

A close-up photograph of a pen writing on a document. A bright spotlight illuminates the tip of the pen and the paper it is writing on, creating a strong contrast with the dark background.

# PLANNING A SECURE MOBILE COMMUNICATIONS STRATEGY

**A B.I.S.S. RESEARCH WHITE PAPER**

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## INTRODUCTION

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This is the first in a series of complimentary educational white papers commissioned by leading recording specialists Compliant Phones. This white paper outlines the issues around the necessity for firms to have a secure mobile communications strategy and architecture and touches on the technology to fulfil this requirement. It is written from a business perspective and uses easy-to-understand terms.

The second white paper entitled '*Evaluating Mobile Phone Recording Architecture*' examines in greater depth the solutions available, pointing out their strengths and weaknesses.

On the 14<sup>th</sup> November 2011 [\*all UK regulated financial services firms\*](#) will be required by the Financial Services Authority (FSA) to record all forms of voice [including mobile/cell phones & landlines] and written [including email, SMS, IM etc] communications with clients and counterparties. Whilst firms in the rest of the EU are awaiting the outcome of the MiFID review, which is likely to include similar stipulations.

It is therefore important that firms understand the background and political agendas, which are driving regulation, not only in the EU, but globally, to enable them to plan and implement a secure communication architecture and strategy, not only to meet regulatory compliance but to protect their firm and employees from an increasingly threatening, risky and rapidly evolving communication and media environment.

The conclusions in this paper should assist firms to understand why the introduction of secure and comprehensive recording systems and services are vitally important not only to their immediate but future business.

## INTENDED AUDIENCE

This white paper is aimed at those involved in planning, selecting and implementing a secure communications architecture and strategy for their firm. This will include; compliance officers, human resources, legal, CIOs and their operational counterparts at investment firms, banks, stockbrokers, investment managers and all regulated financial services firms within the European Union.

## UK REGULATORY REQUIREMENTS

In 2010 the FSA set out draft proposals to remove the existing exemption for the recoding of mobile phones from its Conduct of Business sourcebook (COBS 11.8 taping rules), in its consultation paper 10/7. It received a number of responses from various business types that detailed a range of different concerns but none that prevented the FSA from removing the existing exemption, in November last year.

*The new rules come into effect on the 14<sup>th</sup> November 2011.* On this date financial services firms should have policies and the technical capability to record mobile/cell phones and other electronic devices used to carry out business dealing.

The changes to the Conduct of Business Rules as published in PS10/17 are:

- To record and store – for a period of six months – all ‘relevant conversations’ and ‘electronic communications’ made with/received from firm-issued mobile phones or private phones which have been sanctioned or permitted by the firm.
- To take reasonable steps to prevent ‘relevant conversations’ taking place on private communication equipment including private mobiles, private handheld mobile electronic communication devices and private non-mobile electronic communication devices which the firm is unable to record or copy.

There are no more planned consultations and no route for firms to change or amend the recording rules. Therefore implementation of the written rules will stand leaving a narrowing window for financial services firms to introduce compliant solutions. Although there may be an extension to the record retention time under the MiFID Two review.

### SCOPE OF THE RULES

All financial services firms are required to record conversations that are with clients (Investors) or contractors (Agents) that result in a business action to order or deal in the markets. This includes advice or other actions that commit the investor to a financial action. So it is all encompassing. No regulated firm is exempt and there are no grounds for appeal at the moment although this cannot be discounted if precedence is set in the future.

The FSA points out that the COB requirement to record has overlaps with the Market Abuse Directive (MAD) and the MiFID review, which will create regulatory enhancements across all EU states during 2011/12. This overlap might be seen by some firms as an opportunity to delay; playing off the UK regulations against impending EU regulations but this would be a mistake and could lead to prosecution.

### EUROPEAN REGULATORY REQUIREMENTS

In the EU, the European Securities and Markets Authority (ESMA) *formerly CESR*, has been instrumental in drafting and implementing the Markets in Financial Instruments Directive (MiFID) and recently the MiFID review, which has been through industry consultation but no formal recommendations for rule changes have been announced yet, but are expected by the end of the year.

