

Adrian O'Brien
Deputy Head of Consumer Protection Codes
Irish Financial Services Regulatory Authority
Central Bank Building
Dame Street
Dublin 2

17th September 2009

Dear Mr. O'Brien,

Alder Capital appreciates this opportunity to comment on the Financial Regulator's proposal to increase the obligations on MiFID firms regarding the recording of certain telephone conversations under Regulation 40(6) of the MiFID Regulations.

Costs to Investment Firms Disproportionate to Evidence of Risks

CP38 states that the introduction of the proposed obligation '*would assist in the resolution of complaints*'. To the knowledge of the firm¹, there has not been any major systemic problem arising from an absence of telephone records of conversations between firms and their customers which has led to a significant diminution of consumers' ability to claim their rights because of evidentiary issues surrounding their orders.



¹ Alder Capital could find no mention of the recording of telephone conversations in the IFSRA Strategic Plan 2008-2010 nor has the absence of telephone recordings of conversations with consumers been reported by Financial Services Ombudsman as a major problem in the resolution of customer complaints.

According to the Financial Regulator's CP38, the average cost of installing telephone recording equipment is EUR 103,000² and the average annual maintenance cost is EUR 15,250³.

The firm respectfully suggests to the Financial Regulator that there needs to be some sense of balance between imposing costly obligations on investment firms and relating the costs of those obligations to the emerging evidence of the scale of the risks faced by consumers.

No Evidence of Market Abuse Investigations Inhibited by Absence of Recordings of Telephone Conversations

CP38 states that the introduction of the proposed obligation '*would assist in the ... monitoring of market abuse thus enhancing consumer protection.*'

The Financial Regulator's 2008 Annual Report provides, at page 36 of the report, a comprehensive review of its prudential regulation in relation to market abuse. Nowhere in that review is there any mention of the Financial Regulator's inability to protect consumers or maintain the integrity of the market from an absence of telephone recordings regarding client orders.

In view of the absence of any systemic risks facing consumers and the absence of any barriers to the Financial Regulator in carrying out investigations in relation to market abuse and the significant costs to be imposed on investment firms, Alder Capital urges the Financial Regulator to:

- (i) re-examine the need for imposing such significant costs on MiFID investment firms; and
- (ii) take a more balanced approach to the issue rather than the current blanket approach suggested in CP38.

Pre-MiFID & Post-MiFID Comparison

² Page 8 of CP38 at paragraph (iv) based on the average of the upper (EUR200,000) and lower (EUR6,000) figures quoted.

³ Page 8 of CP38 at paragraph (iv) based on the average of the upper (EUR30,000) and lower (EUR500) figures quoted.

Prior to the introduction of MiFID, there was no requirement for investment firms that were not members of the Irish Stock Exchange to record telephone conversations. In Alder Capital's view, there is no pressing systemic reason nor is there a significant risk to consumers which require the pre-MiFID approach in this area to change.

More Proportionate Regulation

In Alder Capital's view, any proposal in relation to the recording of telephone conversations should be restricted to client order transactions with:

- retail clients or at most,
- retail clients and professional clients within the meaning of Directive 2004/39/EC, Annex II, paragraph II (Clients who may be treated as professionals on request).

Extending the obligations to professional clients within the meaning of Directive 2004/39/EC, Annex II, paragraph I, which are required to be authorised and regulated, is disproportionate, creating significant extra costs for MiFID firms and is not aimed at consumer protection.

Absence of Regard for the Treaty on the Functioning of the European Union

Article 173 of the Consolidated version of the Treaty on the Functioning of the European Union (the "Treaty") states in pertinent part:

1. The Union and the Member States shall ensure that the conditions necessary for the competitiveness of the Union's industry exist.

For that purpose, in accordance with a system of open and competitive markets, their action shall be aimed at: ...

- encouraging an environment favourable to initiative and to the development of undertakings throughout the Union, particularly small and medium-sized undertakings, [Emphasis Added]

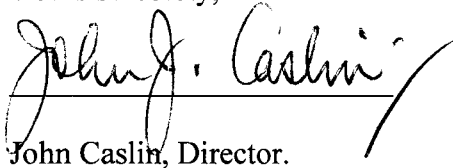
Further, according to a communication from the EU Commission to the Council, the European Parliament et al., entitled "Think Small First" – A "Small Business Act" for Europe dated 25th June 2008, the EU and Member States should design rules according to the "Think Small First" principle by taking into account SMEs' characteristics when designing legislation, and simplify the existing regulatory environment.

The most burdensome constraint reported by small and medium-sized enterprises (“SMEs”) is compliance with administrative regulations. Indeed, SMEs bear a disproportionate regulatory and administrative burden in comparison to larger businesses. It has been estimated that where a big company spends one euro per employee because of a regulatory duty, a small business might have to spend on average up to 10 euros.

In view of the EU Commission communication, Article 173 of the Treaty and the nature, scale and complexity of smaller investment firms that do not deal with retail clients, Alder Capital is of the view that to impose rules relating to the recording of telephone on investment firms that are not members of the Irish Stock Exchange and that do not deal with retail clients is against the spirit and the letter of the Treaty and is disproportionate relative to the risks.

Alder Capital thanks the Financial Regulator for the opportunity to comment on this matter.

For & on behalf of Alder Capital Limited
Yours sincerely,

A handwritten signature in black ink, appearing to read "John J. Caslin", written over a horizontal line. The signature is fluid and cursive.

John Caslin, Director.