COMPLIANCE CONSIDERATIONS TRANSCRIPTS FOR MEETINGS

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SUBJECT

This brief sets out the compliance perspectives for financial services firms to consider when using transcripts for meetings, specifically in relation to the capture, retention, and supervision of post-meeting transcripts. It explains the features of transcripts generated by communication and collaboration tools, how transcripts for meetings are used in practice, and outlines the applicable regulations in the U.S. and UK. Finally, we analyze a few use cases for the transcripts for meetings and consider how regulatory compliance mandates apply to those scenarios

Email marketing tools help businesses efficiently create, send, manage and track email campaigns, which are a coordinated series of emails designed to achieve specific goals like a marketing or sales campaign. The tools streamline and automate the process of delivering relevant emails to the intended audience at the right time, whether for lead generation, product promotion, sharing useful resources, or building customer relationships.

TRANSCRIPTS FOR MEETINGS & HOW THEY ARE USED

Transcription creates a written record of spoken content in a meeting, which participants can view after the meeting along with timestamps and speaker attribution. Transcripts are created through a combination of speech recognition technology, AI and natural language processing (NLP). The accuracy of transcripts depends on the quality of the underlying technology, the clarity of the audio, and the complexity of the conversation.

Transcriptions for meetings are generated by unified communication and collaboration (UCC) platforms including Microsoft Teams, Zoom, Cisco Webex, RingCentral and Google Meet.

The transcripts generated by UCC tools are available to download at the end of meetings. Users can save, copy and review transcripts, as well as search for text in the transcript, to verify what was said, when and by whom. The transcripts can support a variety of use cases for financial services firms, from serving as meeting minutes to audit-related purposes such as quality control, surveillance, and monitoring.

To illustrate, what follows are three real-world examples of how meeting transcripts 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 relating to recordkeeping and supervision.

EXAMPLE A

Organising a party for employees - non-regulated

The events team at a FINRA broker meets on Webex to arrange the company’s summer party. After the meeting, participants download the transcript as a reminder of the options discussed and the key actions they need to follow up on.

EXAMPLE B:

Calls with customers - regulated and non-regulated

Investment advisers at a UK bank engage with customers through Zoom video meetings. The bank uses transcripts for both training and compliance monitoring purposes. The transcripts provide an efficient method for compliance officers to check the accuracy of information provided by advisers, as well as to identify training opportunities to improve efficiency in handling calls.

EXAMPLE C:

Swaps trading - regulated

A CFTC registered swaps dealer uses Microsoft Teams to engage in trading in swaps and related cash and forward transactions. It keeps recordings of the oral components of meetings in order to comply with its recordkeeping obligations. Its compliance officers review the transcripts as part of their oversight activities to check for risks of market abuse.

THE KEY CAPABILITIES OF THE TOOLS THAT GENERATE ELECTRONIC COMMUNICATIONS

Understanding the key features of meeting transcripts is important for firms to determine how regulatory obligations relating to recordkeeping and supervision apply. The features vary by platform and the specific settings enabled by organizations.

Transcription begins automatically when a meeting is recorded, with notifications visible to participants whenever transcription is enabled or disabled. Once the meeting finishes, the full transcript becomes available within the UCC platform and can be downloaded as .docx or .vtt files for offline use.

The transcription capabilities convert the recording of the audio content into a time-stamped, searchable text document with speaker attribution, so that users can easily follow who said what and when. The transcript can be edited to correct words or to add capitalization and punctuation, and to identify any unknown speakers where needed.

Transcripts are fully searchable, allowing for quick keyword searches within the conversation. Hosts and authorized participants can access, copy, and download the transcript, while IT administrators have control over transcription settings, allowing them to enable or restrict access and permissions across departments or specific users.

Multiple language options are available for transcription. In Zoom, for example, audio transcripts are created in English by default but can be regenerated in another language. In Microsoft Teams, the transcription language can be changed where it matches the spoken language in the meeting.

It is important to note that since the quality and accuracy of transcription can vary across platforms or conversations, the reliability of transcripts for searching and documentation purposes is still limited. For that reason, transcripts should be considered a foundation or a blueprint of an oral conversation, not a complete, final, and authoritative document of the interaction. In addition, since the transcripts only provide a written record of spoken content, they do not provide a complete view of a meeting, as visual elements like video or screen share, contextual information like reactions and written communications like in-meeting chat are not included in the transcript.

KEY REGULATIONS THAT APPLY TO THE CAPTURE AND SUPERVISION OF TRANSCRIPTS FOR MEETINGS

The applicable regulations for capturing, retaining and supervising electronic communications, are set out by regulators across the U.S., UK and Canada. They include 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).