However, the introduction of regulations for the recording of mobile/cell phones and other electronic devices is a bit more complex in European markets, as is the evolving regulatory framework, which is very much work in progress.

The problem is that many States have variable domestic laws that need changing under central European objectives and the implementation of these domestic changes often requires an EU Directive to drive that change, which then eventually transposes into law. However, some EU States have a simplified legal and Regulatory structure, where EU objectives can be fast-tracked and simply changed through regulation.

An example of the variable capability to respond to EU Directives is that even today some EU States have still not implemented laws or regulations for MiFID. This unevenness is trying to be harmonised through the creation of new regulations in the EU.

For this reason the implementation of rules regarding the recording of mobile communications is likely to be uneven, leading to financial services organisations with a Pan-European business having to introduce internal policies possibly before the local Regulator imposes rules.

A prudent approach by Pan-European firms would be to adopt a strategy for a Pan-European recording solution that complies with the requirements of the most onerous view of the toughest EU State. In addition, there are areas that differ between the UK Regulator and ESMA for example the 5 year record retention period required under MiFID One against the 6 months requirement of the FSA. Again all regulated firms should be prudent and implement a flexible policy and technology that allows them to meet the most arduous rule requirements.

## USA CELL PHONE REQUIREMENTS

Since the introduction in July 2010 of the all encompassing Dodd-Frank act, the US financial services industry's attention has been taken away from '*Corporate Governance*' as firms wait to see the huge impact of new rules and regulations some of which are still be debated by the industry and constructed by the US Regulators.

Existing regulations require some financial services firms to keep certain records of written communications relating to their client, but at this moment-in-time there is no explicit requirement for voice recording. However, it is felt that because the main objective of the Act is to avert a repeat of the 2008 financial crisis by making financial institutions more accountable for their actions and by enhancing oversight of the industry to detect and prevent systemic risk before it reaches crisis level, recording of voice communications is eventually bound to be made mandatory to assist in the eradication of international market abuse and to harmonise US regulations with European rules and objectives.

## THE REGULATORY JUNGLE

As a result of the financial crisis international Regulators are being empowered by their governments to introduce a better and more protective environment for Investors.

Failings in the market both real and perceived has caused a global march of Regulators to assess and reassess existing market rules and put in place a workable regulatory framework. As a result the UK, the EU and other international markets are introducing a mass of Directives and rules.

Many of the Directives affecting the UK and the EU have connotations for the recording of mobile devices, although they are not always directly referred to within the Directive or regulation. But there is no doubt that recording mobile communications and other devices will add weight to enable firms to fulfil their compliance obligations.

Some of the Directives and compliance obligations where mobile/cell phone recording would form a component of a compliant solution are listed here. This is not an extensive list but it makes a sound point.

- Market Abuse Directive (ESMA EU Directive)
- MiFID One and MiFID Two Review (EMSA EU Directive)
- COB (Conduct of Business Rules) (UK FSA)
- Senior Management Arrangements, Systems & Controls (SYSC) obligations (UK FSA)
- Bribery Act 2011 (UK Law but affects companies who do business in the UK)
- Money Laundering (rules enforced globally)

Note:

- [Details of EU Directives can be found by visiting: [http://ec.europa.eu/internal\\_market/securities](http://ec.europa.eu/internal_market/securities)]
- [Details of UK financial services financial crime legislations and rules can be found at: [http://www.fsa.gov.uk/Pages/About/What/financial\\_crime/](http://www.fsa.gov.uk/Pages/About/What/financial_crime/) for COB rules visit: <http://www.fsa.gov.uk/pages/Doing/Regulated/newcob/index.shtml>]
- [Guidance on the UK Bribery Act 2011 can be found at: <http://www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm>]

## WHAT SHOULD FIRMS BEING LOOKING TO INVEST IN

The key word is *invest!* Financial Services firms must, like their employees and clients, move with the times and make use of the latest technology to ensure high quality communications and business data are available in a timely manner. After all, markets are underpinned by data as well communications. Weaknesses in either can destroy a business.

