COMPLIANCE CONSIDERATIONS FOR CONTACT CENTER PLATFORMS

THETALAKE

CONFIDENTIAL

This brief sets out the compliance considerations that financial services firms need to consider when using Contact Center as a Service (CCaaS) platforms, specifically in relation to the capture, retention, and supervision of electronic communications. It describes the features and capabilities of the contact center platforms which create electronic written, audio and visual 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 "contact center" platforms and how regulatory compliance mandates apply to those scenarios.

HOW CONTACT CENTER PLATFORMS ARE USED

Contact center platforms provide a centralized hub for managing all inbound and outbound customer interactions across multiple channels, including phone, SMS, email, chat, messaging applications, social media and video. These unified omni-channel tools provide staff with a complete view of customer information in a single workspace allowing customers to seamlessly switch between channels when engaging with an organization.

The combination of both human and digital agents enables financial institutions to provide continuous 24/7/365 support to customers through contact center platforms. AI-powered virtual agents provide customers with self-service options to resolve routine queries or perform transactions without the need to wait for a human. These virtual agents use machine learning and natural language processing to act more like a human than traditional 'chatbots'. In addition, any SMS or chat messages received through virtual agents requiring more complex human interaction, can be escalated to other human-assisted channels based on keywords entered by a customer.

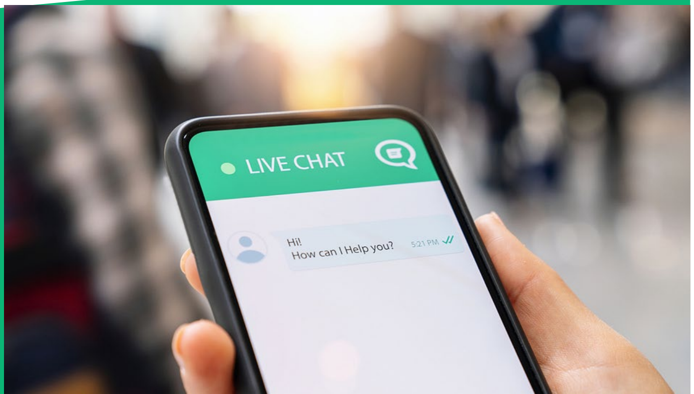
These cloud-based contact center platforms can be deployed from any location, regardless of whether staff are working from home or in the office. They are available on mobile and desktop devices, on smartphones, laptops, or tablets through an app download, and integrate with customer relationship management tools like Salesforce and Zendesk through which communications can continue.

Examples of contact center platforms include RingCentral Contact Center, Ring CX, Zoom Contact Center, Webex Contact Center by Cisco, Talkdesk, Five9, NICE CXOne, Genesys Cloud CX, Vonage Contact Center, Amazon Connect, Dialpad Ai Contact Center, 8x8 Contact Center, and Avaya Experience Platform.

To illustrate, what follows are three real-world examples of how contact center 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. Answering frequently asked questions - non regulated communications

Organization A manages routine logistical and administrative queries from customers through its RingCentral Contact Center. The intelligent virtual agent provides immediate answers to common questions relating to password resets or finding information on its website. It directs customers to tutorials and FAQ pages to resolve simple issues on their own.



B. New customer leads - regulated and non-regulated communications

Organization B handles new investment enquiries through its Zoom Contact Center platform which provides the option for customers to get in touch via SMS. New enquiries receive automated SMS responses requesting information from the customer, which are followed up by email from the wealth management firm's new business team. Any responses from the customer that relate to non-business matters, for example technical website issues they are experiencing, are routed to a separate team of agents to respond.

C. Providing investment advice to existing customers - regulated communications

Organization C uses Webex Contact Center to support its existing UK based customers with complex transactions that are handled by phone. Contact center agents seamlessly transfer customers to financial advisers for investment information and advice, without customers needing to repeat information.

THE KEY DIGITAL COMMUNICATIONS CAPABILITIES OF CONTACT CENTER PLATFORMS

Understanding the scope of electronic written communications (eComms), audio communications (aComms) and visual communications (vComms) available within contact center platforms is critical for firms to be able to capture and supervise them in accordance with regulatory obligations. These capabilities are continuously evolving and vary by both the contact center platform and the features enabled by organizations.

Contact center platforms support voice calls, email and messaging applications like WhatsApp, as well as SMS with the option to engage participants across multiple languages. They support chat with the ability to include attachments and URLs within chat messages and for customers to have the chat transcript emailed to them following a conversation. Agents can elevate a chat or voice interaction to a video call with screen sharing, which enables customers to show and share

information in real time. Engagement through social media like Facebook messenger includes the ability to provide automated responses for consistency.

Intelligent virtual agents utilize artificial intelligence to quickly handle basic customer queries and tasks through text or voice interactions, enabling customers to self-serve without human support. Generative AI capabilities include automatically suggesting replies for agents and creating summaries and transcripts of digital interactions with customers.

