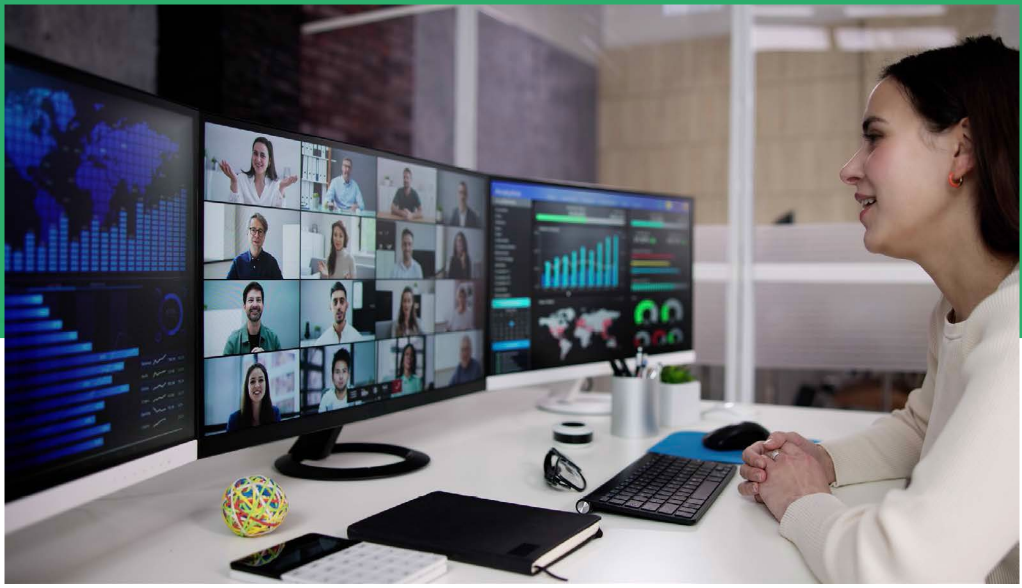

COMPLIANCE CONSIDERATIONS FOR RECONCILIATION

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SUBJECT

This brief sets out the compliance considerations for financial services firms to consider in relation to reconciling their communications records. It specifically focuses on how regulated firms should approach the reconciliation of captured electronic communications records generated by unified communications and collaboration (UCC) platforms. We outline the applicable regulations in the US, UK and Canada, and analyze realworld use cases to demonstrate how regulatory compliance mandates for reconciliation apply in those specific scenarios.

HOW RECONCILIATION IS USED

In the context of recordkeeping, reconciliation is the key process for ensuring that electronic communications records have been appropriately captured from source platforms, ingested into compliance applications, and archived appropriately. Reconciliation provides programmatic and measurable information about the capture and archiving of records from UCC platforms like Zoom, Microsoft Teams, RingCentral, Webex by Cisco, Slack and more. Reconciliation is essential for evidencing regulatory compliance and oversight to regulators and auditors by demonstrating that communications have been fully captured and accurately retained.

There are two main components of reconciliation:

- Upstream reconciliation involves collecting records from multiple communications sources including emails, chats, meeting recordings, and phone calls. A key component is to validate that the communications platforms were correctly configured at the time of capture and that all communications during that period were accurately collected.
- Downstream reconciliation is the next crucial step in ensuring that communications captured from UCC tools match what is stored in relevant archives. This step verifies that the records captured upstream were successfully delivered downstream to the archive.

The transition to cloud-native applications and the widespread use of multiple unified communications and collaboration tools have added complexity to the reconciliation process. This includes the need to reconcile communications extracted through multiple platform APIs, and the reconciliation of dynamic records like chat conversations, which are made up of multiple messages.

UCC platforms offer APIs that allow third-party compliance applications to extract and capture communications. Reconciliation is performed by the compliance application integrating with the UCC platforms, since the compliance application provides and tracks the ingestion of data and its ultimate archive status.

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

A: Investment Banking Team

The investment banking team in a US broker dealer uses multiple chat features within Microsoft Teams, Zoom and RingCentral for sharing market knowledge and progress updates on deals. The regulated nature of their work means the department has regular interaction with regulators and auditors, which makes checking that employee communications are taking place on monitored channels, by detecting dips in usage, a key priority for the firm.

B: Investment Advisor

The investment advisors at a US based wealth management firm use multiple channels to engage with customers, including Microsoft Teams, Cisco Webex and Slack with all communications records retained in a third party archive. Making sure that complete records are both captured across its UCC platforms and received into the archive is a priority for the firm.

THE KEY CAPABILITIES FOR RECONCILING DIGITAL COMMUNICATIONS

Understanding the capabilities that are available for reconciling electronic written communications from UCC tools is essential for firms to be able to respond effectively to requests from regulators and auditors, and demonstrate compliance with regulatory obligations.