To-date many firms have tried to restrict employee's access to the internet and mobile communications, in order to retain control and ensure regulatory and business compliance. This is not the answer and is a rapidly growing problem for financial services firms as their client's expectations have changed. Through the use of different mobile communication devices clients now have direct access to markets and social media websites and expect more. Technology will continue to evolve rapidly and firms must be able to keep pace with client's expectation.

Firms must build a secure communication strategy and install a resilient architecture that not only achieves compliance but future-proofs their business against threats and risks as communication continues to evolve. The recording capability should tie together all communication media and devices.

This should include landlines, mobile phones and other mobile devices such as iPads, netbooks and notebooks which enable email, SMS, Instant Messaging and social media applications/sites such as; Twitter, Facebook and LinkedIn, which by misuse could put the firm at risk.

And when planning the architecture, firms should plan at an individual level; assessing the different types of communication available to each employee, treating each one as a separate cell, of the whole architecture, only then can they build a strategy against the risk of Market Abuse.

## ESTABLISHING AN EFFECTIVE COMMUNICATION ARCHITECTURE

There will never be totally secure communication architecture in financial services, as evolving technology and increasing access by employees and investors to mobile devices and the explosion of social networks makes firms continuously vulnerable to gaps in communication security.

With this in mind, to be effective the overall solution should include technology as the first line of defence, with employment contracts plugging any gaps, to act as a deterrent to employees who may knowingly or inadvertently facilitate external attackers of the firm's business.

A strategic implementation of a communication recording and audit architecture will create a defensive barrier around the firm's business. This will provide assurance that the firm is able to minimize its risk by understanding and monitoring all the communication devices that are permitted to be utilised by each employee.

The ability to archive and simply retrieve and find relevant conversations in either audio or textual form and match them to a transaction, will provide an audit trail of the advice and order communications leading to the deal. If voids are found when matching, this will strongly indicate a suspicious transaction and a case for investigation. And in the case of a dispute arising either between the client and the firm or an employee and the firm, recordings can help to establish the facts in the matter.

For a firm to be effective in establishing durable and resistant communication architecture that specifically meets the firm's needs it should create an enterprise wide project team. This should include

- Communications
- Compliance
- Human Resources
- Legal
- Front Office Operations
- Back Office Operations

## WHOLESALE MARKET PLAYERS

Investment banks and all regulated financial organisations in the wholesale markets have been required to record landline dealing room telephones for decades. For many the technology was an expensive investment and in some cases they have not reinvested to update and modernise.



This legacy is one of the barriers to firms thinking positively about the new regulatory thrust to record all conversations over mobile communication devices and the value to their business of establishing a resilient and secure communication architecture, which is underpinned with recording and communication recovery, at transaction and individual conversation level.

The world is of course very different to 1986, when investment in front office recording systems first became a regulatory requirement. Since then the explosion of mobile/cell phones, the internet and social media and mobile communication devices, which are continually evolving have created increased risks for banks and other wholesale market players.

The exponential rate of growth in mobility and the easy access by employees, of technology, to communicate from any location through many different mediums means that financial services firms need to build a secure communication architecture that ensures their firm is protected against attack by fraudulent or disgruntled employees.

All financial services firms now encompass mobility and direct market access on an international basis, which means they need to standardize their communication architecture globally. The wider the net is spread the increased chances are that gaps will emerge. A standardised and strategic implementation of an international recording system will go a long way in building a compliant and secure solution.

Restrictions on use are not practical as a solution to the growing communication problem caused by mobile devices. It is unthinkable that firms would not allow their dealers to take advantage of transacting globally in markets, as investors now move assets between different markets and time zones and where clients expect 24/7 support. Especially in the case of senior dealers that earn huge profits for the firm.

The increasing aggression of the Regulators after the financial crisis beginning in 2007/8 has to be respected and firms both large and small in the international wholesale markets are coming under extremely close scrutiny.

There is also a very compelling argument, that even without a regulatory requirement to introduce an integrated and comprehensive communication recording architecture, financial services firms need to ensure that their employees and business are protected against investor accusation. Any detrimental impact of reputational risks outweighs cost and assures a ROI.

