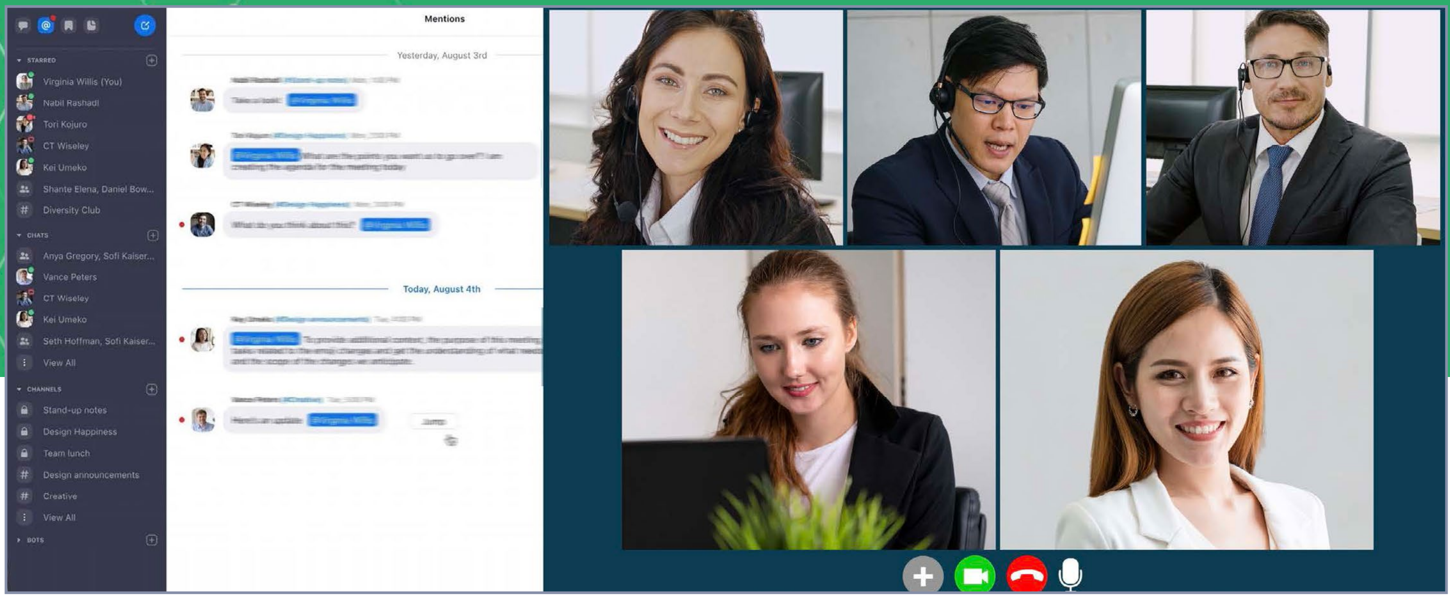

COMPLIANCE CONSIDERATIONS IN-MEETING VS PERSISTENT CHAT

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SUBJECT

This brief sets out the compliance considerations that financial services firms need to take into account when using the chat capabilities of Unified Communi cations and Collaboration (UCC) tools, specifically relating to the capture, retention, an d supervision of 'in-meeting chat' and 'persistent chat'. It explains the distinctions between in-meeting and persistent chat, how they 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 in-meeting chat versus persistent chat and how regulatory compliance mandates apply to those scenarios.

IN-MEETING VS PERSISTENT CHAT & HOW THEY ARE USED

Chat capabilities in UCC platforms enable messages to be sent and received in real-time. These instant communications can be sent between individuals or groups and messages can include images, videos, files, GIFS, emojis, links and more. UCC platforms including Microsoft Teams, Zoom, Webex by Cisco, RingCentral, Google and Slack provide in-meeting chat and persistent chat capabilities for distinct purposes as follows.

In-meeting chat enables real-time communication during a specific meeting. Participants can send instant messages to all other meeting attendees or a private message to an individual participant. Following the meeting, participants can no longer continue chatting and, in some cases, the chats may not be accessible to the participants.

Some UCC platforms provide in-meeting chat capabilities that can also persist after the meeting has concluded, and/or before the meeting starts. This enables the conversation to continue outside of the meeting between users with specific permissions, such as internal meeting attendees.

In contrast, general persistent chat allows permanent and ongoing communication with a group of people who have a common interest, such as a project, department or topic, supporting both real-time and asynchronous communication. Messages can be sent continuously or periodically over the course of days, months, or years to facilitate longer conversations.

To illustrate, these are real-world examples of how tools 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.

EXAMPLE A:

Organizing an office summer party - non-regulated activity

Organization A holds a Zoom meeting to plan its annual summer party. The events team discusses logistics, and participants use the in-meeting Zoom chat feature to share links to planning documents, and quickly comment on ideas without interrupting the flow of the meeting. The platform and settings enable the chat conversation between attendees to persist post-meeting for follow up questions and accessing shared content.

