PERSPECTIVE

November 2018

Strategies for Weathering the Innovation Storm in E-Discovery and Communications Governance

By Monica Summerville, Head of FinTech and European Research, TABB Group

Financial entities are realizing they are information-driven businesses. They understand that leveraging data generated across the enterprise can improve efficiencies and provide actionable insights. When it comes to e-discovery and communications governance, however, past supporting architectures and processes have largely been siloed and dependent on central IT resources. But leading firms actively are redesigning their data infrastructures to achieve today's data-driven objectives and prepare for a data-driven future.

TABB Group is finding that financial entities are realizing they are information-driven businesses. They understand that leveraging data generated across the enterprise can improve efficiencies and provide actionable insights – whether for internal or client use.

For compliance, legal, and risk professionals, however, when it comes to e-discovery and communications governance, past supporting architectures and processes have largely been siloed and dependent on central IT resources. These approaches are no longer fit for purpose, and TABB Group has found leading firms actively redesigning their data infrastructures to achieve today's data-driven objectives and prepare for a data-driven future.

The push for innovation in this space is being fed by three drivers:

1. The ever-increasing methods of inter- and intra-company communications, whether via voice, text, or video chat or email-based communications channels.

2. Raised expectations by global regulators regarding levels of transparency, response time, and privacy as part of an effort to eradicate misconduct.

3. The democratization of data science.

The Rise of Omni-Channel Client Communications

While financial firms are well versed at handling structured data, the sheer quantity is becoming unmanageable under traditional approaches. Additionally, the rise of unstructured data, whether sourced through in-house or third-party channels – for

© 2018 The TABB Group LLC
May not be reproduced by any means without express permission. All rights reserved.

example, email, scanned forms, messaging (text, voice, photo and video) etc. – presents even bigger challenges. These channels may be outside the firm's integration reach or difficult to integrate due to added encryption. This so-called "dark data" can present a huge challenge but also represents a potential treasure trove of insights on operations, culture, conduct and client interaction.

Firms understand that the days when they can dictate or restrict the methods of communicating with clients are long gone. As clients become accustomed to using various communications methods in their personal lives, they expect service providers to follow suit. Who can predict the next popular communications method? Today's communication governance solutions must have flexibility and adaptability baked in.

> "These days we can be given as little as 72 hours to respond to regulators' data requests. Asking centralized IT functions to pull records is simply no longer a realistic strategy to meet these deadlines."
>
> *–Compliance Executive, Leading Broker*

With the amount of data growing exponentially and a fragmented approach to regulations around individual data privacy, firms are turning to distributed architectures for collecting and storing data, coupled with a centralized model when supporting search, access, analysis and reporting.

The Common Drivers of Communications Governance

In conversations with senior executives at financial entities, TABB Group has found that today's communications governance strategies revolve on three main drivers:

1. A requirement for a holistic view of data across the enterprise, no matter the source or location of that data.

2. A desire for systems to support "self-service" approaches by compliance, risk and legal staff that democratize access to data thereby improving response time and productivity and freeing up valuable technology resources.

3. The availability of advanced technology and analytics approaches/tools to address regulatory issues, handle multiple data types and support advanced data enrichment and searching.

The legacy approach to technology would have firms interpreting the above as a prescription for a centralized, IT-managed solution with limited ability by non-technology staff to access and interact with data directly. Such an approach, however, would not only fall foul of jurisdictional data regulations, but would simply prove to be too unwieldy, and too inflexible to support the ever-growing amounts and types of data sources.

© 2018 The TABB Group LLC
May not be reproduced by any means without express permission. All rights reserved.

The Opportunities of a Democracy

Empowering compliance, risk, and legal staff to interact directly with the data directly frees up valuable resources in both business and technology to focus on value-add activities. Additional benefits of this approach include:

- The ability to limit exposure of sensitive data to only those individuals at a firm who are involved in compliance, risk, and legal matters.
- Lowering of support costs as high-value central IT resources are freed from administrative tasks.
- Ability to meet the vastly reduced response timeframes from regulators to financial entities when requesting information.

Equally, the need for more direct control over data access, query and reporting is driven by the complexity of the e-discovery and communications governance challenge. Obligations include:

- Immutability of electronically stored information, once captured.
- Differing regional requirements regarding communications storage, retention time frames and privacy.
- Access to communications records must be controlled to ensure no tampering, or unauthorized access.
- Deletion must conform to jurisdictional rules but also respect legal holds, which prevent deletion for longer periods of time.

