

The Consumer Protection Codes Department  
Financial Regulator  
P.O. Box 9138  
College Green  
Dublin 2



15<sup>th</sup> September, 2009

**Re: Consultation Paper No. 38 – Telephone Records**

Dear Sirs,

We welcome the opportunity to participate in the public consultation process initiated by the Financial Regulator in the recent publication “Telephone Records and Electronic Communications under the European Communities (Markets in Financial Instruments) Regulations 2007 (CPP38)”.

While we understand that this proposal is designed to prevent and detect market abuse, it is our view that the original ISE member firm requirements, with some minor amendments to retention periods, are sufficient for this purpose and we suggest that they be more widely adopted by MiFID investment firms generally.

The current proposal extends to mobile phones and electronic communications, whereas the member firm requirements were limited to telephone lines and voicemails.

In terms of electronic communications, this extension is likely to be extremely onerous, particularly where reliance is placed on third party vendors, including but not limited to those such as Bloomberg, Reuters or Tradeweb. It potentially increases the cost of trading, due to the requirement to purchase additional access identities, for the purpose of monitoring and examining the communications of staff members with the various sites. Furthermore, additional costs may arise due to the requirement to provide or improve archiving facilities. While such costs may be paid by the third party provider, they will ultimately be paid by the firm. Third party providers are neither investment firms nor credit institutions to which MiFID applies. It is likely to be impractical and costly to require them to maintain data in a way which conforms with our regulatory requirements.

In terms of the proposal to record mobile phone communications, we feel that this may be impractical at this time. It is our understanding that solutions to search and retrieve voice, instant messaging, SMS and video communications are at a very early stage of development and the sector is unlikely to be in a position to meet the needs of the fast paced financial services community, which would require a prompt, efficient, automated solution, should this obligation be imposed. Furthermore, a surge in demand may drive prices up, making investment prohibitive. Recording of mobile phone lines also has implications for Data Protection legislation where mobiles are used for both business and personal use.

The minimum suggested retention period is two years or “until the record is no longer of any relevance to any complaint, disciplinary action or investigation”. In reality, unless an issue arises within the first week of a transaction being initiated, it is unlikely to arise, unless by way of complaint, which wouldn’t tend to arise for a number of years after the transaction had been initiated or even after the redemption of the investment.

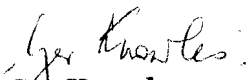
The wording of the current proposal doesn’t provide for situations where complaints arise after the records have been destroyed. Instead, it suggests that they should be available in the event of a complaint. We would suggest that the retention period be amended to six months, with a proviso that the records can be maintained for longer if the firm has reasonable cause to believe they may be relevant to a complaint or investigation, in which case it should retain them until they ceased to be of relevance. Significant storage costs will arise as a result of the proposed extension of the retention period from three months to two years, with little potential benefit for any party.

Maintenance of recording systems and storage costs combined were at one point estimated in the UK to be approximately £50 (€60 approx) per individual p.a.<sup>1</sup> This does not include the costs associated with recording of mobile telephone calls and is in addition to the upfront costs of introducing recording and storage systems for firms where communications were not previously recorded. This incremental increase in costs represents a significant additional burden at a time when companies are struggling to reduce overheads and is likely to be strongly resisted by senior management, particularly where the additional benefits may be disproportionate.

Clarity is required in terms of the individuals within the firms to which this is intended to apply and indeed whether any exemptions are proposed. The reference to “involving” client orders is extremely broad and could extend to all staff members in a firm, including back office functions. Certain front office staff, such as research analysts will not generally be directly involved in client orders, but they may provide a view with indirect implications for same and thus “involving client orders”. We would welcome clarity on scope and suggest that exemptions be provided for Research Analysts, Corporate Finance Advisers, Discretionary Portfolio Managers, Proprietary Traders and those not directly involved in the receipt, transmission or execution of client orders.

Should you require any further clarification in respect to any of the above, then please contact either Ruth Hogan or myself.

Yours sincerely



**Ger Knowles**  
**Head of Regulation & Compliance**

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<sup>1</sup> CP07/9: COBS: Non-MiFID deferred matters (May 2007)