

## Mobile Phone Recording Report

### Key Outcomes from FSA Presentation & Panel Discussion

*With less than twelve months to go before a UK deadline on City securities firms - spanning investment banks, brokerages and wealth managers - to deploy mobile call recording solutions under new regulations, the Financial Services Authority (FSA) told firms at a recent industry forum to start talking to technology providers to arrange "reasonable and adequate" solutions.*

Jocelyn McCafferty, a manager in the FSA's Policy Conduct unit, discussing the cost/benefits, legal and timing issues around mobile recording in the UK, EU and internationally, told delegates: "This deadline is something that we will stand by. We believe there are sufficient solutions and suppliers in this space, both for the larger wholesale firm and smaller private client/stockbroker-type of firm, to put reasonable solutions in place within their organisation by 14 November 2011."

#### Meeting the compliance requirement

Firms attending the event at Vinopolis in London last November were urged by McCafferty that if there were "genuine issues" facing firms as to why they were unable to meet the deadline, then financial organisations were to "alert" the UK financial regulator and talk to their Supervisor. They should also liaise with their relevant trade association to remedy any such issues.

However, while the FSA has not yet specified the extent of sanctions that could be imposed on firms failing to comply and whether this might include fines, McCafferty added that it was not going to be a case of "knocking on firms' doors" to check whether compliance had been met after the deadline passes.

#### Purpose of the requirement

Ultimately the UK regulator will use recordings of firm-issued mobile phones to build up cases around securities market manipulation. "The FSA was not trying to trip firms up," she said. Rather the new rules ('COB 11.8 Taping Rules'), which were announced less than two weeks before the event, are designed to increase the "quality of information" for building cases around market abuse.

Providing feedback on the recent consultation paper (CP10/7, 18/03/2010) and the rationale for the decision to impose call recording of mobiles with a retention period of six months, the FSA executive ran through five key themes that emerged from the feedback to the consultation. These included: Cost Benefits; Loopholes; EU and International Privacy Laws; Reasonable Steps (for compliance); and, The European Timetable.

The FSA was at pains to stress that it does not endorse any one technology vendor over any other, and acknowledges that different firms will have a choice when it comes to the type of solution they can choose.

In terms of dispelling the criticisms by industry respondents to the FSA's consultation paper, McCafferty asserted that the regulator had come up with a "good and robust" decision.



Business Systems 'Vocal Mobile' recording product has been nominated for **'Most Innovative Solution'** and **'Compliance Project of the Year'** in the FST 2011 Awards

### Reasonable Steps for Compliance

In respect of 'reasonable steps' to be taken, she said: "All along we've deliberately said that 'reasonable steps' is a principles-based provision. We've been as prescriptive as we can and we want to leave firms scope to comply. We won't set down exactly how firms need to comply with recording relevant conversations on firm-issued mobile phones nor how to take reasonable steps to prevent 'relevant' conversations taking place on private mobile phones."

Ultimately, if a firm can demonstrate that it has adequate procedures and policies in place, which are consistent with its business models, then the FSA would be broadly happy with that. They will also work with the trade associations, if these bodies choose to issue guidance around what the FSA means by reasonable steps, according to McCafferty.

### Cost Benefit Analysis

As to the cost-benefit analysis, the FSA believes these were "robust enough" in the evaluation - despite differences. "Overall, we felt there was insufficient detailed cost evidence to make us alter our thinking around the balance of costs and benefits that we had arrived at," said McCafferty. "We believe that the costs arrived at were good indicative costs of the true burden on firms."

The FSA does accept that costs will vary "above and below" the average. It will also depend on a firm's business model and what solution they opt for, and the regulator does not expect firms to take "disproportionate or costly steps."

For the FSA, she also rejected the view expressed by some industry respondents that smaller firms would be disproportionately affected or "competitively disadvantaged" vis-à-vis larger financial entities. For example, smaller firms can utilise cheaper hosted solutions compared to the choice of deploying an in-house mobile call recording technology.

### Loopholes

In terms of loopholes, the FSA acknowledges that individuals will also find ways to get round the rules, but they do not think this was sufficient reason for not removing the exemption. What is required is more comprehensive taping rules to help provide an additional source of circumstantial evidence in market abuse cases.

### EU & International Privacy Law

Turning to the EU and international dimension, with the likes of CESR providing technical advice to the European Commission on the Market Abuse Directive and clarification on the e-privacy Directive, this does not prevent regulators from retaining telephone records or electronic recordings under certain circumstances when market abuse cases are being investigated.

According to McCafferty, as long as the call is routed through the firm's internal system from a firm-issued mobile phone, then this should "not contravene" privacy and data protection Directives. However, the FSA gives firms latitude and would "not expect firms to negotiate jurisdiction-by-jurisdiction".



## View from the Panel

### *Vodafone*

On the broad cost-benefit analysis, Matt Chalk, Industry Manager - Finance, Vodafone, revealed that from thorough work undertaken by the firm in relation to mobile phone recording system deployments, costs can be seen as “revenue neutral”. That said, it would largely depend on the ratio of incoming/outgoing calls made. In addition, he pointed to the benefit from technology as ‘improving dispute resolutions’ on calls made on mobiles.

### *NICE Systems*

Chris Daniels, VP Integrated Trading Solutions, NICE Systems, referred to a general “misconception” by end users that the technology and deployment is more costly than it actually is. “Customers are struggling to figure out what the total cost of ownership (TCO) of implementing mobile recording is, at the end of the day, as there are multiple different components to it,” he said.

“In some cases there is an application on the device, in other cases there is additional infrastructure inside of the firm and there might be a network component to it.” But he added that NICE do not see storage as the “big cost in the equation”.

At a stretch, Daniels thinks that with some firms able to have “leverage” with their call recording vendors to negotiate on a volume basis, this is one area that might help from a cost reduction standpoint.

### *TM-Group*

Carsten Kruse Nielsen, Chief Commercial Officer of TM-Group, a vendor of voice recording and trading systems in the Nordic region, pointed to the real benefit from deploying the technology as fundamentally “meeting firms’ obligations under the law...that’s really the biggest benefit.” TM-Group has been involved in client deployments in Norway, where the mobile call taping regulations came into force this January. Denmark, Sweden and Finland are likely follow Norway’s trailblazing lead.

### *Business Systems (UK) Ltd*

Stephen Thurston, Director, Business Systems (UK) Ltd., added: “Risk management is an issue for all organisations. And, if risk management is ‘at risk’ via mobile use, then it should be incorporated within a risk management regime regardless.” The other benefit he addressed, related to “pandemic management”. Business Systems have already identified the value in this as a leading vendor that provides a massive infrastructure for recording mobile phones for the NHS.

## Summary

With the FSA’s rules published and firms having a 10-month transition period before the deadline is up, the expectation is that the industry will be more proactive and relaxed in how it prepares going forward. Firms would be well advised not to let their planning drift, just in case bottlenecks at the vendor end start to swell up.



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