Taming the Mobile Beast

How can mobile devices and trading floors work together under MiFID II?

The Realization Group

Telstra

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The use of mobile devices in a trading environment has been a contentious issue for as long as mobile phones have been in mainstream use. As early as 2004, The Times was reporting on the growing number of financial firms who had banned traders in London using their mobiles at their trading desks, as concerns mounted over staff reportedly using the technology to avoid their calls being monitored by compliance officers.

By 2012, the Libor scandal had thrown the scale of this risk into sharp relief as the impact of unmonitored collusion was felt around the world. By the time the London Fix scandal hit the FX markets, moves were already underway by the regulators to put in place stricter controls over all communications related to trading, most notably under the requirements of MiFID II.

Yet at the same time, the use of smartphones has become so prevalent that both traders and clients now both want, and expect, to be able to use the leading communication tools to facilitate their trading activities. As firms come under increasing pressure to allow the use of instant messaging apps, emails, SMS and voice, how do they then balance the compliance and oversight requirements with the increasing adoption of mobile technology into every tier of financial service provision?

In this Financial Markets Insights report, Nicola Tavendale and Mike O'Hara of The Realization Group speak to Societe Generale's Paul Clulow-Phillips, Sam Tyfield of Shoosmiths, The Broker Club's Sally Jones, Helen Bevis of SteelEye and Telstra's Will Scott about the key challenges that firms face in this area and the various approaches that they can take to help balance and manage the risks.

A new regulatory landscape

It is now over two years since the Markets in Financial Instruments Directive II (MiFID II) came into force in Europe, bringing with it an extensive body of new regulatory requirements for banks, brokers, trading firms, investment managers and other financial institutions.

One core aspect of MiFID II that continues to be challenging for many firms is Article 16(7), regarding the recording of telephone conversations and electronic communications relating to transactions and client orders:

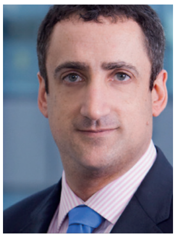
> "…an investment firm shall take all reasonable steps to record relevant telephone conversations and electronic communications, made with, sent from or received by equipment provided by the investment firm to an employee or contractor...

> …An investment firm shall take all reasonable steps to prevent an employee or contractor from making, sending or receiving relevant telephone conversations and electronic communications on privately-owned equipment which the investment firm is unable to record or copy…

> …Orders may be placed by clients through other channels, however such communications must be made in a durable medium such as mails, faxes, emails or documentation of client orders made at meetings. In particular, the content of relevant face-to-face conversations with a client may be recorded by using written minutes or notes. Such orders shall be considered equivalent to orders received by telephone."

To comply with these regulations, firms must record and capture every communication that could result in an order or a transaction, regardless of the communication medium. However, this definition itself is problematic, says **Sam Tyfield**, Partner with Shoosmiths.

"When MiFID II came into force, there was a concern around forcing staff to record conversations that might not lead to a transaction in a financial instrument. But my point has always been, you don't know. Any conversation that anybody has could lead to, or involve, a transaction in a financial instrument. So, your obligation is to pretty much record everything. That means you should be banning people from having any conversations via any medium that is not being recorded".



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Policies around use of mobile devices

Ensuring that all relevant conversations and communications are recorded can be particularly tricky when it comes to the use of mobile phones.

"One of the key trends that our clients face at the moment is the need for policy-based enforcement around mobile devices", says **Will Scott**, EMEA Business Development Director, Telstra. "There is a lot of confusion around the most effective method to deal with mobile as a regulated communication for financial services. Some organisations are banning them from the trading floor completely, others are banning personal devices, others are telling staff, 'you can have your device on the floor, however you cannot use it', or 'you cannot use your personal device but you can use your work device'. So there's a lot of different mechanisms being put into policies that seem to lead to general confusion as to what is and isn't allowed."

Having a clear policy in place is one thing. But firms also need to take reasonable steps to make sure that the policy is adhered to and enforced. "There is no point having a policy unless you can actually demonstrate that it is followed and, if not complied with, bad things happen to the individual', says Tyfield.

Things start to become more complex when BYOD (Bring Your Own Device) comes into play. "I've seen different attitudes to BYOD across different jurisdictions," says **Paul Clulow-Phillips**, Managing Director and Global Head of Markets Compliance & Surveillance at Societe Generale. "Definitely, there are far more open attitudes to BYOD in the US than I've seen here in Europe".

"But the minute you introduce personal devices into the equation, that instantly becomes more difficult because by definition you lose an element of control," he adds. "The thing that I most worry about with BYOD is, can I justify the approach to regulators and, in the event that something is identified that should have been recorded but wasn't, have I protected the bank in the very best way possible?"

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Paul Clulow-Phillips, Societe Generale

Meeting clients' demands

One of the main drivers around use of mobile technology in the trading room is client demand. "From the client perspective, there is an expectation of being able to get hold of people," says Scott. "In a general sense, we all expect to be able to contact people with the details we have, whether that's by a mobile call, a text, an instant message or whatever. People expect to be able to send a message and get a response back".

Scott tells the story of a firm that banned the use of SMS, but then had to re-implement an SMS solution because all of their wealth managers complained that they had to have a way of messaging their clients, and the clients wanted to use SMS. "If I'm a high net worth individual and I have a wealth manager I'm investing with, if I can't contact him I'm going to take my business to someone who I can. Clients are the ones driving the communication channels with organisations. They want to be able to ring people on their mobiles, they want to be able to send a text, and a lot of them are now looking at instant messaging apps".

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Late in 2019, The Broker Club conducted a survey of compliance heads and senior compliance officers from its member firms in order to gauge the current thinking around mobile phone use and policy. One of the most notable findings was that 100% of members said they were now seeing an increased demand from clients to communicate via IM or social channels, yet only 40% of members were actively working to meet to this demand.

