

Telephone Recording Requirements

Introduction

From the 6th March 2009, the FSA will make it compulsory for firms to record telephone conversations if they involve receiving client orders and negotiating, agreeing, and arranging transactions in the equity, bond, financial commodity and derivatives markets. The FSA have extended this to include all electronic communications relating to these activities. The FSA believes that introducing a taping requirement may raise the standard of behaviour by those using telephone lines and other means of electronic communication. It may also increase the quality and volume of information available in pursuing market abuse cases by increasing the probability of successful enforcement. It is also expected to reduce the expected value to be gained from committing market abuse, which should lead to increased market confidence and greater price efficiency.

Scope of the requirements

The scope of the proposals includes proprietary trading and other principal dealing and agency broking. Individuals managing collective investment scheme products will need to comply with these requirements. Outside of the scope of the proposals are investment managers without authority to deal, retail financial advisers, corporate finance advisers, research analysts, treasury and back office functions. Corporate finance business and corporate treasury functions are explicitly excluded by COBS 11.8.2R. Discretionary investment managers are also excluded from the requirements to record telephone conversations and electronic communications with other firms that are subject to the taping rules, as these communications should be captured through the taping obligation on 'sell – side' firms.

Retrieval

All recorded relevant telephone conversations and electronic communications must be readily accessible to the FSA, and any changes to the originals must be identified. No technical standards for search facilities have been specified, such as specifying voice recognition, but search facilities must support a reasonable interpretation of 'readily accessible'.

Mobile Phones

Mobile phone conversations and other electronic communications, except e-mails, are exempt from the recording requirement. This decision will be reviewed in 18 months time to decide whether it is still appropriate.

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Retention

The retention period for recordings has been set at six months.

Definition of electronic communication

The term electronic communication includes fax, e-mail, Bloomberg, video conferencing, SMS, business to business devices, chat and instant messaging. However it is not limited to these, as it captures any electronic communications involving receiving client orders and the agreeing and arranging transactions.

Handbook definitions

FSA handbook COBS 11.8R applies to a firm:

(1) Which carries out any of the following activities:

- *receiving client orders;*
- *executing client orders;*
- *arranging for client orders to be executed;*
- *carrying out transactions on behalf of the firm, or another person in the firm's group, and which are part of the firm's trading activities or the trading activities of another person in the firm's group;*
- *executing orders that result from decisions by the firm to deal on behalf of its client;*
- *placing orders with other entities for execution that result from decisions by the firm to deal on behalf of its client;*

(2) to the extent that the activities referred to in (1) relate to:

- *qualifying investments admitted to trading on a prescribed market;*
- *qualifying investments in respect of which a request for admission to trading on such a market has been made;*
- *investments which are related investments in relation to such qualifying investments*

Action Points

- Consider whether your firm is covered by these requirements
- Does the firm already have the capability to carry out these recordings

- What steps will be needed to meet the requirements

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