and 204-2, FINRA’s 2210 and 4511, the FCA’s SYSC 10A.1.6, and CFTC Regulations 23.202 and 1.35 all of which mandate the capture and retention of written electronic communications. Any regulated AI notetaker created content will need to be retained under the requirements which vary by regulator. Retention periods are three years under rule 17a-4 and five years under the Investment Advisers Act rule 204(a)(7) and CFTC Regulation §1.31. The FCA (in line with ESMA) specifies record retention periods of five years and up to seven.

Other supervisory requirements include CFTC Regulation 23.602(a) and 166.3 together with NFA Rule 2-9 all requiring ‘diligent’ supervision. Similarly CIRO rule 3900 et seq requires a firm to implement a supervisory system that provides ‘reasonable assurance’. In SYSC 6.1 the FCA requires the content of electronic communications to be reviewed for compliance in line with the nature of the communication and for that review to be evidenced.

# INTERPRETATIONS OF THE RULES AND APPLICATION TO THE USE CASES

To illustrate how the recordkeeping and supervision rules apply in practice we can consider the scenarios outlined in section 2. These include regulated and non-regulated content together with regulated and non-regulated users, and the compliance approaches and best practices therefore differ for these populations.

**EXAMPLE A:**

## Non-regulated content/non-regulated user

In the scenario of using an AI notetaker to capture and document an internal meeting between a junior employee and her mentor, the resulting summarized notes are kept by the junior employee for her own personal use. In this instance, there is no regulatory requirement regarding either the retention or supervision of the notes taken.

**EXAMPLE B:**

## Regulated content/mix of regulated and non-regulated users

Where the ESMA-regulated firm is using an AI notetaker to document and track and evidence of board meetings related to a regulatory change project, the summaries created–which essentially operate as the minutes of the meetings–should be retained as part of evidencing the governance and decision making of the firm. The importance of these AI notetaker generated board meeting minutes rise to the level of business “decisions” of the firm triggering the capture and oversight requirements articulated by ESMA outlined in the public statements. In terms of recordkeeping, the records should be kept for a minimum of five years (and up to seven at the request of a regulator) though firms would be well advised to keep the summaries for the lifetime of the project including any post implementation review and snagging (if longer than 5 years).

**EXAMPLE C:**

## Regulated content/regulated users

A FINRA-regulated firm uses AI notetaking to improve the productivity of their financial advisers. As a matter of course all calls between financial advisers and clients are summarized by the notetaker saving the financial adviser at least 20 minutes after each call. The adviser sends the post-call summary to each client to summarize the information shared, disclaimers given and decisions made/actions to be taken.

**Learn More** | Visit: **ThetaLake.com/integrations**

## ABOUT THETA LAKE

Theta Lake's multi-award-winning product suite provides patented compliance and security for modern collaboration platforms, enabling limitless integrations to unify the capture of any UCC platform across all channels. Major integrations include Zoom, RingCentral, Microsoft Teams, Webex by Cisco, Slack, Asana, Movius, Mural, and more. Theta Lake can capture, act as a unified archive connector across modalities for pre-existing archives of record, and/or act as a completely unified archive for all eComms, aComms (voice), vComms (video and images), aiComms (AI tools), and more. In addition to comprehensive capture and archiving, Theta Lake enables unified search and full replay across all modalities and content types including full conversation views across meshed UCC tools and media types. With unified visibility, customers can more successfully implement proactive compliance using patented ML and AI to detect regulatory, privacy, and security risks in communications. Visit us at ThetaLake.com or LinkedIn.