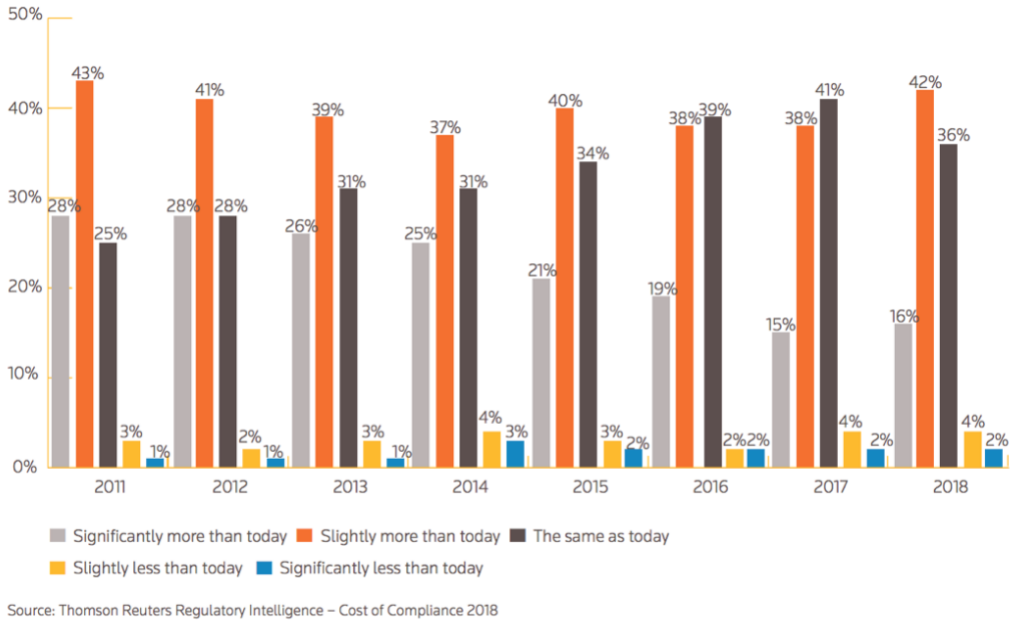
66% of G-SIFI entities expect to spend more time than last year liaising with regulators and exchanges.

–Source: Thomson Reuters Regulatory Intelligence

The increased pressure from regulators has been quantified in a recent survey of 800 senior compliance practitioners from around the globe, by Thomson Reuters Regulatory Intelligence. More than half of firms surveyed (*see Exhibit 1, below*) expect to spend more time than last year liaising with regulators and exchanges. When confined to global systemically important financial institutions (G-SIFI), this jumps to 66 percent. One of the top three reasons given was “increased information requests from regulators.” When it came to the board’s greatest challenges in the year ahead, “enhanced regulatory scrutiny” came in at No. 2.

© 2018 The TABB Group LLC
May not be reproduced by any means without express permission. All rights reserved.

Exhibit 1: Expectation of time to be spent, over next 12 months, liaising and communicating with regulators and exchanges



Source: Thomson Reuters Regulatory Intelligence – Cost of Compliance 2018

The Distributed/Centralized Paradox

The abilities to continue to store data in a distributed fashion but view data holistically across the entire organization seems, at first glance, to be diametrically opposed. TABB Group research found that leading financial firms have already started architecting approaches that offer the flexibility to collect and store data in compliance with jurisdictional regulations but also make the data available in a holistic and non-technically challenging, but compliance-aware, searchable fashion.

The largest financial firms typically support massive data repositories. One large banking group TABB Group is aware of is in the process of upgrading its global email and e-discovery systems, which collect data from nearly 200,000 users, resulting in monthly data volumes of about 30 TB. The new system will have to support voice, documents, and video, in addition to currently covered email and instant messaging. They are projecting annual message volume growth of 10% from email, alone. In recognition of the vast amount of unstructured data, the firm is exploring optimal frameworks to store subsets of the data.

"[Our new solution has] significantly improved the efficiency and flexibility of investigations, and cut time needed for discovery searches from weeks to hours."

–Head of Data Center (UK) and Global Storage at an International Bank

At another international bank client that has now upgraded its communications and e-discovery system, the data sources were dispersed and difficult to access, so the IT team was responsible for compliance discovery analysis. The bank opted for an auditable and secure central hub for the entire data set that allows direct searching of indexed data by the compliance teams. Data was secured with audit trail, pre-set

© 2018 The TABB Group LLC
May not be reproduced by any means without express permission. All rights reserved.

deletion and retention policies, as well as access controls. The system utilizes an object storage solution that supports data enrichment through the use of metadata tagging. To meet international regulations, the data is now categorized by both source and country. This means retention and deletion policies can be applied with precision. A web interface ensures intuitive and ease of use – reducing the reliance on central IT support. As a result, search times have significantly reduced and the productivity of all compliance and IT staff improved. The modular nature of the solution means new data sources can be added as needed and changing regulations can be met.

Regulations Driving Increased Transparency in Financial Services

The need to monitor and access communications is already a requirement for many firms and certainly not new to the financial services industry as it directly relates to issues around financial misconduct and trade surveillance, as well as more generic HR (culture risk) and legal issues. The process of e-discovery applies to an organization's electronically stored information, whether that is on an employee's home or office computer, smartphone, tablet, backup storage, or even in some cases, employees' personally owned devices. Much of this data can be considered "dark data," as it can be virtually invisible to the company due to being managed by the employee or not easily accessible.