It should be noted that while several regulatory regimes require recording of oral communications, the retention of transcripts as a discrete record is not addressed. It is a gray area whether the written transcript of the conversation creates an additional record that needs to be retained and supervised in accordance with the regulators' requirements for written electronic communications.

Given the ambiguity surrounding retention of transcripts, financial services firms will need to take a risk-based position regarding the use and retention of transcripts, taking into consideration that the text based transcript will be a less accurate record than the audio recording itself, and does not include other visual, contextual of written communications within the meeting.

The requirements to record oral communications span several regulatory regimes. These include the CFTC's regulations 23.202, 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; and 1.31 to retain "regulatory records of oral communications for a period of not less than one year from the date of such communication", in contrast to the requirement to retain other records for a period of not less than five years. There are equivalent requirements under NFA Compliance Rule 2-10(a).

The applicable FCA rules include SYSC 10A.1.6, which requires firms to "take all reasonable steps to record telephone conversations, and keep a copy of electronic communications, that relate to the activities in financial instruments"in conjunction with MiFID II requirements under Article 16(7). Question 5 of ESMA's Questions and Answers On MiFID II and MiFIR investor protection and intermediaries topics clarifies that "electronic communication" covers many categories of communications and includes amongst others video conferencing…" SYSC 10A.1.14 also sets out the retention period of five years, and up to seven years at the regulator's request.

When considering if transcripts should be retained to support compliance efforts, firms should take a consistent approach informed by a risk analysis.

For example, if a CFTC-regulated swap dealer takes the position that a transcript of a telephone call is an official written record under Rule 1.31 and retains it for five years–longer than the one year retention requirement for the audio recording itself–situations may arise where the transcript of the call is the best evidence of the conversation, not the recording of the conversation itself. This could cause friction in subsequent exams or investigations where the transcript outlives the recording of the conversation.

For firms who do not take the position that the transcript is a formal written record under CFTC Rule 1.31 (or its equivalent for other regulated entities), one of the following risk-based approaches could be adopted:

1. **Retaining audio recordings for recordkeeping and supervision purposes, but not transcribing audio calls. No transcript is generated or retained.**

2. **Transcribing audio calls but retaining the written transcript for a shorter timeframe than required for both oral and written communications, for example 60 days.**

3. **Transcribing audio calls and retaining the written transcripts for the same period as the oral communications (at least one year).**

Supervision requirements

The related supervisory obligations for oversight of the audio communications of meetings 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. The ambiguity surrounding the treatment of audio transcripts extends to supervision and as described in the example above, will depend on a firm's decision whether to generate transcripts and how long to retain them.

Again, as mentioned earlier, the utility of transcripts alone for supervision purposes may be limited given that they may include errors and mis-transcribed words and phrases, and do not include the visual or contextual aspects of meetings or information shared, such as through screen sharing or through in-meeting chat.

INTERPRETATIONS OF THE RULES & 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.

EXAMPLE A

Organising a party for employees - non-regulated

In the first scenario where the events team at a FINRA broker meets on Webex to arrange the firm's summar party, there is no FINRA requirement to retain the audio calls or related transcripts. This is because FINRA rules do not require audio calls to be retained. In addition, the communications do not relate to the firm's "business as such". FINRA's Regulatory Notice 17-18 clarifies that "for record retention purposes, the content of the communications determines what must be retained". So, in this scenario, the firm can keep the transcripts for as long or short a period as desired.

EXAMPLE B:

Calls with customers - regulated and non-regulated

In scenario B, the UK based bank produces and reviews transcripts of meetings with customers for both regulated and non-regulated purposes. The meetings with sales advisers relating to MiFID 2 transactions require the communications to be retained for 5 years in accordance with MiFID II Article 16(7) and SYSC 10A.1.14.

In this scenario, where transcripts are reviewed for compliance purposes including the provision of accurate and not misleading information, it would be advisable to retain the related audio transcripts for no longer than the original audio recordings, to prevent a potentially less accurate record being available for regulatory inspection without the source regulatory recording. Where transcripts are used to identify training opportunities to improve efficiency it would be advisable to delete them once the training needs have been identified, e.g. after 30 days.

EXAMPLE C:

Swaps trading - regulated

In example C, the firm retains recordings of the audio components of swap dealers' meetings in order to meet its regulatory obligations under CFTC regulations 23.202 and 1.35. These oral recordings need to be retained for one year. Given the ambiguity regarding transcripts and whether they create a separate record, which in accordance with CFTC would need to be retained for 5 years, it would be advisable to align the retention of transcripts with the original audio recordings, keeping them for up to one year, or to choose a shorter operational retention like 90 days. Maintaining the transcript for a shorter or equivalent time period as the audio recordings themselves–not considering them written communications under the CFTC Rules–mitigates the risk of retaining a less accurate record after the original communication has been purged.

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