## **RETAIL MARKET PLAYERS**

The retail market, which includes wealth managers, brokers and all regulated firms acting and advising investors are required to have the capability to record conversations. This is a significant new investment for the retail market players as in the past they have not been required to have a recording system.

To date retail firms have relied on their sell-side suppliers in the wholesale market to provide the functionality to record telephone conversations. This has now changed under the FSA and MiFID regulations, where the investor has to be protected. Under the EU Market Abuse Directive (MAD) requirements and the MiFID review across the EU the retail financial services firms have to find a cost-effective and appropriate technology solution that meets the needs of their business.

It is likely that retail firms will be the most vulnerable to failure because they have the largest leap in understanding the required technology and how best to deploy it to comply.

### GAPS IN ACHIEVING RECORDING COMPLIANCE

No recording solution will ever achieve 100% compliance so financial services firms need to understand; what is the best integrated solution, for their particular business. The key word in the solution is *'integrated'*.

Most firms will have a communication capability that includes landlines, internet, intranet, bespoke trading networks, commercial, closed and private networks, mobile phones and other devices. The problem is that they have not included all communication capabilities within an integrated architecture. Meaning there are gaps between each, leaving firms exposed to risk and compliance failures.

It is through tying these various communication mediums and devices together by recording, that financial services firms can create an integrated communication architecture providing a protective barrier to legal and regulatory breaches. Upon its creation firms can further close any gaps (i.e. use of mobile devices outside the office for business) and create an audited process that can not only prove compliance but also protect the firm and its employees.



## ARGUMENTS AGAINST RECORDING MOBILE COMMUNICATIONS

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### PRIVACY LAWS

There has been much made of the intrusion of mobile recording regulations into the private lives of employees and there is a case to be made. However, financial services firms should mitigate these concerns and possible legal conflict by combining mobile recording technology within agreed employment contracts.

It is very unlikely that the EU will introduce legislation that differs wildly from the FSA rules. In the EU the E-Privacy Directive and Data Protection Directive do not prohibit the recording of mobile phones and other devices. This is a clear indication that a path is being made for firms to introduce mobile/cell phones recording technology and a corresponding employment contract.

### DIFFERENCES IN EU AND UK REGULATIONS

UK financial services firms are worried that the EU will introduce rules for mobile recording that will need amended solutions to comply. This is a valid concern but it should be noted that the ultimate objective of the European Parliament is to harmonise all legislation across all EU States. Generally UK legislations are stricter than those imposed by other EU States and therefore UK firms should not feel prohibited in making an immediate investment in an appropriate solution which takes into account current domestic laws and rules.

### UPSETTING THE DEALERS

Even today many senior and most highly regarded dealers that provide firms and investors with the greatest profits and rewards are indulged and allowed to flout internal rules. Financial institutions have to be strong and ensure that everyone without exception is included and that their communication devices are recorded.

### RECORDING EMPLOYEES PRIVATE MOBILE/CELL PHONES

This is a sensitive area of the regulation and one that obviously confronts privacy laws in the most direct manner. Once again the best solution is to combine recording technology with the employment contract to protect both the firm and their valued employees. Employment contracts should of course be drafted to ensure that the terms encompass the relevant privacy laws and then firms can introduce the required recording architecture to achieve compliance.

### DON'T WANT TO CHANGE MY NUMBER, PHONE OR NETWORK

Mistakenly some firms believe that they will have to either at worst replace all their handsets or change their mobile/cell phone numbers or their network supplier. There are a number of solutions currently available which do not require any of these changes.

## **NO COST BENEFIT**

The ROI for the introduction of recording technology is easy to quantify if it is appreciated as an insurance against the failure of a financial services firm in a legal argument or where there is a need to resolve a client complaint or uphold the firm's position. Even at an individual level if the recording can resolve a dispute or protect the employee, the recording technology will provide an ongoing return on investment.

## **TOO COSTLY TO COMPLY**

It is interesting that in the industry feedback to the FSA consultation document, the cost estimates were very varied but most of them veering towards overestimation, indicating a severe lack of understanding of the actual costs involved.

Firms with existing legacy recording systems do not necessarily need to scrap this investment but can enhance with suitable existing technology to encompass recording mobile devices. Even if firms decided to replace existing technology with a modern integrated solution the overall costs taken over future decades will be very modest.