Where available in archive tools, the following capabilities help verify that electronic communications have been fully captured and accurately retained:

- **Detailed reconciliation reports** provide in-depth analysis of captured records. They show exactly how many records—whether emails, meetings, calls, or chats—have been captured and archived, including multiple messages within a single chat record. The reports allow users to track the number of records captured from platform integrations and verify that the same number of records exist in the compliance archives, as well as providing insight into how long the records will be stored in the archive.
- **Visualization tools and dashboards** provide a quick overview, allowing users to swiftly confirm that communications are flowing correctly from platform integrations to the designated archive and that archives contain data as expected. They highlight both anomalies where records are not being archived and help validate that the UCC platform is configured properly, including the ability to centrally view and enforce configuration settings for the different collaboration tools in use, and receive notifications when configurations are disabled or changed.
- **Platform API capabilities** enable developers to create customized tools to search, compare, and verify data. APIs can be used to check that data has been processed correctly, match archived records with their original sources, and confirm that archives are capturing all necessary communications from platform integrations.

THE KEY REGULATIONS THAT APPLY TO RECONCILIATION

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 relevant recordkeeping rules below specify the types of records that must be maintained. The regulatory expectation that these records are complete and available for regulators is reflected in the enforcement examples outlined below, reinforcing the importance of reconciliation.

In one of the first fines for unmonitored communications, the Director of SEC's Division of Enforcement reiterated that "Recordkeeping requirements are core to the Commission's enforcement and examination programs". FINRA's oversight report sets out key considerations for preventing gaps in records, asking how firms "monitor and surveil for compliance with, the prohibition against using unapproved offchannel communication methods for business communications". Its example of surveilling "approved communication channels for signs of underutilization (that could present a red flag that an associated person is utilizing an unapproved channel for business communications) " outlines a key feature of reconciliation.

> "Recordkeeping includes the obligation of ensuring that the data has been correctly archived and the data will be able to be used.

The rules for retaining written electronic communications include the SEC's Rule 17a-4, which was breached by a firm where "Deleted communications could not be retrieved or produced in response to regulatory investigations" following the permanent deletion of 47 million electronic communications as a result of its storage vendor not applying default retention settings.

FINRA Rule 4511 requires member firms to, "create and preserve, in an easily accessible place, originals of all communications received and sent relating to their "business as such." FINRA Rule 8210(c) provides that "[n]o member or person shall fail to provide information..." which was breached when a firm "failed to timely or completely produce certain phone records responsive to FINRA document requests in ten separate FINRA investigations" and "inaccurately represented to FINRA that phone records older than 18 months were not available...".

The CFTC's Regulations 23.202 and 1.35 require firms to "Keep full, complete, and systematic records", which was violated when a firm's recording platforms suffered deficiencies resulting in a failure to make or keep approximately 3,000 audio recordings. The order clearly specifies that "Recordkeeping includes the obligation of ensuring that the data has been correctly archived and the data will be able to be used."

Other recordkeeping rules include FINRA rule 2210 regarding Communications with the Public, the Investment Advisers Act Rule 204-2 and the NFA's Compliance Rule 2-10(a). FCA rules include SYSC 10A.1.6, in conjunction with the MiFID II requirements under Article 16(7).

Incomplete records and a lack of reconciliation to verify completeness also impacts the effectiveness of supervision, as seen in a recent enforcement order, where messaging accounts were not ingested into a firm's surveillance tool and were not surveilled. A change made by its vendor impacted an automated process leading to the firm "Failing to diligently supervise activities related to its business" and "failing to surveil certain communications for hundreds of its swap dealer personnel over a five-year period" in breach of CFTC Regulation 23.602(a) and 166.3.

Other supervisory obligations for electronic communications 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"and NFA Compliance rule 2-9. CIRO rule 3900 and FCA's SYSC 6.1 set out broad supervisor y requirements to detect risks of non-compliance with regulatory obligations.

INTERPRETATIONS OF THE RULES AND APPLICATION TO THE USE CASES

To illustrate how the reconciliation of communications records applies in practice we can consider the use cases outlined in section 2.

A: Investment Banking Team

In example A, the investment banking team in a US based broker-dealer is using multiple chat features within Microsoft Teams, Zoom and RingCentral to share market knowledge and updates on deals.

Given the employees in this scenario are regulated investment banking staff the firm would be subject to capture, retention and supervision rules. These include the need to capture written electronic communications under the SEC's Rule 17a-4 as well as 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 relating to the member's investment banking or securities business".

Complete records of the employees' emails, messages and other written communications would need to be available to regulators and auditors. Reconciliation reports provide verification that complete records of chat conversations have been correctly retained in archives. The visual reconciliation features of archives enable the firm to quickly check the communications activity across Microsoft Teams, Zoom and RingCentral for signs of underutilization, which could present a red flag that unapproved channels for business communications were being used, as highlighted In FINRA's oversight report.

B: Investment Advisor

In example B, the investment advisors at a US based wealth management firm are using multiple channels including Microsoft Teams, Cisco Webex and Slack, to engage with customers about investment matters. The communications relate to the firm's "business as such" and require capture, retention and supervision in accordance with rules including FINRA Rule 4511, SEC's Rule 17a-4 and FINRA Rule 3110(b)(4).

The firm needs to ensure it has complete records of its advisors' messages and other written communications available for regulators and auditors. Reconciliation reports in capture tools provide verification of the number and types of communications records that have been both captured from its UCC platforms and sent to its third-party archive. They also enable the firm to view and enforce configuration settings for its collaboration platforms to ensure complete records are captured, and receive alerts when platform configurations are disabled or changed.

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