The $200m dollar question

How Bank CIO's stay compliant while letting employees use instant messaging?

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Newspapers Highlights

The New York Times

JPMorgan fined $200 million after staff used personal chats for company business.

JPMorgan fined $200 million for allowing employees to do business on WhatsApp, private devices

The SEC and Commodity Futures Trading Commission say the r
practices skirt regulatory scrutiny, violating record-keeping law

FINANCIAL TIMES

JPMorgan to pay $200m over staff messages on personal devices

JPMorgan fined $200M for employees' use of Whatsapp, personal devices to discuss business matters

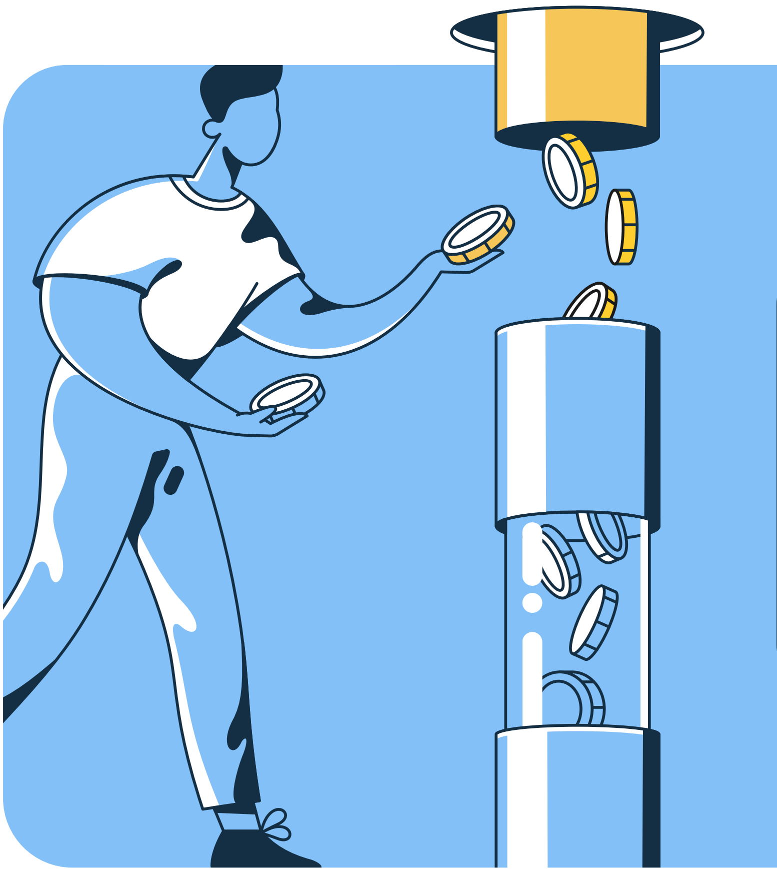
LONDON NEWS TODAY

JP Morgan is fined $200 million

A $200 million problem

December 25th, 2021 was not a very merry Christmas for JPMorgan Chase & Co. executives. Just over a week earlier, the firm was slapped with a $125 million fine by America's Securities and Exchange Commission, and $75 million by the Commodity Futures Trading Commission, after it emerged that employees had been using WhatsApp to conduct business conversations.

Furthermore, the practice was endemic throughout the company. Record keeping duties were so lax that managing directors and senior supervisors were using untracked communications platforms along with lower-level employees. It was that cavalier attitude that led the regulators to impose such a large fine on the company. The fine was uncontested.



WhatsApp is a stand-alone messaging platform. This meant that the messages were effectively unrecorded and therefore was not in line with legal requirements to keep a log of all communications.

The message is:

Although technology is changing rapidly, and despite demand from customers who expect the companies they do business with to provide a convenient service via popular messaging apps, the legal requirement to remain transparent and compliant is still just as important as it has always been.

"As technology changes, it's even more important that registrants ensure that their communications are appropriately recorded and are not conducted outside of official channels in order to avoid market oversight"

SEC Chair Gary Gensler said in a statement on the decision to fine JPMorgan.

