

Financial Services Consultative Consumer Panel

Submission on CP 38 - Telephone Records and Electronic Communications under the European Communities (Markets in Financial Instruments) Regulations 2007

The present Consultation Paper concerns the introduction of obligations relating to the recording of telephone conversations or electronic communications involving client orders under MIFID.

The Consumer Panel is concerned that the Consultation Paper fails to link this obligation with the general record keeping obligations contained within MIFID and its implementing Directive & Regulation.

It is very useful to have results from the examination completed by the Financial Regulator of investment firms regulated by MIFID but it could have been beneficial to have an idea of how these firms are presently dealing with the MIFID mandatory record keeping obligations – whether they find them onerous etc.

Article 13(d) of MIFID contains a general record keeping obligation that obliges investment firms to keep records necessary to enable competent authorities to monitor compliance with the MIFID legislation. Under the Implementing Directive (Article 51(1)) investment firms are required to retain records for a period of five years, however competent authorities can require firms to keep their records for a longer period if such a requirement is necessary to facilitate effective supervision or if the longer period is justified by the type of instrument or transaction.

This general provision is sometimes supplemented with explicit record keeping requirements on client order handling (Article 6 Implementing Regulation) or covering specific transactions (Article 7 Implementing Regulation) and record keeping obligations relating to SIs (Article 23 Implementing Regulation).

In that case it is no surprise that the feedback from other national competent authorities was that the obligation to retain telephone records ranges between three months to five years. Three months is in line with the present ISE Rulebook, while five years is in line with the general provision for record keeping in MIFID.

The Consumer Panel supports the recommendation in the Consultation Paper to increase the obligation to retain telephone records for 2 years and agrees that the necessity to retain telephone records for an additional 21 months will assist in the resolution of complaints and monitoring of market abuse thereby enhancing consumer protection.

The Panel would be grateful if the Regulator could supply a list of the competent authorities and the telephone record keeping time obligation. While interested in enhancing consumer protection, the Panel must be cognisant of not putting Irish investment firms at a disadvantage to their competitors especially in London.

The Consumer Panel would also like to receive an outline of all the record keeping obligations existing in Ireland under MIFID and its implementing Regulation & Directive so that it can assess this new telephone record obligation in the context of the overall MIFID regime.

I look forward to hearing from you in response to the Consumer Panel's particular information requests.