MiFID II update: telephone recording

Under MiFID II, there will be more stringent rules regarding the retention of communications. In this update, we explain why these rules are being put in place, what firms will have to do to comply with them and how we can help you do so.

Why are the rules changing?

The new rules are designed to assist in deterring and detecting market abuse. They will obligate firms to keep records of communications relating to client transactions thereby assisting authorities in regulating their conduct. However, the recording of telephone communications will benefit both clients and service providers, including professional advisers and discretionary fund managers.

What is changing?

The basic requirements include the retention of telephone conversations and electronic communications relating to transactions, the receipt and transmission of orders and the confirmation of client order execution. Specifically, the differences the new MiFID II rules will have to existing FCA obligations include:

- The removal of the exemptions provided for Discretionary Investment Managers
- Firms will need to record all telephone calls and electronic communications, even if discussed transactions are not concluded.
- The removal of the exemption of certain firms under MiFID Article 3 (largely financial advisers and corporate finance firms).
- A longer retention period. MiFID II requires records to be retained and easily accessible for five years and seven years at the request of the regulator in specific cases (currently the requirement is to maintain records for 6 months).

In addition, affected firms will be expected to:

- Have a written, effective telephone conversation and electronic recording policy, appropriate to the nature, scale and complexity of their business that is overseen at board level.
- Take all reasonable steps to prevent employees or contractors from making, sending or receiving relevant telephone conversations (which includes mobiles) and electronic communications on privately owned equipment that the business is unable to record.
- Have a register of those who are using the business's communications devices, or privately-owned devices approved for use.
- Provide staff training in regard to electronic communications policies.
- Notify new and existing clients that relevant electronic communications between them and the firm will be recorded.
- This notification must be made before the provision of any investment services.
- Allow clients to access communication records on request, including telephone conversations and electronic communications. However, MiFID II permits firms to charge clients a reasonable amount for access to this information. The charge, if applied, should not deter clients from making such a request.

• Implement a communications monitoring procedure appropriate to the nature, size and complexity of their business, particularly in relation to market manipulation or non-compliance with other regulatory obligations. Specifically, this focuses on acting in the best interest of the client. Monitoring should take into account the volume and frequency of investment transactions, as well as the characteristics of client orders and any compliance or audit findings (including any risk assessment).

What will firms have to do?

• Firms will first have to identify which of their communications need to be recorded. It is likely that this will consist of telephone conversations, emails, video conferencing, text, faxes, etc.
• They will have to determine whether their current monitoring policies, management oversight and systems sufficiently cover the new requirements.
• Firms will need to assess whether staff need further training.

How we can help you:

All LEIs have to be renewed on an annual basis. If the client has given us permission, we will automatically update LEIs annually and deduct any costs from their account.

As mentioned in previous updates Your Comms Group is implementing a new phone system scheduled to be in place by the end of July 2022 which allows a greater ability and flexibility for us to manage MiFID II requirements. In preparation for MiFID II we have undertaken significant due diligence on what solution would best meet the immediate requirements, and also provide future proofing, as far as we can reasonably see. We appreciate many firms will already have adequate telephone systems in place but for those looking to review their systems, below is brief insight into key areas Your Comms Group considered:

• Security: looking at options that provide for PCI (Payment Card Industry) Data Security Standards
• Audit: Being able to quickly and accurately search large volumes of audio content so we can find any incidences, if required, monitor calls and identify trends to assist in training needs.
• Access: The recordings should be easily accessible and we should have a system that is able to mine call data across potentially different channels.
We sought targeted, easily accessible end-to-end solutions that digitise and securely store calls. In this we concluded that a cloud- based technology solution was the best fit for us.

As stated in previous updates we have no influence on impending regulation but we are fully committed to assisting our clients in meeting their requirements wherever possible. As such, if you would like to discuss telephone recording with the Your Comms Group team that undertook this due diligence then please do let us know.

In addition, you may want to consider what the FCA included in their consultation paper (CP 16/29) covering telephone recording released in September 2016. **In the paper they stated (s15.30 on page 115) that they are open to considering alternative proposals to telephone and electronic communication recording for smaller adviser firms,** in order to help lower costs and resolve some of the practical implications.
The policy statement in response to this consultation has been published in Q2 2017.

Important Information

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