

## Chapter 10A

# Recording telephone conversations and electronic communications

## 10A.1 Application

### Application

10A.1.1

**R**

Subject to the exemptions in ■ SYSC 10A.1.4R, this chapter applies to a *firm*:

- (1) that is a:
  - (a) *MiFID investment firm*; or
  - (b) *full-scope UK AIFM*; or
  - (c) *small authorised UK AIFM or residual CIS operator*; or
  - (d) [deleted]
  - (e) *UCITS management company*; or
  - (f) *MiFID optional exemption firm*, performing activities covered by the exemption; or
  - (g) [deleted]
  - (h) *third country investment firm*; or
  - (i) that carries on activities referred to in the *general application rule* related to:
    - (i) *commodity futures*; or
    - (ii) *commodity options*; or
    - (iii) *contracts for differences* related to an underlying commodity; or
    - (iv) other *futures or contracts for differences* which are not related to *commodities, financial instruments* or cash, which are not *MiFID or equivalent third country business and energy market activity or oil market activity*, but excluding the following *firms*:
      - (v) a *depository* when acting as such; and
      - (vi) an *authorised professional firm* with respect to its *non-mainstream regulated activities*; or
    - (j) that carries on *energy market activity or oil market activity*; or
    - (k) is an *OPS firm*; and
- (2) that carries out any of the following activities, in *investments* that are *financial instruments*:
  - (a) *arranging (bringing about) deals in investments*;
  - (b) *dealing in investments as agent*;

- (c) *dealing in investments as principal;*
- (d) *managing investments;*
- (e) *managing a UK UCITS to the extent that this comprises the function of investment management referred to in Annex II of the UCITS Directive;*
- (f) *managing an AIF to the extent that this comprises the function of portfolio management referred to in Annex I of the AIFMD;*
- (g) *establishing, operating or winding up a collective investment scheme to the extent that this comprises scheme management activity,*

only with respect to a *firm's* activities carried on from an establishment (including a *branch*) maintained by the *firm* in the *United Kingdom*.

[Note: article 16(7) and 16(11) of *MiFID*]

**10A.1.2** G Where this chapter applies to a *third country investment firm*, it applies in conjunction with ■ GEN 2.2.22AR, to ensure that such *firms* are not treated in a more favourable way than a *UK firm*.

**10A.1.3** R For a *firm* in ■ SYSC 10A.1.1R(1) (other than a *MiFID investment firm* or a *third country investment firm*) *MiFIR*, and any *EU Regulation* adopted under *MiFIR* or *MiFID* which is an *onshored regulation*, apply to the extent relevant to the subject matter of this chapter as if the *firm* were a *MiFID investment firm* providing *investment services* or performing *investment activities* in accordance with article 16(7) of *MiFID*.

**10A.1.4** R This chapter does not apply to the carrying on of:

- (1) activities between *operators* and *depositories*, of the same fund (when acting in that capacity); or
- (2) *energy market activity* and *oil market activity* which is not *MiFID* or equivalent *third country business* but which, if the *firm* carrying it on were not *authorised*, would not be a *regulated activity* because of article 16 of the *Regulated Activities Order* (Dealing in contractually based investments) or article 22 of the *Regulated Activities Order* (Deals with or through authorised persons etc.); or
- (3) any activity referred to in ■ SYSC 10A.1.1R(2), to the extent that it is carried out by a *firm* that is not a *MiFID investment firm*, *MiFID optional exemption firm* or *third country investment firm*, in *financial instruments* that are not:
  - (a) admitted to trading on a *trading venue*; or
  - (b) traded on a *trading venue*; or
  - (c) instruments for which a request has been made for admission to trading on a *trading venue*; or
  - (d) instruments covered by paragraph (a), (b) or (c), but the price or value of which depends on, or has an effect on, the price or value of a *financial instrument* referred to in those paragraphs; or

(3A) the activities referred to in ■ SYSC 10A.1.1R(2)(d) to (g), to the extent that they are carried out by a *MiFID investment firm* or *third country investment firm* in *financial instruments* that are not:

- (a) admitted to trading on a *trading venue*; or
- (b) traded on a *trading venue*; or
- (c) instruments for which a request has been made for admission to trading on a *trading venue*; or
- (d) instruments covered by paragraph (a), (b) or (c), but the price or value of which depends on, or has an effect on, the price or value of a *financial instrument* referred to in those paragraphs; or

activities which comprise:

- (a) underwriting of *financial instruments* on a firm commitment basis; or
- (b) placing of *financial instruments* with or without a firm commitment basis,

within the meaning of section A(6) or A(7) of Annex 1 of *MiFID*.

*ancillary services*.

10A.1.5 G *Firms* should refer to article 76 of the *MiFID Org Regulation*, which contains additional requirements on recording of telephone conversations or electronic communications, in addition to this chapter.