Working from home makes matters more complicated

Customers' demands to use convenient messaging platforms is just one part of the equation. Over the last two years, regulators have warned that a sharp increase in working from home, driven by pandemic policies, is laying the ground for a regulatory misconduct tsunami. 2020 saw home working in the United States nearly double, from 22% of workers report working from home at least some of the time in 2019, to 42% in 2020. That figure was heavily skewed toward high earners.

US Census data shows a neat correlation between a person’s salary and their likelihood of working from home: just 12.7% of those earning less than $25,000 a year worked remotely during 2020, while at the other end of the scale, 73.1% of those earning more than $200,000 a year worked remotely.

People working from home

2019	2020	2021
22%	42%	63%

Percentage of households by income with adult(s) who swicthed to Telework because of Coronavirus pandemic.

$200,000 and above	73.1%
$150,000-$199,999	67.5%
$100,000-$149,999	57.5%
$75,000-$99,999	44.1%
$50,000-$74,999	32.1%
$35,000-$49,999	23.1%
$25,000-$34,999	17.5%
Less than $25,000	12.7%

Source: U.S. Census Bureau, Household Pulse Survey (Weeks13-21:August19-DEcember 21, 2020) Estimates produced using public use microdata files.

This means that high earning industries such as banking are more likely to have a significant portion of their employees working remotely, often using messaging platforms such as WhatsApp to stay connected, and yet these are the companies for whom keeping a record of all communications is a must.

"all telephone and written communications must be recorded to remain compliant"

In January 2021, the UK's Financial Conduct Authority issued a warning in its Market Watch report that, even when working from home, all telephone and written communications must be recorded to remain compliant. "We have acted against individuals and firms for misconduct which involved the use of WhatsApp and other social media platforms to arrange deals and provide investment advice," the FCA noted.

"This included transmitting lists of trades to copy ('trading signals') and making other investment recommendations to clients. We view these actions as serious and have sought orders preventing such individuals from carrying out these activities in the future. We expect this to remain an area of focus."

"It is important for firms to proactively review their recording policies and procedures every time the context and environment they operate in changes. We expect firms to have a rigorous monitoring regime, commensurate to the increased risks, where in-scope activities may be conducted outside the controlled office environment".

FCA | Financial conduct authority

Know how to stay within the law

According to the SEC, JPMorgan was fined after it was found the company had violated Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-4(b)(4) and 17a-4(j) thereunder. The text of these are as follows:

SEA Rule 17a-4(b)(4)
"Originals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public. As used in this paragraph (b)(4), the term communications includes sales scripts and recordings of telephone calls required to be maintained pursuant to section 15F(g)(1) of the Act (15 U.S.C. 78o-10(g)(1))."

SEA Rule 17a-4 (j)
"Every member, broker and dealer subject to this section must furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the member, broker or dealer that are required to be preserved under this section, or any other records of the member, broker or dealer subject to examination under section 17(b) of the Act (15 U.S.C. 78q(b)) that are requested by the representative of the Commission."

Customers want the convenience of messaging apps

It's not only home workers who crave the convenience of messaging apps such as WhatsApp, customers too increasingly expect to be able to contact service providers via such platforms.

WhatsApp is currently dominating the messaging landscape. Launched in 2009, by 2016 the platform reached 1 billion users. Two years later it had grown to 1.5 billion users, and by 2020, it hit 2 billion users in 180 countries, meaning it added a quarter of a billion users year on year.

By October 2021, 2 billion WhatsApp users were accessing the app every month, leaving its closest competitor, Facebook messenger, in the dust at 1.3 billion users per month. Every single day, 100 billion messages are conveyed by the platform.

WhatsApp user base growth

1B	1.5B	2B
2016	2018	2020

18M Downloads of the WhatsApp Business app in September 2021

With such a large audience, it's little wonder that businesses, especially small businesses, have sought to connect with their customers on the app. Within a year of launching WhatsApp Business, it had already attracted 5 million business accounts, and that number too has since shot up: in September 2021 there were an estimated 18 million downloads of the WhatsApp business app across Google Play & App Store.

