

Merrion Stockbrokers Limited

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

I refer to your letter of 29th July inviting submissions on your consultation paper entitled “Telephone Records and Electronic Communications under the European Communities (Markets in Financial Instruments) Regulations 2007 (CP38)”.

Having reviewed the consultation paper, we would like to make the following comments:

Following the introduction of the MiFID in November 2007, Merrion Stockbrokers continued to record telephone calls in line with guidelines of the Handbook for Investment and Stockbroking Firms and The Irish Stock Exchange Rulebook. Merrion Stockbrokers welcomes the Regulators proposal obliging firms to record telephone calls and electronic communication involving client orders. However, we believe that the requirement to have mobile phone calls recorded, if legally possible, will impose a significant additional cost burden on firms. Merrion is, therefore, not in favour of the proposed obligation in its current format.

Merrion discourages the use of mobile phones or e-mail for the purposes of taking orders from clients and the vast majority of orders are received through the firm’s dealing lines, which are all recorded. Nonetheless, there are instances where a client may contact an account manager on his mobile to give an instruction (despite the account managers request that the client ring the firm’s dealing line and not the mobile), or the client may send a text.

Currently, Merrion requires that an order via an unrecorded line is rung through to the recorded dealing line by the account manager, and in the case of a text, the text is printed off and attached to the deal ticket, or placed on the client file. This, in our opinion, suffices as proof of order receipt, whilst avoiding significant expenditure on such specialised recording equipment.

I would also highlight the following;

- Not all sales and trading staff in Merrion have company mobile phones. Therefore, recording these calls on a personal mobile phone, as per the proposed obligations, may not be legally possible.
- Those that do have company mobile phones make a contribution on a monthly basis towards the costs – to cover for personal calls. As a result, a portion of the proposed phone recordings may be deemed private and Merrion may not have the authority to record these calls.

Merrion does not believe that this rule could be implemented in its current proposed format.

We believe that the statement “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” is ambiguous. If a firm, in good faith, holds records for a period of two years and after that time a complaint arises, will the firm be considered in breach of the proposed obligations? We believe that the statement should be clarified to state - as per the Handbook –

“and if it has reasonable cause to believe the recording is or might be relevant to a complaint, disciplinary action or investigation, shall retain such a recording until it ceases to be of relevance to such complaint, disciplinary action or investigation”.

I trust you find the above comments useful and if you have any further queries regarding this matter, please do not hesitate to contact me.