

## DELMORE ASSET MANAGEMENT RECORD KEEPING POLICY 2018

One of the biggest changes MiFID II brings is the regulation regarding how firms record transactions and their dealings with clients. Under MiFID I, firms were subject to few record-keeping requirements, as compared to under MiFID II. Investment firms are required to keep records of *every client order and every decision taken to execute the order*. Firms must also keep records of *transactions while executing or transmitting an order*. European Securities and Markets Authority (ESMA) has provided a non-exhaustive list of minimum records to be kept which firms must adhere to. The retention period of a “record” begins on the date it is initiated. As per the directive, ***data must be stored for at least five years (with an option to extend it to seven years)*** and should be in a medium that can be “*easily accessed*” by National Competent Authorities (NCAs. In the case of UK the FCA).

Under MiFID II, there is an increased need for investment firms to provide significant data to the FCA. These enhanced records will assist The FCA in confirming whether a firm has complied with its obligations under Market Integrity and its compliance thereto. As a result, record keeping requirements under MiFID II are much more granular. MiFID II regulations require investment firms to:

- Store records of all services, activities and transactions and ensure the data is sufficient, so that a regulator can reconstruct each stage involved in the processing of a transaction.
- Record all the initial forms of communication. In addition, records must be ‘readily accessible’ by the relevant competent authority. However, there isn’t an explicit definition by ESMA or the FCA on what ‘readily accessible’ means.
- Identify what is appropriate, based on the type of transactions involved. Investment firms must now ensure the stored records cannot be manipulated in any way, unless it is for amendments. In this case, a clear audit trail is required to show the changes that have taken place. MiFID II also requires firms to immediately record every initial order received from a client and in relation to every initial decision to deal taken to be stored and readily available for scrutiny by the FCA.

MiFID II enhances considerably the regulations around the recording of voice and other electronic communications. The new regulations require firms to operate an effective policy which covers the rules surrounding the recording of telephone conversations and electronic communications. It is mandatory for firms to keep records of telephone conversations and electronic communications relating to transactions whether received, transmitted or

executed client orders. MiFID II also extends its scope of communication to *any form of electronic media*, such as emails instant messaging, video conferencing, SMS and so on. Firms must also inform new and existing clients that telephone calls which may result in transactions will be recorded. Delmore has made it clear to clients that no client order will be accepted by 'phone (landline or mobile).

Whilst all client related telephone conversations are taped (and retained for at least 5 years) in the interests of good Audit Trail, ready access and suitability, notes of such conversations and face to face meetings should be kept on CRM system or client files, thereby obviating the need access to tape recordings. It is envisaged that recordings should only be accessed in the case of dispute, rather than an aide-memoire to statutory record keeping.