

## 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

		<p>(k) is an <i>OPS firm</i>; and</p> <p>(2) that carries out any of the following activities, in <i>investments</i> that are <i>financial instruments</i>:</p> <p>(a) <i>arranging (bringing about) deals in investments</i>;</p> <p>(b) <i>dealing in investments as agent</i>;</p> <p>(c) <i>dealing in investments as principal</i>;</p> <p>(d) <i>managing investments</i>;</p> <p>(e) <i>managing a UK UCITS</i> to the extent that this comprises the function of investment management referred to in Annex II of the <i>UCITS Directive</i>;</p> <p>(f) <i>managing an AIF</i> to the extent that this comprises the function of portfolio management referred to in Annex I of the <i>AIFMD</i>;</p> <p>(g) <i>establishing, operating or winding up a collective investment scheme</i> to the extent that this comprises <i>scheme management activity</i>,</p> <p>only with respect to a <i>firm's</i> activities carried on from an establishment (including a <i>branch</i>) maintained by the <i>firm</i> in the <i>United Kingdom</i>.</p> <p>[Note: article 16(7) and 16(11) of <i>MiFID</i>]</p>
10A.1.2	G	Where this chapter applies to a <i>third country investment firm</i> , it applies in conjunction with ■ GEN 2.2.22AR, to ensure that such <i>firms</i> are not treated in a more favourable way than a <i>UK firm</i> .
10A.1.3	R	For a <i>firm</i> in ■ SYSC 10A.1.1R(1) (other than a <i>MiFID investment firm</i> or a <i>third country investment firm</i> ) <i>MiFIR</i> , and any <i>EU Regulation</i> adopted under <i>MiFIR</i> or <i>MiFID</i> which is an <i>onshored regulation</i> , apply to the extent relevant to the subject matter of this chapter as if the <i>firm</i> were a <i>MiFID investment firm</i> providing <i>investment services</i> or performing <i>investment activities</i> in accordance with article 16(7) of <i>MiFID</i> .
10A.1.4	R	<p>This chapter does not apply to the carrying on of:</p> <p>(1) activities between <i>operators</i> and <i>depositories</i>, of the same fund (when acting in that capacity); or</p> <p>(2) <i>energy market activity</i> and <i>oil market activity</i> which is not <i>MiFID</i> or <i>equivalent third country business</i> but which, if the <i>firm</i> carrying it on were not <i>authorised</i>, would not be a <i>regulated activity</i> because of article 16 of the <i>Regulated Activities Order</i> (Dealing in contractually based investments) or article 22 of the <i>Regulated Activities Order</i> (Deals with or through authorised persons etc.); or</p> <p>(3) any activity referred to in ■ SYSC 10A.1.1R(2), to the extent that it is carried out by a <i>firm</i> that is not a <i>MiFID investment firm</i>, <i>MiFID optional exemption firm</i> or <i>third country investment firm</i>, in <i>financial instruments</i> that are not:</p> <p>(a) admitted to trading on a <i>trading venue</i>; or</p>

- (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 ■ SYSC 10A.1.1R(2), even if those conversations or communications do not in fact result in the performance of such activities.

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

10A.1.9 **R** A *MiFID optional exemption firm* that provides services solely or mainly to *retail clients* is not required to comply with the requirements of ■ SYSC 10A.1.6R, ■ SYSC 10A.1.7R and ■ SYSC 10A.1.11R in relation to telephone conversations, subject to compliance with the following requirements:

- (1) a telephone conversation that would be subject to ■ SYSC 10A.1.6R must be recorded instead using a written minute or note; and
- (2) the minute or note must include all relevant, and at least the following, information:
  - (a) date and time of the conversation;
  - (b) identity of the individual participants in the conversation;
  - (c) initiator of the conversation; and
  - (d) relevant information about the client order, including the price, volume, type of order and when it will be transmitted or executed.

10A.1.10 **G** A *MiFID optional exemption firm* 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). *MiFID optional exemption firms* should note that the effect of ■ SYSC 10A.1.3R is to require their compliance, as relevant, with article 76 of the *MiFID Org Regulation*, including that records must be:

- (1) stored in a *durable medium* which allows them to be replayed or copied; and
- (2) retained in a format that does not allow the original record to be altered or deleted.

**Notification**.....

10A.1.11 **R** A *firm* must notify new and existing *clients* that telephone communications or conversations between the *firm* and its *clients* that result or may result in activities in *financial instruments* 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 *investment services* to new and existing *clients*.

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

10A.1.12 **G** A notification referred to in ■ SYSC 10A.1.11R is only required to be made by the *firm* once, at the following times:

- (1) to a new *client* prior to the provision of any *investment services*; and
- (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]