COMPLIANCE CONSIDERATIONS WHITEBOARDS & VISUAL COLLABORATION

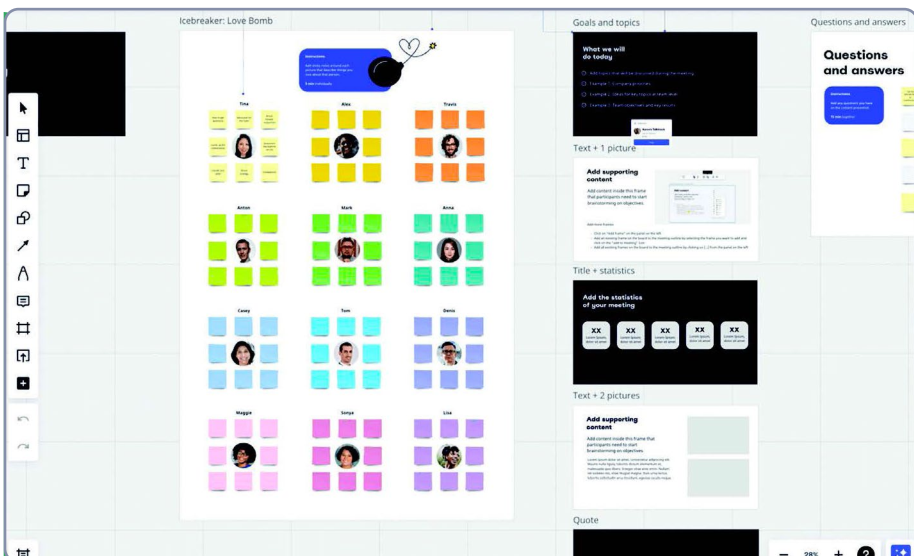
CONFIDENTIAL

SUBJECT

Whiteboards and visual collaboration tools are widely used in modern workplaces to facilitate team collaboration, brainstorming, and ideation. These tools offer a dynamic workspace where teams can interact with text, images, and the whiteboard itself to foster creativity and productivity. However, when it comes to compliance considerations, financial services firms need to be mindful of the capture, retention, and supervision of electronic communications generated through these tools. This includes audio, text, and visual content, which may be subject to applicable regulations in different jurisdictions such as the U.S., UK, and Canada. By understanding the features and capabilities of whiteboards and visual collaboration tools, firms can ensure regulatory compliance while leveraging the benefits of these innovative platforms.

Whiteboard & Visual Collaboration Tools & How They Are Used

Visual collaboration tools are cloud-based platforms that enable teams to communicate and creatively collaborate. The most common form is the digital whiteboard where users can share ideas during both asynchronous and real-time work. Examples include Miro, Mural, Zoom Whiteboard, Microsoft, Lucidchart, Jamboard, Figjam, Sketchboard and Bluescape.



Miro is an all in one visual workspace rich, ready-to-use native capabilities for teams of every size to build out their vision with a creative, collaborative edge.

The tools provide an infinitely scalable shared digital canvas. The default canvas is blank, freeform and often includes templates for graphs, diagrams, project plans, brainstorming, mind maps, and other structured formats alongside the ability to add sticky notes, images, links, upload files and communicate through comments, voting and more. The canvases are easily shareable through links or can be exported in multiple formats.

Multiple users can interact on the same canvas simultaneously, regardless of location or device. 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 an d provide guidance about how to apply relevant regulatory requirements to interactions on these platforms.

EXAMPLE A

Designing web pages for a new careers section - non-regulated users

Financial services firms use whiteboards where neither the business activity nor the individual users are regulated. For example, non-regulated, back office user s in financial services firm 'A' are using Miro for the design of a new careers section on i ts website. Web designers and copywriters work with recruitment teams to develop and agree on the content and design.

EXAMPLE B:

Creating client presentations - regulated & non-regulated users

In other instances, collaborative work on the same whiteboard w ill include a mix of individuals whose roles require regulatory supervision and records retention, alongside others whose roles are not subject to regulatory obligations. For example in financial services organization 'B' the need to create client presentations in Mural requires collaboration between 'front office' investment banking analysts and 'back office' marketing colleagues.

EXAMPLE C:

Conducting a workshop with a client to provide financial advice - regulated users

Whiteboards and visual tools are frequently used in undertaking front office regulated financial services activities such as giving advice. Financial services organization 'C' uses Zoom Whiteboard for conducting online workshops with groups of retail customers.

THE KEY E-COMMS CAPABILITIES OF WHITEBOARDS AND VISUAL COLLABORATION TOOLS

Understanding the scope of electronic written communications (e-Comms), audio communications (aComms) and visual communications (vComms) with in the tools is critical for firms to be able to capture and supervise them to meet regulator y obligations. To illustrate, the following sets out the specific features using examples from Miro, Mural and Zoom Whiteboard.

Written electronic communications facilitated by the tools include:

Built-in chat inside Miro and Mural enable users to chat in real time or leave messages.