Will Cathcart, head of WhatsApp tweeted in January 2021 that each day, around 175 million people worldwide contact a business via the app, demonstrating that there is strong demand from customers for communicating in this way.

The popularity of the app presents a dilemma for businesses, especially in regulation-heavy industries such as banking. Some are opting to embrace their customers' demands, for example, Indian health insurance company Star Health and Allied Insurance has launched a dedicated WhatsApp service for costumers allowing them to acess a range of services at the click of a few buttons.

At the other end of the scale, Deutsch Bank banned the use of the app among employees in 2017, mindful of the difficulties with remaining compliant. In plenty of other workplaces, not just JPMorgan, bosses have remained ambivalent. In 2015, a study of 2,107 UK doctors and nurses found that a third used WhatsApp and other messaging platforms to send clinical information, despite NHS warnings over data privacy.

But remaining neutral can clearly set companies up for failure when it comes to regulation. Global law firm Norton Rose Fulbright noted last year that firms are still falling foul of misconduct rules due to using messaging platforms such as WhatsApp. Its lawyers advised firms should not only take a proactive approach to update their policies on the use of messaging apps but ensure that they can demonstrate the policies are well understood and adhered to throughout the organization, including through regular training events.

Banks are adopting RegTech to reduce compliance costs

The cost of compliance has risen exponentially in the banking sector under a flurry of new rules and regulations brought in following the 2008 financial crash. Compliance staffing costs doubled in just five years, between 2012 and 2017, with 10-15% of staff dedicated solely to compliance by 2020.

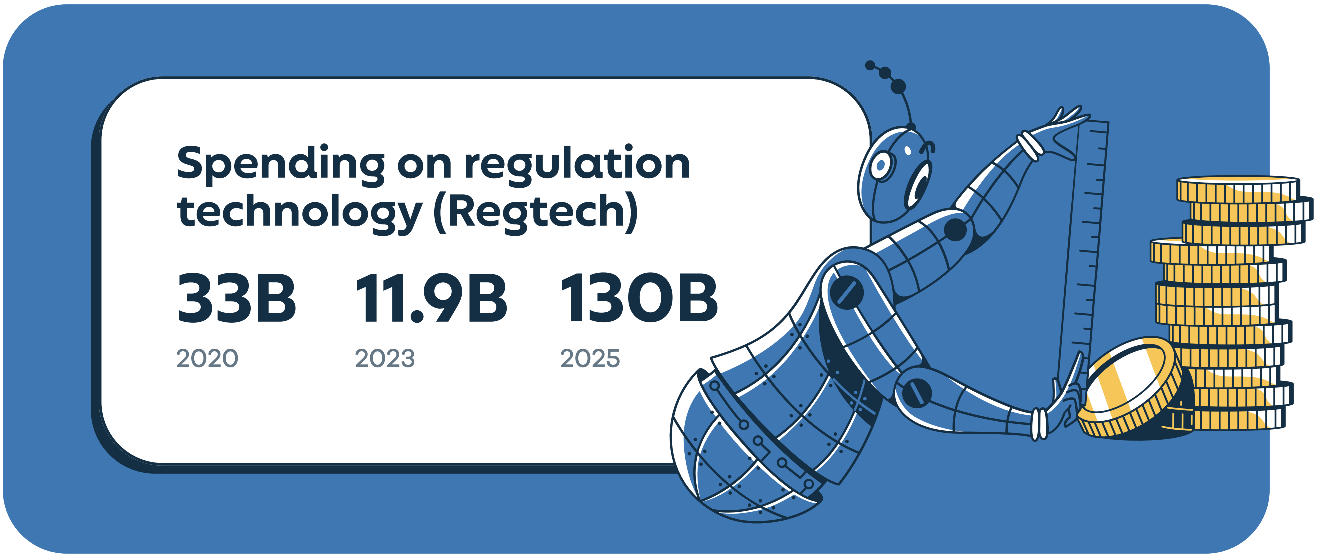
57% of 21 European Banks Reported compliance risk

2021

In the same year, banks spent a staggering $287 billion on compliance alone, with no relaxation of the rules insight. Between 2018 and 2023, compliance spending is projected to rise a further 16.6%. The unsustainability of such rapidly rising costs has prompted industry insiders to turn to AI solutions to bring down the cost of compliance, a trend that was also boosted by the pandemic.

