



THE FINANCIAL ADVISOR'S GUIDE TO

Compliant IM and Collaboration



Change is the only constant. The preparations you've made for today may not be enough for tomorrow, and the things you think you know now may be irrelevant in just a short time. Taking the correct steps today is crucial in preparing for tomorrow's uncertainties. Nowhere is this more apparent than in highly-regulated industries. The past two decades have seen an explosion in the use of new communications channels — specifically Instant Messaging (IM) and collaboration platforms — driven largely by shifting workplace demographics and the increasing prevalence of tablets and mobile phones.

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Increasingly, we're seeing financial firms allowing the use of collaboration platforms, utilities that integrate the best aspects of instant messaging, file sharing applications, and group chat suites which create a productive and modern environment for their employees. This creates a new challenge for compliance officers who now must supervise additional internal communications.

Applicable Regulations

Each member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. — *FINRA 3110(a)*

The Securities and Exchange Commission is publishing its views on the operation of its rule permitting broker-dealers to store required records in electronic form. Under the rule, electronic records must be preserved exclusively in a non-rewriteable and non-erasable format. This interpretation clarifies that broker-dealers may employ a storage system that prevents alteration or erasure of the records for their required retention period.

— *SEC Rule 17a-3 and SEC17a-4*

Every firm that intends to communicate, or permit its associated persons to communicate, with regard to its business through a text messaging app or chat service must first ensure that it can retain records of those communications as required by SEC Rules 17a-3 and 17a-4 and FINRA Rule 4511. SEC and FINRA rules require that, for record retention purposes, the content of the communication determines what must be retained.

— *FINRA Regulatory Notice 17-18*

When it comes to financial services firms, any business-related communications between colleagues and with clients must be supervised, archived, and producible. It makes no difference what communications channel is being used, only that the communication itself is in any way related to business matters.



According to the 2018 Electronic Communications Compliance Survey Report from Smarsh, collaboration platforms lag behind only text messaging and social media on the list of most-requested communications channels.¹

Collaboration platforms are a valuable tool, but they bring with them additional supervisory responsibilities for any firm under FINRA or SEC oversight. Like email and text messages, this new channel must be archived. Of course, that gets complicated when you take into account the kinds of communications that flow through these platforms. Audio files, images, video, and text are all natively supported by collaboration platforms, and you must be able to capture each alongside all relevant contextual content.

Three requirements to add IM and Collaboration platforms to a compliant ecosystem:

1

IT teams need to select, deploy, and manage employee use of IM & Collaboration Apps

As a part of Office 365, Microsoft Teams is among the most popular platforms for IM and collaboration — particularly among small to medium-sized firms. Built with integration in mind, Microsoft Teams seamlessly works alongside popular apps such as Word, Outlook, and Excel, extending and enhancing its formidable communications potential. Other apps being adopted by employees (even outside of IT governance) include Slack and Workplace by Facebook.

- Skype grants Teams the option to conduct voice and video calls
- Outlook integration means you can schedule a meeting directly through a Teams chat
- Word integration offers users the ability to collaboratively edit documents
- And all of this is available regardless of whether you're using a computer, tablet, or mobile device

2

Compliance Officers need to develop Written Supervisory Policies (WSPs)

When it comes to Microsoft Teams and other collaboration platforms, there are a few WSPs that are considered crucial if you aim to satisfy all applicable compliance regulations. These include:

- Prohibit encrypted or ephemeral apps as well as personal email accounts
- Properly train employees on which apps and communications are allowed and which are prohibited
- Frequent lexicon reviews with appropriate documentation of each review
- Test policies often

3

Employees need efficient, supervised communications

Increasingly youthful, tech-savvy employees and a client base that's gradually growing to include younger generations are driving a seismic shift in business communications, and are pushing firms to adopt new messaging and collaboration tools.

While there is no specific supervisory requirement for internal communications on collaboration platforms, best practices dictate that FINRA-registered reps must capture, archive, and supervise any and all communications, regardless of communications platform, network, or device being used.

Microsoft Teams and collaboration platforms like it benefit both firms and employees by improving the efficiency of organizational communications, which enhances productivity and pleases employees who are better able to send and receive information quickly and efficiently.

According to Robert Cruz, Senior Director of Information Governance at Smarsh, “firms should think about their current supervisory processes against the reality that information risk created by policy violation is not just about registered representatives, it can happen at the hands of a number of registered and non-registered users, using email, messaging, text and social platforms.”

“Some firms have not yet recognized the unique characteristics of collaboration platforms,” Cruz continues. “It is not just the message that can create the risk – it is the activities, the content that is shared, it is controlling new features such as white boards, audio, and video. Most firms do not yet have supervisory processes or technologies that are designed to address these rich, dynamic, multi-modal platforms. Simply stuffing all this information into a supervisory tool designed for email is not only inefficient, it can also miss important interactions that happened in a collaborative environment that can create exposure and damage to the firm.”

Marianna Shafir, Corporate Counsel and Regulatory Authority at Smarsh, highlights the importance of proper employee training. “Employees must be trained on what they can and can’t do, which communications are allowed, and which apps they may use to communicate. More importantly, after training, they must provide signed attestation stating that they understand all applicable WSPs. If employees don’t know the policies, they can’t be expected to follow them.

With Great (Communications) Power Comes Great Responsibility

As business communications continue to evolve, it’s important that firms possess the agility to modernize their processes in lockstep. An integrated capture and archiving solution is critical for firms as they onboard new communications channels. Consider that solutions providers who specialize in archiving and compliance software eliminate constrained resources and massive review queues which is why staying on legacy archives greatly increases risk of fines and potential litigation to organizations that don’t modernize.



Conclusion

The rise of collaboration platforms and the compliance requirements they bring with them are a symptom of a larger reality: Workplace communications are changing. Recordkeeping responsibilities and compliance requirements for public sector, financial services, healthcare and all other highly-regulated industries are evolving. Simply archiving emails is no longer enough, as business communications spread beyond the inbox to channels like Teams, social media, and text which offer their own unique risks. Fortunately for you and organizations like yours, the evolution of these new communications channels has been matched by an evolution in automated capture, archiving and supervision solutions. Keeping up with technology and being proactive with capture and review is critical in reducing the risk of fines and protection of your brand.

Top Channels

Requested By Employees²

-  **39%** SMS/Text Messaging
-  **34%** Facebook
-  **25%** Twitter
-  **22%** Corporate IM/
Collaboration

Top Types of Messages

Requested By Examiners³

-  **1.** Email
-  **2.** Website Pages
-  **3.** LinkedIn
-  **4.** Facebook



Sources:

1. <https://www.smarsh.com/guides/2018-electronic-communications-compliance-survey-report-financial/>
2. <https://www.smarsh.com/guides/2018-electronic-communications-compliance-survey-report-financial/>
3. <https://www.smarsh.com/guides/2018-electronic-communications-compliance-survey-report-financial/>



Smarsh delivers cloud-based archiving solutions for the information-driven enterprise. Its centralized platform provides a unified compliance and e-discovery workflow across the entire range of digital communications, including email, public and enterprise social media, websites, instant messaging and mobile messaging. Founded in 2001, Smarsh helps more than 20,000 organizations meet regulatory compliance, eDiscovery and record retention requirements.