Vendors in the market are already offering a range of solutions that are priced to fit the budgets of small low volume businesses as well large high volume players. So there is already flexibility in pricing and like all market products an economic benefit in moving quickly rather than waiting for a hypothetical price reduction as the market becomes saturated.

Outsourcing the recording solution under a license is going to be something that will attract the majority of financial services firms. Even high-volume firms will be attracted to the benefits of attaining a high-value product and technology that will always be maintained to the best regulatory standard.

A SaaS (Software as a Service) type solution should be examined closely before embarking on purchasing technology. Any investment in recording technology must be with awareness of the growth of social media and the need to build a comprehensive communication recording architecture.

## **MY FIRM HAS NEVER BEEN FINED**

The vast majority of financial services firms have never transgressed in the market and have never been fined or reprimanded. Most firms have never employed people that have been reprimanded by the FSA or worse, been guilty of market abuse or anything close to it, so why do they need to invest in recording communication architecture?

The answer is obvious, because the Regulator says you must, but in fact it goes beyond this, as firms need to protect their business and their employees. They must be able to provide evidence when needed if for example; they are innocently implicated in bribery, under the bribery Directive or money laundering.

Financial services firms also have to protect against the growing impact of social media and the power that this medium has for reputational risk. A comprehensive and integrated communication architecture, which is able to record and evidence good practice, is fundamental for today's business.

## I DON'T HAVE TIME TO IMPLEMENT A SOLUTION

The market has clearly been worried by the aggressive timescale of the Regulators to implement a mobile/cell phone recording solution however; this is unfounded at the moment. Some mobile/cell phone recording solutions can be implemented very quickly. But choosing the right solution, which fits the needs of your particular organisation from the range available, can take time.

Implementation timescales can vary depending on the complexity of the business environment and the solution chosen but even in the most complex cases this can be considered modest, with the implementation project completed in a few months.

## SECURITY

Security is always an issue, which tends to be tied in with where the data is held. Current recording solutions, allow for various storage options, either the data can be stored on servers in-house or in a firm's secure data centre (if using external storage). Hosted systems also use secure data centres, with the usual high level of security encryption and login procedures as defined in the SLA. Nothing is ever completely secure but recording data is as secure as any other form of data that financial services firms collect and store.

## AMBIGUITY

Typically the FSA has introduced ambiguity into its COB rules, using terms such as '*reasonable steps*' when determining compliance. The FSA have also stated that a restrictive policy on the use of mobile phones for business might be deemed compliant however; this is hardly a practical business solution with so much client communication, going through a myriad of communication devices and platforms.

There is no doubt that the principles based approach of the FSA is a cause for concern by financial services firms, when looking at introducing a solution that is deemed to be compliant, as opposed to EU Regulations which are more prescriptive and provide a clear black and white case for a firm to implement a compliant solution.

However, it is better for firms to implement the best possible solution not only for compliance but for the business and by taking a more proactive stance firms should be afforded protection against the FSA or the EU taking a more aggressive view of compliance. For those who may be seeking additional guidance, it should be noted that whilst the FSA will not endorse any solution, they will supply low-level consulting without necessarily committing themselves.

## 3 BIG REASONS TO INVEST IN A SECURE & RESILIENT RECORDING SYSTEM

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### COMPLIANCE

This is an obvious reason but firms should refrain from looking at such a short-sighted reason. Yes, the Regulator is mandating that all financial services firms have a complete communication recording capability but with media technology evolving fast there is every reason to expect that current rules and regulations are just the starting point so a strategic investment today will save costs tomorrow.

### BUSINESS CONTINUITY

Look through many of the Directives and regulations in the UK and EU financial markets and you will find an ongoing theme of business continuity. It is a core principle of the financial markets that they remain open at all times to ensure investors and customers are able to transact for their financial protection and that of their assets. Firms equally need to ensure there is limited downtime and ensure there is a resilient system in place to carry on business.

