

Data Journey Map for Virtual Communications

Primer for Financial Institutions

COVID-19 is making physical meetings more difficult or undesirable, and all of us are regularly using virtual communications. However, in adopting virtual channels to deliver products and services financial institutions need to work through issues touching on financial regulation, data privacy and technology. This Data Journey Map developed by Baker McKenzie cross-disciplinary experts helps guide your organisation through these questions at a high level. In ten steps, it flags up considerations which should form part and parcel of your risk and compliance assessments with a view to mitigating the potential risks of supervisory intervention and litigation.



STEP 1 APPLICABLE LAWS AND SUPERVISING AUTHORITIES

Ask what laws apply to the regulated entity (e.g. MiFID record-keeping requirements)? Which regulators supervise the entity? Who is the primary regulator? Has specific guidance on the use of virtual meeting technology been issued by National Competent Authorities or ESAs?



STEP 2 RESIDENCY REQUIREMENTS

Virtual meetings remain subject to local residency requirements.

Restrictions on **the offer and sale** of securities and other regulated products and services to residents in EU Member States still apply.



STEP 3 VIRTUAL TECHNOLOGY SELECTION

All outsourced functions and technical solutions must be adequately assessed to meet applicable legal and security requirements. Once vetted, use one approved virtual technology that can log and facilitate compliance with applicable requirements.



STEP 4 INTERNAL APPROVALS

Has the appropriate officer or oversight committee for the firm approved this novel use? Has that approval been adequately documented?



STEP 5 SUPERVISORY OBLIGATIONS

Does the solution allow you to adequately supervise activities of associated persons? Can sessions be recorded and retained? If solution qualifies as outsourcing, you will need to comply with outsourcing rules.

Update or build out policies and procedures.



STEP 6 PRIVACY AND CYBERSECURITY

Update your Incident Response Plan to reflect potential data privacy and security risks that may occur in a virtual session. What if unauthorised persons join or intercept the call? Data breaches and cybersecurity practices are top-of-mind for regulators.



STEP 7 CUSTOMER NOTICES

Develop clear guidance on how virtual meetings will be conducted and update your customer privacy notice. What type of information will customers be expected to provide during meetings and what will you do with that data?



STEP 8 TRAINING

Develop mandatory training for associated persons. Limit to one-on-one conversations versus presenting to groups (which could trigger additional regulatory requirements).



STEP 9 DEPLOY IN PHASES

Test the experience before a full deployment. Assess the challenges and risks against those anticipated before launch. Are representatives conforming to firm requirements?



STEP 10 EDUCATE YOUR CUSTOMERS

Explain the limitations of virtual meetings. Some activities may still require e-mail or other steps.

Contacts

DATA PRIVACY AND SECURITY

We advise multinational companies on all aspects of data privacy, security and information management. Our extensive experience includes helping financial institutions comply with global privacy and data security requirements, providing advice that is crucial for navigating the current "perfect privacy storm" environment of more data, more regulation and more enforcement at a global level.



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FINANCIAL REGULATION AND ENFORCEMENT

We provide a full range of regulatory advice and enforcement counseling services. This integrated approach helps our clients to navigate the challenges presented by regulatory and reporting requirements while simultaneously considering how to assess and minimize potential enforcement exposure. Enforcement investigations and regulatory examinations are similarly addressed, not only with considerable enforcement experience, but also by fully leveraging the enormous value added by regulatory expertise.



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TECHNOLOGY TRANSACTIONS

Baker McKenzie has extensive experience advising clients on complex, transformational technology transactions, including complex information technology, and application development and maintenance transactions, highly bespoke business process outsourcing transactions. Having closed tens of billions of dollars in contracts to source critical technologies, services and business functions, our lawyers possess a deep and sophisticated understanding of the unique features of technology agreements.



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