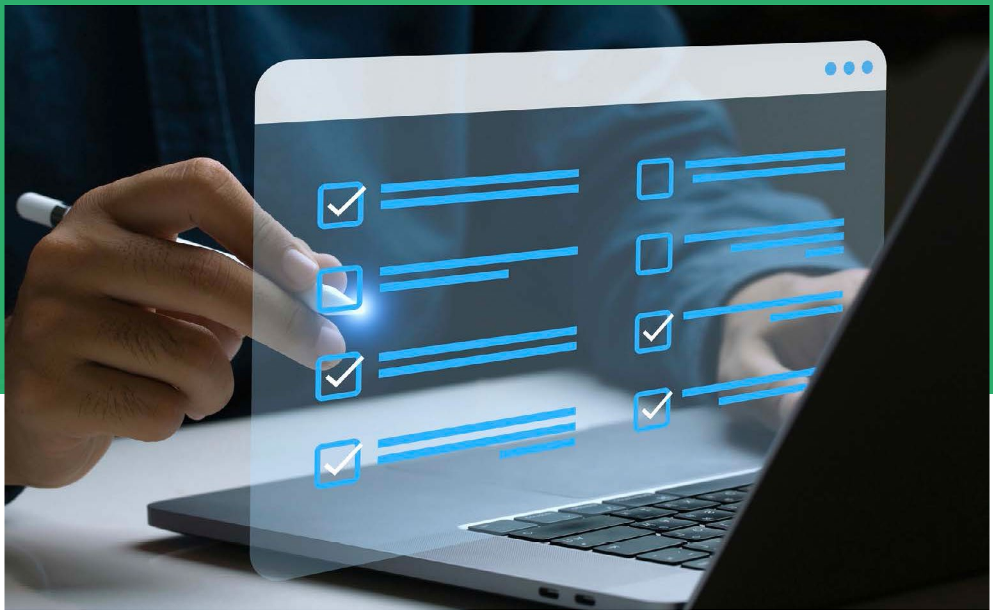


COMPLIANCE CONSIDERATIONS
Q&A AND POLLING

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 the question and answer (Q&A) and polling functionality in their unified collaboration and communication (UCC) platforms. It explains the features and capabilities of the tools which include the text based digital communications. Additionally, it outlines the applicable regulations in the U.S., UK and Canada for capturing and supervising communications, depending on the content of the communication, its intended use and whether user populations fall within regulated or non-regulated roles. Finally, we analyze a few use cases for Q&A and polling and consider how regulatory compliance mandates apply to those scenarios.

Q&A AND POLLING & HOW THEY ARE USED

Q&A and polling functionality in UCC tools enable firms to engage with their teams, customers and prospects in a structured and interactive manner.

Q&A functionality is enabled by the host of a meeting, webinar, conference or other online event. It allows participants to ask questions during the meeting, and for the host and co-hosts to answer their questions privately, for everyone, mark them to be answered during the meeting, or flag them to be covered as part of follow up communications. The Q&A interaction is ad hoc and freeform– none of the text is pre-defined.

Polling tools, which include quizzes and surveys, allow hosts to pose questions and gather responses from meeting participants. Polling questions can either be drafted before or during a meeting. Quiz questions (and associated answers) are drafted before an event and surveys engage participants after a meeting has ended.

Both polling and Q&A promote real-time interaction between hosts and participants during an online meeting, enabling the collection of polling responses as well as encouraging dialogue as part of the Q&A feature. Q&A and polling tools capture data on participant responses, allowing organizations to analyze trends, gather insights, and make data-driven decisions.

Depending on the settings enabled, participants using Q&A and polling features can remain anonymous.

Key determining factors for the applicability of regulatory requirements are the contents of the poll or Q&A as well as the intended use. 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

A firm uses the polling functionality to ask its employees to anonymously choose from a range of five possible venues for a Christmas party. The polling is conducted during one of the firm’s regular ‘All hands’ meetings held virtually. The results of the poll are collated after the meeting and then published as part of the formal party invitation.

EXAMPLE B:

Regulated content/mix of regulated and non-regulated users

A firm deploys both Q&A and polling functionality for an internal meeting with both regulated and non-regulated participants present, some virtually and some in the room. The Q&A functionality enables a free flowing debate and the polling functionality is used to allow all participants to vote on the decisions being taken.