'Sticky notes' with text alongside emojis, drawings and links.

Written comments created directly or pasted on the board, or added to any aspect of content.

Free hand text using a built-in pen option, directly on the canvas or another object.

Text created with AI assistance. In Miro Assist that includes summarizing content; language translation; changing tone; and rewriting for clarity. In Mural it includes generating content and summarization. Zoom's AI Companion generates ideas and extends existing content.

Files uploaded or imported with text from PNG files with text, to Word documents.

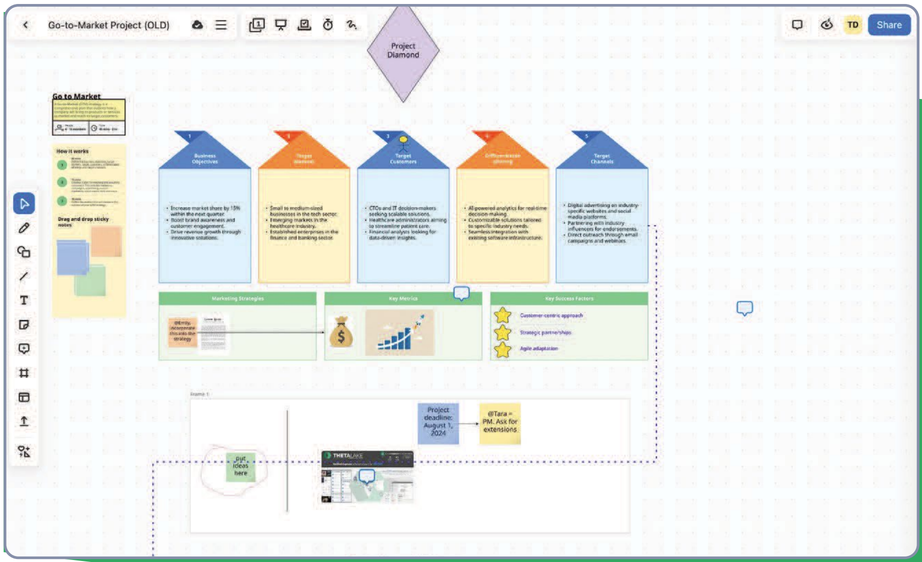
Direct links to text based files or webpages.

Q&A and polling for voting. Miro's 'Voting' plugin or Mural's 'voting session' allow questions and multiple-choice answers to be created with optional freeform answers. The results of Zoom's structured voting sessions can be exported in a CSV file.

Written captions in video like the subtitles in Miro's Talktracks board recordings.

Tables and grids with text and numbers.

Written disclaimers, like the custom disclaimers that can be added to Zoom whiteboards.



Zoom Whiteboards are used by teams around the world to collaborate on complex projects with whiteboard features like sticky notes, chat, polls, and more. All of this content is strictly regulated for certain industries and teams.

Audio electronic communications facilitated by the tools include:

Audio during screen share. In Miro, turning on the screen sharing mode enables participants to hear a presenter's voice over the audio while viewing the screen.

Voice chat. Up to 25 users can simultaneously participate in a Miro voice chat, or a call can be started in Mural's 'quick talk' voice calling capability by clicking a phone icon.

Visual communications facilitated by the tools include:

Video chat. A 'video chat' using camera and/or microphone directly within Miro enables up to 25 users to simultaneously participate.

Board recordings. Miro's 'talktrack' enables a live video commentary of content as the creator interacts with the board. Recordings can be watched later or shared via a link.

Live screen sharing like presenting the entire board live in Miro or sections in ' frames'.

Reactions to express opinions. Some examples include Miro's thumbs up, heart, fire and celebrate, plus hand raising to elicit attention, and Mural's clapping, crying and thumbs down.

Diagrams and shapes. Miro's and Zoom's library of shapes for diagramming enable the creation of flowcharts, similar to Mural's shapes, connectors and icons.

Freehand drawing with options of colors, pen styles and erasers to remove content. Smart drawing capabilities use AI to interpret drawings and create shapes.

Emojis, images, and GIFs. A full library of emojis can be added to, or used instead of comments. Images and GIFs can be uploaded directly from a computer, drive or other storage, or by adding a URL. In Mural users can search the web directly from the tool and import them.

THE KEY E-COMMS CAPABILITIES OF WHITEBOARDS AND VISUAL COLLABORATION TOOLS

Capture and Retention Requirements

The applicable regulations for capturing 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).