EXAMPLE B:

Investment Banking Team's dedicated chat group - regulated & non-regulated communications

The Investment banking team in Organization B has a persistent chat channel on RingCentral for ongoing team communication. It serves as the central hub for discussions, celebrations, and knowledge sharing among its geographically dispersed and remote team of traders and support staff across the US.

EXAMPLE C:

Advising a customer on investment strategy - regulated communications

Organization C carries out a quarterly investment review with Mr & Mrs S on Microsoft Teams. They speak on video about changes to personal circumstances and revisions needed to investment strategy. The registered representative uses in-meeting chat to share the latest market analysis with the customer, as well as communicate privately with another colleague attending the meeting.

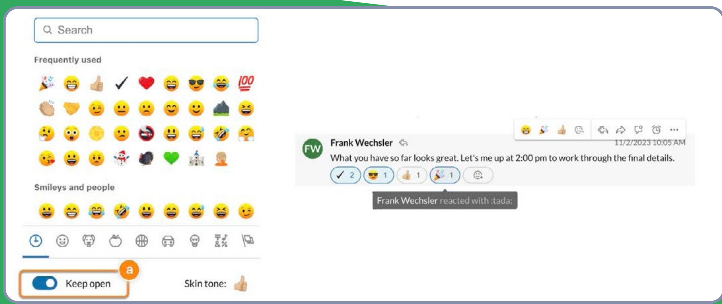
THE KEY CAPABILITIES OF CHAT CAPABILITIES THAT GENERATE E-COMMS

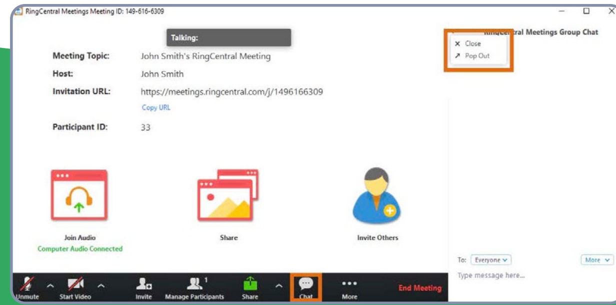
Understanding the key features of in-meeting and persistent chat is important for firms to be able to capture and supervise the communications in accordance with regulatory obligations. These capabilities are continuously evolving and vary by both the UCC platform and the specific settings applied by organizations.

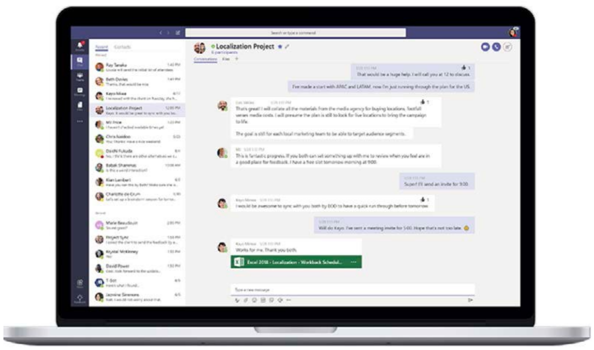
Chat content can include various types of content such as text, URLs, images, GIFs, audio files, code snippets, video files, memes, and stickers. Participants can react to messages with emojis like thumbs up or down, hearts, expressions of joy and laughter. Additional capabilities including the ability to delete messages, reply in threads, quote messages, format text and preview images are available in both persistent and in-meeting chats. Some persistent chat tools provide message translation, text prediction and suggested replies, plus the ability to add events, tasks, or files from various sources like OneDrive, SharePoint, Box, or the user's computer.

Chat participants: In-meeting chat messages are typically only visible to meeting attendees, whether sent to everyone, or privately to individual participants. In some platforms, meeting chat is accessible even before participants join the meeting, and the conversation can also be forwarded to another person or group within the organization once the meeting ends. By contrast, persistent chat allows participants to add other internal users as well as people outside of the organization, at any time to the ongoing conversation. This enables new participants to join the chat going forward as well as access previous messages sent. Participants can also leave conversations without disrupting the chat, and may have the option to remove other users; once a participant has left the chat, they no longer have access to it. Additionally, users can edit and delete sent messages or delete entire conversations from their chat list.

Conversation history: Whether and where in-meeting chat history is retained depends on the platform - it may be saved manually, automatically, to the local desktop computer or the cloud, or not at all, and typically doesn't save private messages between participants. This is in contrast to general persistent chat, where the conversation history is preserved and accessible over time, with messages and content remaining visible to both current and future participants, unless purposely removed. Participants can search the chat history, access shared information and continue interacting with the conversation, for example replying or reacting, even after it has ended. Some platforms provide in-meeting chat capabilities that also persist, enabling the conversation to continue even after the meeting has concluded, although these may not be available to external meeting attendees.







