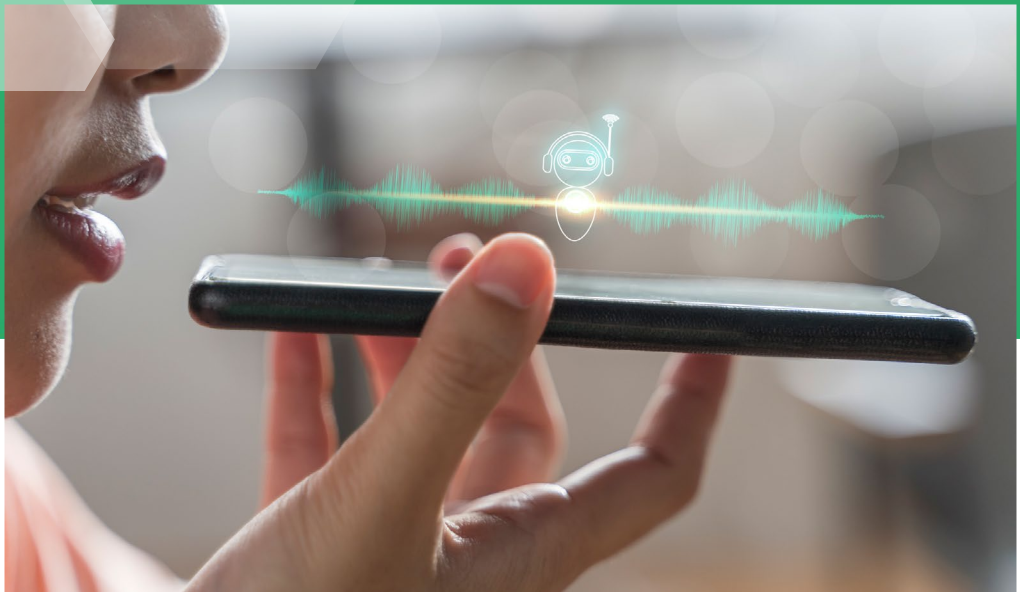

COMPLIANCE CONSIDERATIONS USING TRANSCRIPTS FOR VOICE CALLS

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SUBJECT

This brief sets out the compliance perspectives for financial services firms to consider when using transcripts for voice calls, specifically in relation to the capture, retention, and supervision of post-call transcripts. It explains the features of transcripts generated by communication and collaboration tools, how transcripts for voice calls 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 voice calls and consider how regulatory compliance mandates apply to those scenarios.

TRANSCRIPTS FOR VOICE CALLS & HOW THEY ARE USED

Audio transcription is the process of taking speech from an audio file and converting it to written text. The transcripts of voice calls generated by communication and collaboration platforms 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 voice calls are generated by unified communication and collaboration (UCC) platforms including Microsoft Teams, Zoom, Cisco Webex, RingCentral and Google Meet. Transcription tools such as Otter.AI and Notta can be used to produce transcripts from imported audio files.

Audio transcripts generated by UCC tools are available to download at the end of calls. 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 meeting minutes to audit-related purposes such as quality control, surveillance, and monitoring.

To illustrate, what follows are three real-world examples of how voice 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: HR Interview transcripts - non-regulated

The HR function of a FINRA broker downloads transcripts for a series of Microsoft Teams calls with potential candidates for the firm's graduate program. The transcripts enable the HR team to review and compare the candidates' responses in order to determine those best suited for the program.

Example B: Calls with customers - regulated and non-regulated

A UK based bank uses transcripts of calls with customers for both training and compliance monitoring purposes. For regulated calls with sales advisers the transcripts provide an efficient method to check that appropriate disclaimers have been provided. For non-regulated calls related to password resets, transcripts help managers identify areas where additional training may be needed to help with employee efficiency.

Example C: Swaps trading - regulated

To comply with its recordkeeping obligations, a CFTC registered swap dealer makes and keeps recordings of oral communications made by its employees who engage in trading in swaps and related cash and forward transactions. 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 transcripts for voice calls 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 audio recording into a time-stamped, searchable text document, identifying each speaker so users can easily follow who said what at each point in the call. The transcript can be edited to correct words or to add capitalization and punctuation, and to identify any unknown speakers where needed.

The transcription capabilities convert the audio recording into a time-stamped, searchable text document, identifying each speaker so users can easily follow who said what at each point in the call.

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.

One note–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. Transcripts should be considered a foundation or a blueprint of a conversation, not a complete, final, and authoritative document of the interaction.

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

The applicable regulations for capturing, retaining and supervising electronic communications, including voice 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 telephone conversations, 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.

The requirements to record oral conversations 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 the MiFID II requirements under Article 16(7). SYSC 10A.1.14 sets out the retention period of five years, and up to seven years at the regulator's request.

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. For example, if a CFTC swap dealer takes the position that a transcript of a telephone call is an official 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. In this instance, the choices for a CFTC swap dealer, or any entity subject to a voice recording requirement, include:

1. Retaining audio recordings for recordkeeping and supervision purposes but not transcribing audio calls.
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 oral communications 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.

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. These include both regulated and non-regulated business activity, and the compliance approaches and best practices therefore differ accordingly.

A: HR Interview transcripts - non-regulated

In the first scenario where the HR function is using transcript for calls with candidates for its graduate program 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.

B: Regulated oral content/non-regulated written content

In scenario B, the UK based bank produces transcripts of calls with customers for both regulated and non-regulated conversations. The regulated calls with sales advisers require oral communications to be retained for 5 years in accordance with FCA SYSC rules 10A.1.6 and 10A.1.14. It would be advisable to retain the related 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.

For the other non-regulated calls relating to password resets, the transcripts used for training would not be considered written electronic communications and there are no regulatory obligations for retaining or supervising them. They could be requested as part of a wider audit or investigation so it would be advisable to delete them once the training needs have been identified, e.g. after 30 days.

C: Swaps trading - regulated

In example C, the firm retains recordings of swap dealers' oral communications 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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