

18 September 2009

'Telephone Records'
Consumer Protection Codes Department
Financial Regulator
PO Box No 9138
College Green
Dublin 2

**CP 38 Telephone Records and Electronic Communications
under the EC (MiFI) Regulations 2007**

Dear Sir

I refer to your Consultation Paper 38 in relation to the above and wish to provide Goodbody Stockbrokers' views on the proposed introduction of the following obligations under Regulation 40(6) of the MiFID Regulations:

“Effective from 1 May 2010, MiFID firms should record all telephone calls (including mobile phones) and electronic communications involving client orders. These records must be maintained for a period of at least 2 years and until the record is no longer of any relevance to any complaint, disciplinary action or investigation.”

As the Consultation Paper recognises “ISE member firms were subject to the ISE Rulebook and were required to record telephone lines and voicemails relating to the provision of advice and the acceptance and execution of instructions. These records were to be maintained for at least three months. In addition, the Handbook required, where relevant, firms to maintain telephone records for at least six months”.

Retention Period

On the introduction of the MiFID Regulations, Goodbody Stockbrokers (GBS) continued to record all telephone land lines and retained calls for an 18 month period in accordance with GBS' internal procedures. This retention period was extended to six years following receipt of correspondence from the Financial Services Ombudsman (FSO) in November 2007 stating that it would be in the interests of the Providers to consider retaining appropriate records - including where necessary telephone recordings relating to such contractual commitments - for the period within which a person can complain to the FSO. We believe that there should be consistency between Regulators in relation to the required retention period of telephone recordings.

Mobile Phones

We have concerns in respect of the introduction of a requirement to record mobile telephone calls involving client orders. In GBS, all employees who interface with clients or markets in a sales, dealing or trading capacity are prohibited from using a mobile telephone in all dealing room environments. All calls received or made in these departments by relevant staff members must be on fixed line extensions. Mobile telephones are required to be forwarded to the staff member's land line when he/she is in the office.

Notwithstanding the above, the nature of the work of Private Client Executives means they meet with clients out of the office quite frequently. From time to time Private Client Executives may receive calls on their mobile phone from clients wishing to place orders. In this event, Private Client Executives are required to telephone the instruction into a recorded line of the firm thereby capturing the client order on a recorded line and ensuring that the order is entered into the appropriate system. If the order is received out of hours then the Private Client Executive is required to phone the order either through to his/her own recorded line or a dedicated recorded phone line of the firm.

Given the procedures GBS has in place, the receipt of client orders on mobile phones is not a common occurrence. If the proposal to record all mobile phone calls involving client orders is introduced, it would place an extremely onerous burden on firms of our size for something which occurs infrequently. GBS would need to carry out a comprehensive feasibility study to ascertain whether it is possible to add approximately 50 mobile phones to our Voice Recording System ("the System"). Assuming it is feasible, the implications of an additional 50 mobile phones on the System are as follows:

- The traffic volume on the System will increase significantly thereby increasing the complexity of the System configuration and technical environment;
- The added complexity to the System will result in a significant increase in operating risk;
- The addition of the mobile phones to the System will add a significant increase in costs, both at the set-up stage and ongoing servicing and maintenance;
- There is uncertainty as to whether mobile phones operating abroad would be recorded.

We believe that instead of introducing the extremely onerous requirement of taping mobile phones involving client orders, the Financial Regulator should prohibit firms from ordinarily accepting client orders on mobile phones. In the event that a client order is received on a mobile phone, the firm should have controls in place to ensure that the order is telephoned into a recorded line.

Please contact me if you have any queries in relation to the above.

Yours sincerely



Neil Collins
Compliance Director