In Teams, the chat can be organized by groups of people, topics, or in designated Teams. The concept is identical to persistent chat in WebEx Teams. These conversations live in the app and do not automatically delete themselves like Instant Messages do.

The experience with Microsoft is more cohesive. You can easily find meetings in the app on the left-hand pane. You can instantly launch meetings, or schedule them for later.

The two types of chat options are present in most major Unified Communications platforms. Both have additional metadata that is important to capture, archive and review in order to achieve full digital communications compliance.

KEY REGULATIONS THAT APPLY TO THE CAPTURE AND SUPERVISION OF CHAT

The requirements for capturing and supervising both in-meeting chat and persistent chat are set out in long-standing rules for written electronic communications or ‘e-comms’ 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). As a baseline, any written communications, like chat, related to firm business must be captured, retained, and supervised.

Retention of chat messages

US rules set out detailed expectations for retaining chat messages. The SEC’s Exchange Act Rules 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 reemphasized this point specifically calling out “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 the content of communications

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"made through text messaging apps and chat services" determines what must be retained. Preservation of written communications is the subject of intense regulatory scrutiny following almost $3bn in penalties levied by US regulators where firms have failed to retain business-related messages. The 2024 FINRA Annual Regulatory Oversight Report states that "This risk has become a particular area of focus for regulators." While some communications have taken place through unmonitored messaging applications like WhatsApp, the requirement to retain written chat communications applies equally to all communication platforms.

Other applicable e-comms record keeping rules include FINRA rule 2210 regarding Communications with the Public, the Investment Advisers Act Rule 204-2, CFTC Regulations 23.202 and 1.35., and NFA Compliance Rule 2-10(a) which was recently breached by a firm "based on its failure to keep written pretrade communications readily accessible". The applicable FCA rules include SYSC 10A.1.6, in conjunction with the requirements for MiFID II business, where ESMA's Questions and Answers clarify that chat is in scope of the requirements to record electronic communications under Article 16(7).

Supervision and oversight of chat communications

The supervisory obligations for written electronic communications like chat 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."

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

To illustrate how the recordkeeping and supervision rules apply in practice we can consider the use cases outlined in section 2, relating to US organizations. These include both regulated and non-regulated business activity, and the compliance approaches and best practices therefore differ accordingly.

EXAMPLE A:

Organizing an office summer party - non-regulated activity

In the first scenario, where Zoom in-meeting chat with post-meeting persistent chat is used by the events team to facilitate the planning of a summer party, there is no regulatory requirement to retain the chat messages or proactively supervise them. This is because the communications do not relate to their "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."

EXAMPLE B:

Investment Banking Team's dedicated chat group - regulated & non- regulated communications

In example B the investment banking's team's persistent chat group on RingCentral includes a wide range of participants from front office traders to back office support staff. As the central hub for team discussions, knowledge sharing, and decision-making, the messages span both business related matters like market analysis and client meetings through to non-business related matters such as birthday celebrations. Typically the conversation style is casual and includes GIFs and emojis to convey humor and emotion.

Given the different types of employees interacting in this scenario, at a minimum the firm would be subject to the e-comms capture, retention and supervision obligations applicable to the regulated investment banking staff using RingCentral chat. These include the need to capture written chat 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".

While technically only the business related messages of the front office investment staff need to be retained and supervised, capturing all aspects of the chat content in this scenario, including contextual information like reactions and emojis, would be advisable. In the event that a compliance review or regulatory investigation is undertaken, then the full conversation and context of the chat between participants would provide a complete perspective. Limiting the capture to only front office regulated staff or business related matters would create gaps in the conversation and an incomplete audit trail of events.

EXAMPLE C:

Advising a customer on investment strategy - regulated communications

In this scenario the registered representatives are using a group in-meeting chat during a Microsoft Teams video meeting to share market analysis and answer questions with Mr & Mrs S as part of their investment review. Separately, the representatives send private one to one inmeeting chat messages to each other to gather further information on securities to facilitate the client meeting.

Under 17a-4, firms and their registered representatives must retain records of communications related to their "business as such", the application of the requirement being determined by the content of the communication. As both the group and one to one chat conversations in this scenario relate to an investment review the content, including any attachments, would need to be captured and retained for a period of at least three years.

Given there are only two customers attending the meeting, the chat messages would need to be supervised as correspondence in line with the example set out in FINRA's Advertising FAQs: "if a representative meets with fewer than 25 retail investors, and uses the chat feature of the online conferencing platform to answer a live question, that chat content meets the definition of correspondence in FINRA Rule 2210(a)(2). The firm must review the chat content in the same manner as required for supervising and reviewing any other correspondence pursuant to FINRA Rule 3110(b) and 3110.06 through .09."

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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.