COMPLIANCE CONSIDERATIONS FOR CLOUD-BASED CALLING PLATFORMS

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SUBJECT

This brief sets out the compliance considerations that financial services firms need to consider as they migrate to cloud-based calling platforms, specifically in relation to the capture, retention, and supervision of electronic communications. It describes the features and capabilities of cloud-based calling platforms which create electronic communications. It explains how the tools are used in practice and outlines the applicable regulations in the US, UK and Canada for capturing and supervising them. Finally, we analyze a few use cases for cloud-based calling platforms and how regulatory compliance mandates apply to those scenarios.

HOW CLOUD-BASED CALLING PLATFORMS ARE USED

Cloud-based calling platforms use cloud computing instead of traditional landline infrastructure to manage voice communications, enabling organizations to run their business phone systems through an internet connection. All voice data and call processing functions are hosted and managed by third-party providers like Azure, AWS or Google cloud in remote data centers which means that firms do not need to own and manage physical telephony infrastructure and hardware.

Examples of cloud calling systems include: Webex Calling, RingCentral Phone, Microsoft Teams Phone, Zoom Phone, 8x8, Dialpad, Gamma, and Google Voice.

Users are able make phone calls through multiple devices, including mobile phones, desk phones and computers through an app, desktop, or web browser. The tools can be accessed from wherever employees are located, with the ability to seamlessly transfer calls between devices whether in the office, remote or on the move.

Cloud-based calling is one type of unified communications as a service (UCaaS), and is often offered in conjunction with SMS, instant messaging and video conferencing capabilities all in the same app. The tools can be integrated with other communication modes such as file sharing and digital whiteboards, providing firms with a single platform for communication and collaboration.

To illustrate, what follows are three real-world examples of how cloud-calling platforms are used in financial services organizations. We will revisit these use cases in Section 5 and provide guidance about how to apply relevant regulatory requirements to interactions on these platforms.

A. Human Resources Administration - non-regulated communications

The HR team of a FINRA regulated broker-dealer uses Webex Phone to answer employee queries relating to administrative matters such as compensation and internal recruitment. The flexibility of cloud-calling enables the geographically dispersed HR team to support employees from multiple office locations.

B. Investment adviser - regulated and non-regulated communications

A UK-based wealth management firm has a virtual office phone number enabling customers to speak to its home-based account management team for both investment and administrative queries. If an adviser or relevant support staff aren’t available, the calls are automatically transferred to another member of staff through Zoom Phone.

C. Trading in derivatives markets - regulated communications

A swap dealer working at a CFTC regulated firm uses RingCentral Phone to speak with counterparties. Conversations frequently evolve from SMS messages to audio calls, and seamlessly transfer between desk and mobile phone, enabling her to continue the conversation when traveling between offices.

THE KEY DIGITAL COMMUNICATIONS CAPABILITIES OF CLOUD-BASED CALLING PLATFORMS

Understanding the scope of electronic written communications (eComms), audio communications (aComms) and visual communications (vComms) available within cloud-based calling platforms is critical for firms to be able to capture and supervise them in accordance with regulatory obligations. The capabilities vary by both the tool and the features enabled by organizations.

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The communications features available within cloud-calling tools span voice, video, SMS/MMS, instant messaging and group messaging, with the ability to transition smoothly from text to voice to video conferences within the same application. Collaborative features include bringing additional participants into one-on-one or group calls and screen-sharing during calls.

Virtual phone numbers can be provided which are not tied to any physical location or device and can be set up to route to mobile devices, physical office phones or computers. Call management features enable calls to be automatically forwarded or transferred to colleagues, voicemail, or alternate devices. Call sharing and pick up capabilities enable users to share their phone line so that another user can make and receive calls on their behalf and answer calls for colleagues when they are unavailable. When a user receives a voicemail, it is delivered to their email with the voicemail message as both an attachment and a transcript.

AI capabilities within the tools such as Copilot in Microsoft Teams Phone or Zoom's AI Companion provide productivity features. These include real-time transcriptions of conversations, post-call summaries, the capturing of actions, key points and next steps from conversations and voicemails, and summaries of SMS message threads.

The tools can be integrated with other communication modes such as file sharing and digital whiteboards to provide a single UCaaS platform for communication and collaboration, as well as other business applications like customer relationship management (CRM) platforms.