Mobile/cell phones and other remote communication devices and mediums are extensively used within most firms' disaster recovery or business continuity plans and therefore a top class recording system and set up will greatly enhance their capability. It is almost a necessity that firms include recording and archiving of communications for their protection as much as for their clients.

### MITIGATE REPUTATIONAL RISK

More and more business is being done outside of the office and normal office hours. The problems of undertaking this type of operation are noteworthy. For example trade reporting is often the first task in the morning as the markets open. There is an over reliance on the individual to record the details of the trade and not surprisingly mistakes are made. Disputes occur and these can be extremely damaging to the individual as much as the firms. Reputational risk is at stake and this can be terminal in business.



## OUTLINING TODAY'S MARKET SOLUTIONS

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Currently there are four types of solutions offered by vendors. These are referred to as:

- Store-and-forward
- Conference-call type solution
- Unified-Communications based recording
- Inline mobile recording™

By and large these solutions tend to have been created from the vendor's core offering and therefore from different starting points. For example vendors that have networks provide a solution where the solution is based on recording from the network.

### STORE-AND-FORWARD

This approach uses the handset to capture and record calls, before forwarding them over the airwaves to a remote recorder.

### CONFERENCE-CALL TYPE SOLUTION

This approach uses an application on the handset to automatically connect a recorder when a call is made or received, thereby creating a three-party conference call.

### UNIFIED-COMMUNICATIONS BASED

This approach uses 'Unified Communications' (UC) technology, developed to offer 'single-number reach' across multiple fixed-line and mobile handsets. By making the mobile/cell phone another 'end point' on the company's private exchange (PBX), all calls to and from the handset can be routed through the fixed-line system and recorded using the existing fixed-line recorders connected to the PBX.

### INLINE MOBILE RECORDING™

Today there are two methods of routing calls through a recording gateway:

1. [Application-managed routing](#), which uses an application on the handset to divert incoming and outgoing calls through a recording gateway.
2. [Network-managed routing](#), which relies on 'network intelligence' in order to route calls through a recording gateway.

These inline mobile recording solutions have a number of different deployment options; fully hosted and 'on-premise' or 'enterprise' deployment.

As previously mentioned the second white paper in this series examines these solutions in greater detail and points out their strengths and weaknesses.

## SUMMARY

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The threats to financial services firms emanating from evolving communication technology and especially mobile devices makes it imperative that firms construct a secure and resilient communication recording architecture.

Mobile phone recording is developing fast and new vendors are bound to enter the ring in the coming years with new ideas and concepts for mobile phone recording but it is today that counts. It is important that financial services firms decide a long term future strategy for a secure recording architecture and contract with a supplier that can meet not only the regulatory needs of today but also future requirements as social networks and mobile communication devices and networks evolve.

There is enough evidence of the capability of existing technology and services being currently offered by suppliers for firms to invest in recording communication architecture to meet the regulatory requirements already set for November 2011 by the FSA.

Creating a project team to identify requirements, manage the selection and implementation has to be a priority for firms. It is important that the communication architecture created by the firm is a combination of technology and contractual law.

Privacy laws are always stated as a reason why mobile phone recording has to be limited but as new communication and mobile devices are created and social media continues its exponential growth, firms have to ensure employment contracts are unified with the telephone recording architecture. For this reason human resources and legal officers have to join technologists and compliance offices as important components of any project team.

Time is running short for firms to create the best architecture to meet, not only regulatory requirements, but to create a secure and risk adverse environment for their business and employees.



## ABOUT COMPLIANT PHONES

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Established in 2005, Compliant Phones develops voice and data recording applications for mobiles, for use in financial institutions, industry, healthcare, transport and government. Its patented Inline Mobile Recording™ technology enables organizations to use mobile phones without exposure to regulatory or operational risk.

Selected by Vodafone Global Enterprise and Autonomy to power their mobile recording solutions for some of the world's largest banks and corporates, Compliant Phones offers the only reliable solution for automatically recording mobile voice and data communications across any network, worldwide.

Compliant Phones is head-quartered in London UK, and has offices in New York and Singapore.

If you would like to lean more about the company and its market-leading mobile-recording solutions, please visit: [www.compliantphones.com](http://www.compliantphones.com)

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