

The Model Code

Update 24

April 15th 2004

This replaces the existing text for this section

Chapter V

4. Recording telephone conversations and electronic text messages

The practice of recording telephone conversations in dealing rooms has become so widespread that what was once reluctantly accepted has now become normal practice. Access to tapes can help settle dealing conversation disputes quickly and amicably. It also facilitates investigations of whether staff members have been involved in inappropriate behaviour. The practice of taping conversations is now almost universal for front office lines and is common for some back office lines. However, telephone is not the only medium of communication used by dealers and back office staff. A variety of electronic text messaging systems are widely used, including e-mail and conversational dealing systems. Messages sent over these systems may be recorded and available for inspection at a later date.

Experience has shown that recourse to tapes is invaluable to the speedy resolution of differences. It can also play a useful role in compliance. The use of recording equipment in banks and brokers is strongly recommended. All conversations undertaken by dealers and brokers should be recorded, together with back office telephone lines used by those responsible for confirming deals or passing payment or other instructions.

When initially installing tape or other recording equipment, or taking on new clients or counterparties, firms should take steps to inform their counterparties and clients that conversations and messages will be recorded. Firms should ensure that they comply with local privacy laws.

The periods for which tapes and other records should be retained should reflect the way in which the terms and conditions of transactions have been agreed and the duration of transactions. Normal practice is that tapes and other records should be kept for at least three months. However, firms engaged in dealing in longer-term interest rate swaps, forward rate agreements or similar instruments - where errors may only be found at a later date (eg the first movement of funds) - may consider it prudent to retain tapes relevant to these transactions for longer periods. Nevertheless, as stressed in Chapter III (2), it is vital that all confirmations are checked immediately upon receipt so that discrepancies can be quickly discovered and corrected.

Management should ensure that the installation and control of recording equipment complies with local legislation, including laws on data protection, privacy and human rights. There should be a clear written policy on whether and to what extent telephone conversations are taped and electronic text messages are recorded and how long tapes and other records are retained, explicitly taking into account legal and regulatory requirements. This policy should be reviewed regularly by management.

The policy on taping telephone conversations and recording electronic text messages should impose controls to ensure taping and other recording is not deliberately or inadvertently interrupted. There should also be controls on access to tapes and electronic text message records, whether in use or in store, in order to prevent tampering. These safeguards are necessary in order to ensure that such records are accepted as credible evidence in resolving disputes or, in jurisdictions in which this is allowed, accepted as evidence in a court of law.

As a minimum requirement, the policy should clearly state who has access to tapes and electronic text message records, and who can listen to or read them and under what conditions.

It is recommended that prompt access should be allowed to compliance officers investigating whether or not there has been a specific breach of law, regulation or policy by a dealer, and for general compliance monitoring. Access should also be allowed to internal audit. Access by anti-money laundering officers is likely to be obligatory under law or regulation.

Allowing access for other reasons should be carefully considered in the light of local law. Access, except for compliance officers, should be documented and supervised by a senior line manager, for example, the chief dealer in the case of taped dealing room conversations or the head of operations in the case of taped back office conversations.

Dealers and other staff are reminded that, whether or not conversations are being taped or electronic text messages are being recorded, telephones and electronic text messaging systems in the firm are intended for business use and conversations and exchanges of text messages should be conducted in a professional manner.