KEY REGULATIONS THAT APPLY TO THE CAPTURE AND SUPERVISION OF CLOUD-BASED CALLING COMMUNICATIONS

The requirements for capturing and supervising electronic communications are set out by global regulators. These include rules from the Security & Exchange Commission (SEC), Financial Industry Regulatory Authority (FINRA), the Commodity Futures Trading Commission (CFTC) and the National Futures Association (NFA) in the US; the Financial Conduct Authority (FCA) in the UK and the Canadian Investment Regulatory Organization (CIRO).

The US requirements for retaining voice calls include CFTC Regulations 23.202 and 1.35 which mandate the retention of “oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of” relevant transactions as well as equivalent requirements under NFA Compliance Rule 2-10(a). Enforcement of both CFTC and NFA Rules is increasing as the CFTC recently fined a firm where deficiencies in a firm’s audio recording tools recently led to a “failure to make or keep approximately 3,000 audio recordings.” The NFA similarly issued fines where the use of unrecorded personal cell phones led to a failure “to maintain all oral communication records in accordance with regulatory requirements”.

In the UK and Europe, the applicable rules for retaining voice communications include the FCA’s SYSC 10A.1.6, in conjunction with the requirements for MiFID II business. In addition to audio calls, ESMA’s Questions and Answers clarify that video is also in scope of the requirements to record electronic communications under Article 16(7).

There are additional requirements for retaining the written electronic communications within cloud-calling platforms, which include SMS and instant messaging. These include the SEC’s Exchange Act Rules 17a-4, and FINRA Rule 4511 which require member firms to, “among other things, create and preserve, in an easily accessible place, originals of all communications received and sent relating to their “business as such.” FINRA’s Regulatory Notice 17-18 explains that the content of communications “made through text messaging apps and chat services” determines what must be retained. NFA Compliance Rule 2-10(a) and CFTC Regulations 23.202 and 1.35 also apply to written electronic communications. Other e-comms record keeping rules include FINRA rule 2210 regarding Communications with the Public, the Investment Advisers Act Rule 204-2,

The related supervisory obligations for oversight of cloud-based calling communications include CFTC Regulation 23.602(a) and 166.3 together with NFA Rule Supervision rule 2-9. Similarly CIRO rule 3900 and FCA’s SYSC 6.1 set out broad supervisory requirements to detect risks of non-compliance with regulatory obligations. FINRA Rule 3110(b)(4) requires firms to have procedures for the “review of incoming and outgoing written (including electronic) correspondence and internal communications”.

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 use cases outlined in section 2. These include both regulated and non-regulated business activity, and the compliance approaches and best practices therefore differ accordingly.

A. Human Resources Administration - non-regulated communications

In the first scenario where the broker-dealer's HR team is using Webex Phone to answer employee queries relating to administrative matters there is no requirement to retain the audio calls. Similarly, any instant or text messages sent as part of those conversations would not need to be retained because the communications do not relate to the firm's "business as such" and FINRA's Regulatory Notice 17-18 clarifies that "for record retention purposes, the content of the communications determines what must be retained".

B. Investment adviser - regulated and non-regulated communications

In example B, the UK-based wealth management firm receives calls from customers covering both investment related matters with advisers, and other administrative matters with support staff. The call management capabilities of Zoom Phone allow group pick up, forwarding and transfer of calls meaning that multiple home-based staff can speak with and help a customer.

At a minimum the firm would need to retain records of the audio conversations with its regulated investment advisers, including any written communications sent during the calls like instant messaging, in line with FCA's SYSC 10A.1.6. Market Watch 66 reiterates that the expectations for firms on recording telephone conversations and electronic communications remain the same when homeworking arrangements are in place.

While technically only the investment advisers may be regulated in this scenario, capturing all of the voice and e-comms where a customer interacts with both regulated and non-regulated employees as part of the same call, such as requesting copies of account documents before speaking to an adviser about making investment changes, would be advisable. In the event that subsequent analysis of the conversation is required for regulatory or investigative purposes, the full content of the conversation across all participants would provide critical context to compliance or supervisory teams.

C. Trading in derivatives markets - regulated communications

In scenario C, RingCentral Phone enables the swap dealer to have audio conversations with counterparties relating to trading in derivatives markets which evolve from SMS messages, and to seamlessly transfer calls between her desk at a CFTC regulated firm and her mobile phone.

Both the audio calls and written SMS communications in this case would need to be retained in line with CFTC Regulations 23.202 and 1.35 to retain "records of all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices" whether "communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media." These records of oral communications need to be retained for a period of not less than one year from the date of the communication.

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