"Everyone who responded to the survey said that they are seeing increased demand to communicate via alternative methods," says **Sally Jones**, Executive Director at the Broker Club. "Not just mobile phones, but also things like WhatsApp and other social media methods of communication. Which is obviously causing concern, because with WhatsApp, you can't record conversations, everything's encrypted. And firms are realising that just having a policy is not really sufficient because they still need to be able to enforce it. So, although everyone said that they've made it clear that WhatsApp is not permitted for business, they are also aware that traders do communicate with other traders - and sometimes with customers – via those kinds of applications".

Messaging apps

Scott believes that the emergence of instant messaging applications on the trading floor is a top priority challenge for financial institutions at the moment. He cites the example of WhatsApp and points out that none of the solutions for capturing WhatsApp messages are officially sanctioned by Facebook, WhatsApp's owner. "A lot of these 'solutions' are basically just screen-scraping WhatsApp and copying messages into another application. Facebook could shut them all down tomorrow, which people don't seem to realise," he says.

Scott also points out that WhatsApp's business API is intended purely as a low-end messaging application. "For businesses, it's mainly used for sending messages in one direction around notifications, like, 'Your pizza's on the way'," he says. "It has very limited functionality".

Clulow-Phillips agrees that instant messaging apps have become important issues for the industry. "That's a discussion that is active now," he says. "I'm pushing very hard. If we're going to implement control mechanisms, then let's make sure those control mechanisms incorporate capture of WhatsApp, WeChat and anything similar. And I think technology will eventually come to the rescue".

To BYOD or not to BYOD?

Another interesting outcome of The Broker Club's survey was the diverse attitudes that exist towards BYOD, from one firm saying they only have BYOD and no corporate devices, to others saying that they would like to ban all mobiles. This seems to be fairly reflective of what's happening across the industry, but these positions are by no means static, according to Jones.

"It does seem to be quite a fluid thing, people are looking at this and changing their position constantly," she says. "And as the cost of technology comes down, in terms of being able to monitor and perform holistic surveillance, I think we will see policies change again. Firms are constantly evaluating the advantages and the disadvantages of BYOD.

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Sally Jones, The Broker Club

Helen Bevis, Head of Operations & Strategic Partnerships at SteelEye, believes that the growing popularity of BYOD is driven by employees' desire to continue using the devices they are wedded to in their private lives, while at work. "If you encourage them to do just that, their satisfaction levels will rise. This is an incredibly valuable trade-off for businesses, but it also cuts the cost of holding depreciating tech assets overall".

Bevis tells an interesting story about two global banks that occurred last year. "Just as one bank was cracking down on mobile phone use on their trading floors, the other lifted their trading floor mobile technology ban. The ban was lifted NOT to facilitate better trading decisions, or to create a more advanced set of trading analysis by considering modern tech advancements or anything like that, but to help their employees to relate back to their families and be available for emergencies outside the office. The change followed feedback they had from their workers about being unhappy with the separation of their tech devices. Proving that happiness of employees is also a factor in increasing the growth of tech on the trading floor".

Scott agrees that completely banning mobile devices from the floor is probably not the best approach. "It's getting a lot of resentment from regulated users, because a smartphone is a key productivity tool. People don't want their personal devices banned, they don't see that as being reasonable," he says. "Most people use their mobile phone for everything now, especially with the advent of 5G coming, and more bandwidth available. It's becoming a more mobile-centric world."

How can technology help?

Clulow-Phillips is optimistic about the outlook for BYOD. "We're seeing technology start to appear that would seem to make BYOD more palatable," he says. "New forms of technology whereby we can effectively segment a device into two utilising different numbers, different SIMs in certain cases, different numbers in the case of other solutions. For me that is very definitely a potential solution for banks because it puts the onus on the employee, you can legitimately say as a bank you have given the employee all of the tools that they need to be able to comply with the rules. If that employee then chooses to have a business phone call or send a business message using the personal half of their device – or vice versa – that's their decision. Ultimately, I would see them as being first in the firing line as opposed to the bank in those circumstances".

For Tyfield, the path of least resistance is to implement technologies that enable staff to continue with their existing work practices but ensure that everything is captured in compliance with regulations. "Ideally, you want to be able to say, 'continue to use the technologies you're already using, as long as you go through this particular app on your device'".

Scott agrees that the best approach is a BYOD policy that allows the use of a personal device installed with a regulated communications app that records everything. "This streamlines the whole mechanism and workflow. There's only one device and it has a business persona and a personal persona. And thereby it's very clear what a user can and cannot do with it", he says.

"The technology solutions are out there, Telstra MultiLine powered by Movius being one of them," continues Scott, "where you can put in the compliance solution that delivers for the end user, and also delivers for the client, while also meeting the regulatory requirements of the bank. What Telstra MultiLine powered by Movius delivers is a compliant communications solution that has the mature capability to capture, store, and manage regulated communications and put them in the bank's compliance system."

"To truly see how all of these technologies can be utilized, you have to use them, not just in unison, not just as a silo, but with other technologies in order to get a real picture of what's happening"

Helen Bevis, SteelEye

Bevis believes that the industry needs to move on from the 'knee jerk' reaction to ban all mobile phones because firms don't know how to control the use of them. "We've got to a point where there are applications and technology solutions allowing us to control and also try to reduce the impact of utilising mobile devices, not only for corporate use but also to limit out any activity for personal use", she says. "But to truly see how all of these technologies can be utilized, you have to use them, not just in unison, not just as a silo, but with other technologies and bring them all together, in order to get a real picture of what's happening".

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