The platforms provide a centralized view of information which enables customers to seamlessly switch channels, such as from an intelligent virtual agent to a human agent, or from an SMS to a voice call.

KEY REGULATIONS THAT APPLY TO THE CAPTURE AND SUPERVISION OF CONTACT CENTER 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).

Given the omni-channel nature of contact center platforms, multiple rules may apply where customer interactions transition across channels.

Capture and retention requirements

US rules set out detailed expectations for retaining electronic communications, which apply to the written components of contact center interactions. SEC's Exchange Act Rule **17a-4**, and FINRA **Rule 4511** (General Requirements) 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 2024 Annual Regulatory Oversight Report** specifically highlights "emails, instant messages, text messages, chat messages, interactive blogs" as business communications that would trigger recordkeeping requirements. FINRA's **Regulatory Notice 17-18** explains that "for record retention purposes, the content of the communication determines what must be retained" and highlights that business information shared over social media platforms must be captured and retained appropriately.

Other applicable record keeping rules include FINRA rule **2210** regarding Communications with the Public and the Investment Advisers Act Rule **204-2**. The applicable FCA rules include SYSC **10A.1.6**, in conjunction with the MiFID II requirements under **Article 16(7)** which requires the recording of telephone conversations or electronic communications that relate to the reception, transmission and execution of client orders. The CFTC's Regulations **23.202** and **1.35**., and the NFA's Compliance Rule **2-10(a)** also apply, albeit in practice their members' communications are less likely to take place through contact center platforms.

Supervision and oversight of communications

The obligations for supervising written electronic communications within contact center platforms include FINRA Rule **3110(b)(4)** which requires firms to have procedures for the "review of incoming and outgoing written (including electronic) correspondence and internal communications" .

In terms of supervising communications with the public, FINRA's Advertising **FAQs** clarify that the supervision requirements for use of a "chat or instant messaging feature" depends on the meeting nature and number of attendees and "may be correspondence, retail communications or institutional communications, and the firm must supervise them as such." They also state that firms must "ensure that AI-generated communications they distribute or make available" to investors "comply with applicable federal securities laws and regulations and FINRA rules", clarifying that the "obligation includes compliance with supervision requirements".

Other requirements 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.

INTERPRETATIONS OF THE RULES AND APPLICATION TO THE USE CASES

A. Answering frequently asked questions - non regulated communications

In the first scenario, where the RingCentral Contact Center virtual agent is used for answering routine logistical and administrative customer queries about password resets and finding information on the firm's website, there is no regulatory requirement to retain the messages. This is because the communications do not relate to the investment adviser's "business as such," and FINRA's **Regulatory Notice 17-18** clarifies that "for record retention purposes, the content of the communication determines what must be retained".

While FINRA's **Advertising FAQs** clarify that a firm must supervise chatbot communications in accordance with applicable FINRA rules, in this case, given that communications do not relate to the firm's "business as such" there is no requirement to supervise them.

B. New customer leads - regulated and non-regulated communications

In example B, the new investment enquiries received by SMS as well as the automated AI-generated SMS responses and the follow up emails from the new business team, through Zoom's contact center would all be subject to the e-comms capture, retention and supervision obligations.

These include the need to capture written communications under the SEC's Exchange Act Rule **17a-4** as well as **3110(b)(4)** which requires firms to have procedures for the "review of incoming and outgoing written (including electronic) correspondence and internal communications" relating to the member's investment banking or securities business". FINRA Advertising Regulation FAQs D.8. further clarifies that a firm's regulatory obligations in relation to communications apply "regardless of whether they are generated by a human or AI technology".

While technically only the business related SMS messages from the customer need to be retained and supervised, capturing all of SMS content in this scenario would be advisable. In the event that a compliance review or regulatory investigation is undertaken, then the full conversation would provide a complete perspective. Limiting the capture to only the business related matters would create gaps in the audit trail of communications as the conversation traverses across channels.

C. Supporting existing investors - regulated communications

In this scenario organization C's financial advisers are supporting their UK based customers through Webex Contact Center with investment information and advice provided by phone. Information shared with an agent during the initial inbound call is shared with the expert advisers so that customers do not have to repeat information.

As these communications relate to investment advice, complete records of all audio calls would need to be retained in accordance with FCA SYSC **10A.1.6**, and MiFID II **Article 16(7)** . As explained in the FAQ, the investment firm would need to "record all relevant telephone conversations or electronic communications from start to end" because "it is impossible to appreciate upfront whether the conversation will lead to the conclusion of a transaction".

Given the ease of transitioning between channels within contact center platforms, any other audio, written or visual communications related to the conversation would also need to be retained for at least 5 years. **ESMA's Questions and Answers** clarifies that the scope of electronic communications "includes amongst others video conferencing, fax, email, Bloomberg mail, SMS, business to business devices, chat, instant messaging and mobile device applications". Capturing the related communications would provide a complete perspective and full audit trail for any compliance reviews or regulatory investigations that subsequently take place.

Learn more

Visit https://thetalake.com/integrations/?tab=contact-center