EXAMPLE C:

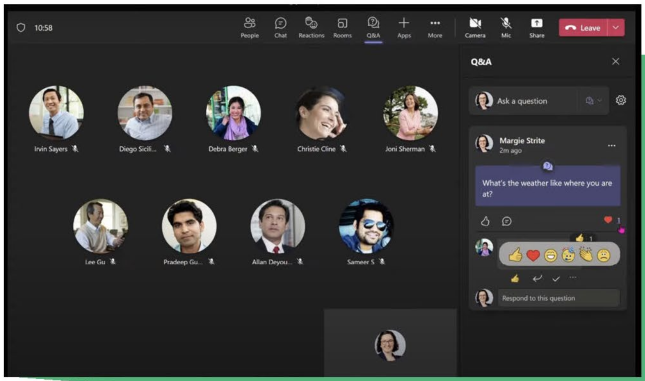
Regulated content/regulated users

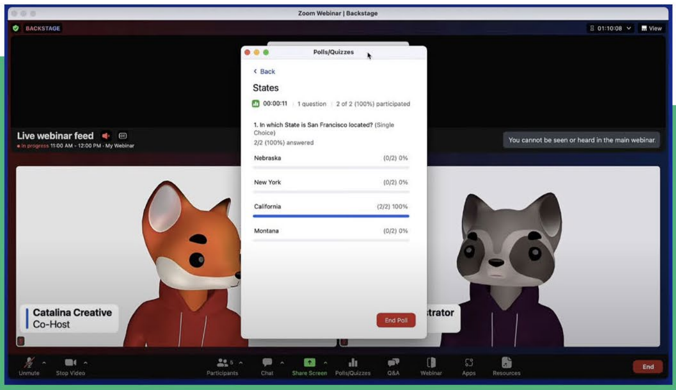
As part of its product design strategy, a firm hosts a webinar attended by over 100 registered representatives of other firms. A key part of the webinar is an interactive poll seeking views on the firm's latest product ideas. Once the poll is complete, the results are displayed in real time to the attendees. The firm subsequently uses the information and feedback gathered to refine its product design.

THE KEY CAPABILITIES OF THE TOOLS THAT GENERATE ELECTRONIC COMMUNICATIONS

Understanding the key features of Q&A and polling tools is important for firms to be able to capture and supervise the communications in accordance with regulatory obligations. Q&A and polling tools are near universal in UCC platforms, however these capabilities are continuously evolving and vary by both the UCC platform and the specific settings enabled. Key capabilities include:

- In Most Q&A and polling (or quizzes and surveys) tools caninclude emojis and links (not directly click-able but copyable), but not attachments or videos
- The results of polls can be displayed live during the meeting and/or reported after an event
- Both Q&A and polls can be conducted anonymously
- Polling or other results can be shared and accessed in the relevant UCC platform and also sent directly to internal or external recipients





Enabling Q&A and Polling features in-meeting is a capability most major Unified Communications platforms offer.

- Post event reports are most often a snapshot of a poll and its responses rather than a complete audit log of all changes/edits made. It is possible that a question could be changed or edited after the answers have been gathered and collated
- For quizzes, the answers can be pre-set and the quiz results (including each participant's answers and submission times) provided in the resulting reports. Results are available after the event by default, but can also be made available and updated in real time during a live session
- Surveys are used after a meeting to gather participant feedback. In addition to a UCC tool's native meeting survey feature, hosts may choose to use a third-party survey service.

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).

Rules such as 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 mandate the capture and retention of written electronic communications. The content and intended use of the output of Q&A and polling functionality will determine the regulatory obligations. Specifically if Q&A and polling are used for communications related to a firm's business as such then it will be considered regulated and will need to be retained under the relevant regulatory requirements. Retention periods are three years under SEC Rule 17a-4 and five years under the Investment Advisers Act rule 204(a)(7) and CFTC Regulation §1.31. The FCA specifies record retention periods of five years and up to seven.

Supervision requirements

The detailed supervisory obligations will depend on what the Q&A and polling output is used for. FINRA has specifically addressed the regulatory expectations regarding polling in its Advertising Regulation FAQs which consider the use of polling functionality in the context of a webinar attended by registered representatives, stating:

"Because the audience is composed solely of registered representatives, the poll and the results would meet the definition of institutional communication in FINRA Rule 2210(a)(3). As such, the distributor would need to review the poll and the results in accordance with the firm's written supervisory procedures for the supervision of institutional communications adopted in accordance with FINRA Rule 2210(b)(3)."

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 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:

Non-Regulated Content

In the scenario of using polling to ask employees their choice of venue for a Christmas party, a topic totally unrelated to firm business, there is no regulatory requirement to capture, retain, or supervise the poll or its results. The use of the anonymous polling feature in this instance was appropriate, given that neither the polling questions nor responses required oversight under relevant compliance mandates.

EXAMPLE B:

Regulated content/mix of regulated and non-regulated users

Where a firm is using Q&A and polling to enable an internal meeting where business decisions are taken, capturing the resulting output is critical to evidencing 'business as such' despite the mix of regulated and non-regulated participants. SEC rule 17a-4 requires records to be retained for three years. The business nature of the polling results and the Q&A means that the entire record should be maintained regardless of the fact that both regulated and non-regulated users were involved.

EXAMPLE C:

Regulated content/regulated users

In the product design webinar example with the interactive poll, all the communications, and the attendees, are regulated. For a FINRA member firm the interactive poll in the webinar falls within the Advertising Regulation FAQs detailed in section 4 above and would therefore have to comply with the 'institutional communication' requirements - defined in FINRA Rule 2210(a)(3) as "any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member's internal communications."

The interactive polling content would need to be retained for three years. Supervision for these institutional communications would be mandatory pursuant to FINRA Rule 2210(b)(3).

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