

**Submission Date**

10/10/2016

## ESMA\_QA\_1776

Status: Answer Published

### **Additional Information**

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#### **Level 1 Regulation**

Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014 - Investor Protection and Intermediaries

#### **Topic**

Recording of telephone conversations and electronic communications

### **Subject Matter**

Recording of telephone conversations and electronic communications

#### **Question**

Are employees or contractors permitted to use mobile devices to enable them to undertake activities relating to transactions concluded when dealing on own account and the provision of client order services?

10-10-2016

Original language

[ESMA 35-43-349 MiFID II Q&As on Investor protection, Ch 3, question 10]

Firms may permit relevant persons to use mobile devices to undertake activities relating to transactions concluded when dealing on own account and the provision of client order services. This includes devices owned by the firm which are expressly authorised for use and devices which are personally owned and used to make relevant conversations. Whatever the circumstance, a firm shall take all reasonable steps to prevent a relevant person from making, sending or receiving relevant telephone conversations and electronic communications on devices which the firm is unable to record or copy.

Firms are required to establish, implement and maintain an effective recording of telephone conversations and electronic communications policy. This policy should therefore cover the requirements relating to mobile devices.

For example, the policy should cover, amongst other factors, the fact that data must be retained for a period of at least 5 years, relevant persons should be prevented from being able to delete records. It should cover what happens to the data/device if a relevant person leaves a firm and what happens in the event that the device is lost or stolen. Additionally, it should also stipulate the frequency of transferring data from the mobile device (whether privately owned or expressly authorised for use by the firm) to the firm's own data retention database.