A survey of 21 European banks conducted by EY in 2021 found that 57% reported “facing increasing compliance risk” due to the pandemic, with the majority of firms recognizing that the changing landscape due to Covid has accelerated the need to change in how they carry out compliance activities. Some 38% of respondents reported that “accelerating plans to implement technology solutions” was going to impact how they carry out compliance.

According to Juniper Research, spending on regulatory technology (‘RegTech’) is on track to exceed $130 billion by 2025, up from $33 billion in 2020. This represents a mammoth 290% increase in just five years, with the vast majority to be spent in America, Europe, and the Far East. By 2023, RegTech is expected to account for 40% of compliance spending, or some $115.9 bilion.



However, the tech can offer significant savings, for example, banks are expected to save $701 million by utilizing tech for customer verification processes by 2023, and there are similar savings to be made elsewhere.

a simple conclusion

In an increasingly connected world, there is no doubt that customers expect ease of communication with service providers such as financial institutions at the click of a button on their favorite messaging platform, making doing business as seamless and easy as chatting to a friend. But struggling under a tsunami of ever more stringent regulations, banks until now have faced a serious dilemma: do they meet their customers' needs and risk the wrath of the regulators, or do they deny their customers' their preferences in order to make sure they remain fully compliant? With so much on the line in terms of profits v's potential fines, the choice isn't an easy one to make.

While RegTech has been around for a little while now, the pandemic, which shifted minds toward digital solutions, has really sparked a desire within the industry to invest in technological solutions to the regulation problem. Increasingly, AI is filling the gap between customers' expectations and regulatory requirements, allowing banks to keep both customers and regulators happy.

Stay Compliant with Tuvis

At Tuvis, we're proud to be part of that solution. Our product links WhatsApp with record-keeping systems used by companies (CRM, ERP, and custom databases) in a secure encrypted way. In doing so, we allow companies to keep serving customers where they want to be - on WhatsApp - while automatically syncing every customer interaction back into the company's systems, ensuring companies keep a complete log and stay compliant.

References

Penalties: $200 million - fines issued to JP Morgan Chase & Co in December 2021.

Securities and Exchange Commission & Commodity Futures Trading Commission

Homeworking: 90.1% increase - in the number of Americans working from home, between 2019 and 2020. The figure rose from 22% of the population to 42%.

American Time Use Survey, July 22, 2021

73.1% - the number of Americans earning over $200k a year who worked from home in 2020. Homeworking is heavily skewed toward high earners.

US Census Bureau, Household Pulse Survey, March 31, 2021

UK's FDA: "We expect firms to have a rigorous monitoring regime, commensurate to the increased risks, where in-scope activities may be conducted outside the controlled office environment."

FDA Market Watch 66, January 11, 2021

Use of messaging apps: 2 billion - the number of WhatsApp users who access the platform each month.

WhatsApp, accessed January 11, 2022

18 million - downloads of WhatsApp business in September 2021.

BackLinko, January 5, 2022

175M - number of people messaging a business account each day on WhatsApp.

Will Cathcart, Twitter, January 8, 2021

Compliance: 16.3% - CAGR of global regulatory compliance spending, 2018-2023.

Juniper Research, April 2021

10-15% - the percentage of banking staff dedicated to compliance.

Juniper Research, March 22, 2021

38% - the percentage of European banks accelerating adopting technological solutions to compliance, following the pandemic.

EY, February 2021

$33 billion - the spend on RegTech in 2020 - $130 billion - the projected spend on RegTech in 2025 290% increase - the projected increase in RegTech spending between 2020 and 2025

Jupiter Research, March 22, 2021