



THE INSTITUTE
OF CHARTERED
ACCOUNTANTS
IN ENGLAND AND WALES

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Sue Bailey
MiFID Implementation Office
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Cp07_09@fsa.gov.uk

Dear Sue

Conduct of Business Regime: non-MiFID deferred matters

The Institute of Chartered Accountants in England and Wales (ICAEW) welcomes the opportunity to comment on the consultation paper Conduct of Business Regime: non-MiFID deferred matters published by Financial Services Authority in May 2007.

The ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the ICAEW provides leadership and practical support to over 128,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The ICAEW is a founding member of the Global Accounting Alliance with over 700,000 members worldwide.

The ICAEW's Financial Services Faculty was set up in 2007 to become a world class centre for thought leadership on issues and challenges facing the financial services industry, acting in the public interest and free from vested interests. It draws together professionals from across the financial services industry and from the 25,000 ICAEW members specialising in the sector. This includes those working for regulated firms, in professional services firms, intermediaries, and regulators.

We have reviewed the Consultation Paper issued and are pleased to submit our comments in respect of Section 19: Telephone Recording – recording of voice conversations and electronic communications.

General Comments

1. In principle, the ICAEW supports any initiative that furthers the prevention, detection and deterrence of market abuse.
2. Any regulatory initiative should be consistent with the overarching objectives to act: as safeguards for consumers; for efficient and stable financial markets; and against market abuse. The objectives outlined in Section 19 of the Consultation Paper are more likely to be delivered effectively through market-led solutions and, against the background of the FSA's desire to move towards more principles-based regulation, it is disappointing that the mechanism proposed in the Consultation Paper is rules-based. This may suggest that senior management in some firms have not yet recognised the impact that actual or perceived market abuse has on the confidence in, and efficiency of, the UK market and that senior management have not become sufficiently engaged in addressing the potential for market abuse. Alternatively it may be that they have not been persuaded that the proposals will achieve the intended objectives.
3. To achieve improvements in market cleanliness requires an understanding of the points in the market processes where abuse is most likely:
 - to occur;
 - to be identified; and
 - for the perpetrators to be detected.

We recognise that the proposals address only one aspect of the market process and that the proposals are designed to contribute to the overall objective of improving market cleanliness. However, articulation of the overall framework for preventing, detecting and deterring market abuse may enable players to more readily understand the gap that this proposal is seeking to address.

In particular, determined market abusers will find non-recorded means of communication and this will impact the overall cost-benefit analysis. If the mitigating control is only partially effective and can be relatively easily circumvented the implementation and running costs need to be set against the possibility that only a very few extra cases of abuse will be able to be pursued.

4. The existing widespread usage within the financial services sector of telephone recording and retention of electronic communication has been put in place primarily to enable firms to resolve client (counterparty) complaints in a fair and fact-based manner. In addition to prescribing this as a requirement, the proposals contain some significant differences to current market practice, particularly the length of time that records must be retained and the demand for readiness of access. The additional costs that this will bring will be significant.

5. Against this background, the ICAEW supports the move to:

- Record telephone lines used for voice conversations that involve the receipt of client orders and the negotiating, agreeing and arranging of transactions across the equity, bond and financial commodity and derivatives markets;
- Retain electronic communications relevant to these activities; and
- Ensure that the recordings and electronic communications are available within a reasonable timeframe.

However, in terms of managing the burden to firms, we recommend that the FSA considers further:

- The timing of implementation

The FSA should not under-estimate the challenge of undertaking the necessary systems and hardware changes. It is important that firms are provided with sufficient time to plan for their orderly introduction without disruption to other planned initiatives.

- The requirement to retain records for three years from the date of creation

The FSA should not under-estimate the cost of retaining records which, due to systems configuration, will inevitably capture many more records than are being targeted by the proposals. The FSA should consider whether a more appropriate and proportionate response would be to require all records to be kept for a far shorter period commensurate with the likely identification of market abuse, with firms required to hold specific records for longer periods when notified of a potential market abuse investigation.

6. The ICAEW agrees it is appropriate exclude the activities of individuals who are investment managers but who do not have authority to deal, retail financial advisors, corporate finance advisors who do not carry out relevant activities, and treasury and back-office functions.

If you would like further information or to discuss any aspects of this response, please contact me at philippa.scott@icaew.com or on +44 (0)207 920 8432.



Philippa Scott
Manager, Risk and Regulation
Financial Services Faculty
T +44 (0)20 7920 8432
F +44 (0)20 7920 6009
E philippa.scott@icaew.com