"Culture is often viewed as a 'soft' topic, but I would disagree. The financial penalties associated with misconduct are anything but soft – with bank fines since the crisis estimated at more than $320 billion as of year-end 2016. The hit to a bank's reputation can also be quantified."

– William C. Dudley, President & CEO, Federal Reserve Bank of NY, speaking at US Chamber of Commerce, Washington, D.C., March 2018

Meanwhile the financial services industry is one of the most highly regulated, and it is no surprise that compliance executives speaking with TABB Group flagged numerous regulations that affect their businesses (*see Exhibit 2, below*). As the table below shows, the regulations affecting financial entities can be extremely broad. Further complexity is borne by multi-service, multi-national firms, as they must reconcile differing – and sometimes contradictory – regulatory requirements by nation or business function.

© 2018 The TABB Group LLC
May not be reproduced by any means without express permission. All rights reserved.

Exhibit 2: Financial services are among the most heavily regulated institutions

Sample of Varied Regulations Challenging Financial Institutions

FINRA 10-06, 11-32, 11-39 (relating to social media communications, tweets, text messages, work and personal devices)
SEC Rules 17a-3 & 17a-4 (records preservation by dealers and brokers)
NASD 3010/3110 (retention program for correspondence involving registered representatives)
Fourth Money Laundering Directive (4MLD)
Countering America's Adversaries Through Sanctions Act (CAATSA)
Common Reporting Standards (CRS)
Dodd-Frank Act (Title VII mandates extensive record keeping. For transactions in past 12 months, all interactions related to a single transaction must be provided to regulators within 72 hours if requested. Every interaction with the potential of a transaction must be preserved. Phone calls and electronic communications must be archived for five years.)
Graham-Leach-Bliley Act, Section 6801 (relates to customer communication control)
IIROC 11-0349 (all communication methods are subject to IIROC Member Rules)
General Data Protection Regulation (GDPR) (protects personally identifiable data or PII and includes right to be forgotten)
International Financial Reporting Standards 9 (IFRS 9)
The Markets in Financial Instruments Directive II (MiFID II) & Markets in Financial Instruments Regulation (MiFR) (All communications related to a trade must be recorded by financial advisors and corporate brokerage firms. Data must be stored for a minimum of 5-7 years)
The Packaged Retail and Insurance-based Investment Products (PRIIPs)
PATRIOT Act (specified an identity trail for customers opening new accounts)
Sapin II (French anti-corruption law addressing transparency to mitigate corruption risks)
Sarbanes-Oxley Act (public companies must save all business records, including e-records/message, for no less than five years)
Senior Managers and Certification Regime (SM&CR) (UK regime replacing the Approved Persons Regime, the aim is to make individuals working in financial services more accountable for conduct and competence)
Markets Abuse Regulation (MAR) (expands scope to new markets, platforms and behaviors)

Source: TABB Group

Financial entities have long had the ability to record, monitor, store and search many forms of internal and client communications, for time periods lasting years. However, expectations by regulators and clients regarding response time, responsibility and privacy have massively increased. In some cases, firms can have as little as 72 hours to comply with requests from regulators. For example, under U.S. Commodity Futures Trading Commission (CFTC) rules regarding trade reconstruction, affected firms must produce a time-sequenced complete reconstruction of a swap trade within 72 hours of a request. This reconstruction will include pre-trade data (e.g., email, instant messaging) as well as trade data and post-trade execution data. Adding to the compliance executive's challenges are moves by regulators across the globe to introduce or increase personal liabilities regimes.

At the same time the industry is realizing the untapped potential of data it collects, new technology approaches and tools are democratizing access to this data – data is the

© 2018 The TABB Group LLC
May not be reproduced by any means without express permission. All rights reserved.

new oil, and most companies are eager to exploit its valuable client, market and business insight.

Enterprise Hardened, Future-Proofed

As these two examples demonstrate, with such demanding requirements, firms are opting for systems in which the underlying infrastructure supporting communications data collection and archiving and the e-discovery process are extremely robust and enterprise hardened. However, the solution is also flexible enough to allow new tools and data sources to be added and adjusted to support ever changing regulations. These solutions generally support a modular approach to extension, allowing addition of various tools such as user interfaces, dashboard, data visualizers and report generations. And these often are required to interface with other systems, for example for trade/order surveillance and voice recording.

Firms must be ready to embrace the innovation occurring in e-discovery and communications governance. TABB Group research has identified a trend for the leading companies to adopt systems that, while extremely robust and stable at core layers (data collection, archiving, access), are also built to support principles of an open and modular architecture. Additional components, whether developed in-house or provided by varying vendors, can, therefore, be "plugged in" as needed. This approach allows financial firms, regulators, and clients to be sure data is safely secured but accessible as needed.

To learn more about developments in FinTech, please contact TABB Group.

▲

To see comments and join the discussion, visit FORUM.
Not yet a member of TabbFORUM? Please complete a free registration: Sign-up for TabbFORUM

© 2018 The TABB Group LLC
May not be reproduced by any means without express permission. All rights reserved.