**Obligations for telephone and electronic communications**

10A.1.6 R A *firm* must take all reasonable steps to record telephone conversations, and keep a copy of electronic communications, that relate to the activities in *financial instruments* referred to in ■ SYSC 10A.1.1R(2) (and that are not excluded by ■ SYSC 10A.1.4R), and that are made with, sent from, or received on, equipment:

- (1) provided by the *firm* to an *employee* or contractor; or
- (2) the use of which by an *employee* or contractor has been accepted or permitted by the *firm*.

[Note: article 16(7) of *MiFID*, third subparagraph]

10A.1.7 R A *firm* must take all reasonable steps to prevent an *employee* or contractor from making, sending, or receiving relevant telephone conversations and electronic communications on privately-owned equipment which the *firm* is unable to record or copy.

[Note: article 16(7) of *MiFID*, eighth subparagraph]

10A.1.8 R The telephone conversations and electronic communications referred to in ■ SYSC 10A.1.6R include those that are intended to result in the performance of the activities in *financial instruments* referred to in

		<div> <div> ■ SYSC 10A.1.1R(2), even if those conversations or communications do not in fact result in the performance of such activities. </div> <div> [Note: article 16(7) of <i>MiFID</i>, second subparagraph] </div> </div>
10A.1.9	R	<div> <div> A <i>MiFID optional exemption firm</i> that provides services solely or mainly to <i>retail clients</i> is not required to comply with the requirements of </div> <div> <div> ■ SYSC 10A.1.6R, </div> <div> ■ SYSC 10A.1.7R </div> <div> and </div> <div> ■ SYSC 10A.1.11R </div> </div> </div> <div> in relation to telephone conversations, subject to compliance with the following requirements: </div> <div> <div> <div>(1) a telephone conversation that would be subject to ■ SYSC 10A.1.6R must be recorded instead using a written minute or note; and</div> <div>(2) the minute or note must include all relevant, and at least the following, information: <div> <div>(a) date and time of the conversation;</div> <div>(b) identity of the individual participants in the conversation;</div> <div>(c) initiator of the conversation; and</div> <div>(d) relevant information about the client order, including the price, volume, type of order and when it will be transmitted or executed.</div> </div> </div> </div> </div>
10A.1.10	G	<div> <div> A <i>MiFID optional exemption firm</i> that chooses to take advantage of the provisions in ■ SYSC 10A.1.9R should set out its decision in its recording policy. Further, any minute or note made in accordance with ■ SYSC 10A.1.9R should contain all relevant substantive details of the conversation, as well as the information set out in ■ SYSC 10A.1.9R(4)(a)-(d). <i>MiFID optional exemption firms</i> should note that the effect of ■ SYSC 10A.1.3R is to require their compliance, as relevant, with article 76 of the <i>MiFID Org Regulation</i>, including that records must be: </div> <div> <div> <div>(1) stored in a <i>durable medium</i> which allows them to be replayed or copied; and</div> <div>(2) retained in a format that does not allow the original record to be altered or deleted.</div> </div> </div> </div>
		<div> <div> Notification </div> <div> </div> </div>
10A.1.11	R	<div> <div> A <i>firm</i> must notify new and existing <i>clients</i> that telephone communications or conversations between the <i>firm</i> and its <i>clients</i> that result or may result in activities in <i>financial instruments</i> referred to in ■ SYSC 10A.1.1R(2) (and that are not excluded by ■ SYSC 10A.1.4R) will be recorded. The notification must be made before the provision of any <i>investment services</i> to new and existing <i>clients</i>. </div> <div> [Note: article 16(7) of <i>MiFID</i>, fourth subparagraph] </div> </div>
10A.1.12	G	<div> <div> A notification referred to in ■ SYSC 10A.1.11R is only required to be made by the <i>firm</i> once, at the following times: </div> <div> <div> (1) to a new <i>client</i> prior to the provision of any <i>investment services</i>; and </div> </div> </div>

- (2) to an existing *client* prior to the provision of any *investment services* following:

(a) the commencement of these *rules*; or

(b) the *firm* otherwise becoming subject to these *rules*, after the date of commencement.

[Note: article 16(7) of *MiFID*, fifth subparagraph]

Obligation for other communications

10A.1.13 R

Client instructions given otherwise than by telephone must be made in a *durable medium* such as by mail, faxes, emails or documentation of *client* instructions issued at meetings. In particular, the content of relevant face-to-face conversations with a *client* may be recorded by using written minutes or notes.

[Note: article 16(7) of *MiFID*, seventh subparagraph]

Record-keeping

10A.1.14 R

The records kept in accordance with this chapter must be:

(1) provided by the *firm* to the *client* involved upon request; and

(2) kept for a period of five years and, where requested by the *FCA*, for a period of up to seven years.

[Note: article 16(7) of *MiFID*, ninth subparagraph]