

MiFID II Roles and responsibilities

Telephone recording and taping electronic conversations

1. Introduction

MiFID II introduces, for the first time, an EU-wide harmonised requirement on firms to record telephone conversations and electronic communications relating to (or intended to relate to) certain transactions. This will replace the FCA's domestic taping regime that has been in place since 2009, which is currently outlined in COBS 11.8. As a result, UK regulatory requirements will see significantly less change in this area than other Member States that have not previously introduced their own domestic obligations.

However, there are important changes in the UK. Currently only conversations and electronic communications that conclude an agreement and, for professional clients and eligible counterparties, those carried on with a view to conclude an agreement are in scope and MiFID II extends the scope of this requirement to retail clients too, which has an impact on retail advisers.

The FCA's new rules will come into force from 3 January 2018 and are outlined in SYSC 10A and in the new rules it is clear that the FCA has chosen to apply MiFID rules to activities of non-MiFID firms in addition to MiFID firms; the FCA believes the taping regime is a valuable means of gathering evidence in the context of market abuse and related regulatory breaches.

2. Scope

a) Relevant Conversations

The telephone conversations and electronic communications in scope include those that are intended to result in the performance of the activities in relevant financial instruments, even if those conversations or communications do not in fact result in the performance of such activities.

b) Firm types

The list of firm types in scope in SYSC 10A includes MiFID investment firms, AIFMs and UCITS management companies. Transfer Agents may not be directly in scope but as they are acting on behalf of firms that are in scope, the expectation is likely to be that Transfer Agents assist in-scope firms by recording certain calls.

3. Conclusion and requirements

Typically a Transfer Agent will be performing functions which are in scope for firms that are in scope in relation to product types that are in scope.



It is therefore down to individual firms to discuss these requirements with their clients in order to assess whether or not the activities performed are in scope for call recording but clearly many will be and Transfer Agency firms are likely therefore to take the decision to record calls.

For transfer agents processing deals in relevant financial instruments on behalf of firms which are in scope, recording all calls received on dealing lines would be a minimum requirement.

It is up to firms to decide if they wish to record all calls (e.g. internal calls and conversations with depositaries) but firms may find it more practical to do so.

Requirements:

- Have a written call recording and retention policy
- Record relevant calls made on the firm's equipment
- Prevent staff from using their own phones (e.g. mobiles) for relevant calls
- Notify clients up front that calls are being recorded
- Maintain records for up to 5 years (7 at request of regulator) and make available to clients on request
- Perform risk-based compliance monitoring to ensure relevant calls are recorded and maintained