Existing rules such as the SEC's 17a-4, FINRA's 2210, the FCA's SYSC 10A.1.6, and CFTC Regulations 23.202 and 1.35 have long mandated the capture and retention of written electronic communications such as email, chat, and other text-based components of collaboration platforms. This would include the written components of whiteboard interactions. FINRA's FAQs beg in to address whiteboards, clarifying that the supervision requirements for virtual communications depend on the nature and number of persons participating in the communications. FINRA's example focuses on 'retail communications' - defined as 'any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period '

> [I]f during an online meeting that includes more than 25 retail investors, a representative responds to a live audience question by using the platform's whiteboarding feature to draw a diagram illustrating the differences between a conventional bond and a stock, that content would meet the definition of a retail communication in FINRA Rule 2210(a)(5). However, because the representative created and posted the whiteboarding content during an online interactive electronic forum, the firm would no t have to approve such content prior to use (see FINRA Rule 2210(b)(1)(D)(ii)). Instead, the firm may review the whiteboarding content in the same manner as required for supervising and reviewing correspondence pursuant to FINRA Rule 3110(b) and 3110.06 through .09.

Everything captured from whiteboards needs to be retained under the requirements which vary by regulator. Retention periods are three years under rule 17a-4 and five years under the Investment Advisers Act rule 204(a)(7) and CFTC rule §1.31 - the CFTC specifies records of oral communications must be kept for a period of one year. The FCA specifies record retention periods of five years and up to seven.

Supervision requirements

The supervisory obligations for e-Comms that would apply to whiteboards include those from FINRA where there is a specific supervisory requirement to 'establish, maintain, and enforce written procedures' that are reasonably designed to achieve compliance with applicable securities laws and regulations. FINRA Rule 3110(b)(4) requires firms to review incoming and outgoing written (including electronic) correspondence and internal communications. Rules 3 110.06 -.09 cover the risk-based review of correspondence and internal communications and the need to evidence the review.

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 3 900 et seq requires a firm to implement a supervisory system that provides 'reasonable assurance'. In SYS C 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 & 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 users, and the compliance approaches and best practices therefore differ for these populations.

EXAMPLE A:

Designing web pages for a new careers section - non-regulated users

In the scenario of using Miro to design a new careers section for the firm's website neither the business activity nor the individual users are regulated. The firm leverages the functionality of the canvas to upload photos and images together with internal links to job vacancy templates and external links to third party websites for ideas. Users add comments to web copy created on t he board, and sticky notes as ideas and sections to include. Polling enables the team to take a final vote on layout, images and font to use.

There is no regulatory requirement for retaining any of the written, audio or visual content or proactively supervising them. Nonetheless, some firms choose to capture and supervise the whiteboard activity of non-regulated users for oversight of conduct purposes. For example a firm may choose to retain all records for seven days in case a complaint is made a bout a user's conduct such as the use of discriminatory remarks or offensive language or the uploading of inappropriate websites or images. This would facilitate internal investigations into workplace policy violations.

EXAMPLE B:

Creating client presentations - regulated & non-regulated users

In example B, regulated investment banking analysts and non-regulated marketing employees are using Mural to collaborate on client presentations. Within Mural, the firm creates discrete 'rooms' for specific client deals which facilitates discussions and content sharing to create the presentations. Information shared and created on the board includes examples of other client presentations, latest market data and insights as well as logos and images. Real time discussion and editing enables the speedy finalization of client-ready decks, with emojis, chat and polling used to give approval.

Given the different types of employees interacting in this scenario, at minimum the firm would be subject to the e-comms capture, retention, and supervision obligations applicable to the regulated investment banking staff using Mural. The written electronic communications in Mural, such as the text exchanged on the whiteboard as well as the real time discussion s, polling, and reactions, would all fall under SEC Rule 17a-4 and other applicable capture regulations.

While technically only the investment banking employees may be regulated in this scenario, capturing all of the e-comms in these Mural sessions would be advisable. In the event that subsequent analysis of this transaction or specific employee communications is required, the full context of the conversation across all participants would provide critical perspective to compliance review or investigations teams. Limiting capture to only regulated users in this use case would omit important parts of the conversation.

The final versions of the customer decks would be subject to relevant pre-approval requirements or post-publication supervision obligations depending on their status as retail or institutional communications under FINRA Rules and other applicable marketing and promotional requirements.

Given the investment banking participants in this scenario, firm s should also consider if appropriate information barriers have been established and if any material non-public information is properly identified and secured pursuant to the mandates of Section 15(g) of the Securities Exchange Act.

EXAMPLE C:

Conducting a workshop with a client to provide financial advice - regulated users

In example C, an advisor from a broker-dealer uses Zoom to conduct an online, interactive workshop for a group of 30 investors. During the workshop, the advisor presents a pre-approved slide deck discussing the state of the financial markets. In response to questions, the advisor uses the chat function as well as Zoom's whiteboard functionality to share several tables, flowcharts and graphs.

Here FINRA Rules 2210, 3110, and the related Advertising Regulation FAQs would apply to the interactions of the advisor during the online meeting. The chat communications are clearly retail communications under the FINRA rules and must be captured in full. In addition, the use of whiteboard features to share tables, flowcharts, and graphs in response to investors' questions would be considered retail communications occurring in an interactive forum. Given that these retail communications (i.e. the chats and whiteboard usage) occurred during an interactive forum they must be reviewed and supervised consistent with the firm's protocols for compliance with the oversight of retail correspondence described in FINRA Rule 3110 and the FAQs.