Making sense of financial services regulation

The Global Impact of New Regulations on Communications Compliance

19 December 2017
The financial services industry has been facing ever more pressure to utilise increasingly sophisticated surveillance techniques to monitor internal and external communications.

During this webinar JWG and NICE will discuss the global regulatory requirements impacting communications and the approach to achieving compliance.

We will also ask for your opinions on several important issues, please look out for the audience polls.

We will take questions at the end, please submit your questions throughout.
Speakers

- **Dan Simpson** – Head of Research, JWG
  
  - Dan runs JWG’s regulatory research team and has lead JWG’s research on the impact of MiFID II /MiFIR and other EU trading regulation on the global marketplace.

- **Arno Sybrandy** - Product Marketing Director, NICE Financial Communication Compliance
  
  - Arno has two decades’ experience in the financial software industry. Arno oversees global product marketing for NICE’s communication compliance solutions which enable FSOs to ensure compliance, fight financial crime and improve risk management.
How well prepared for MiFID II is your firm?

- Ready to go
- Have changed the operating model, all that is left are final tweaks
- Understand what it means to us but there is much left to do in 2018
- Limited understanding of requirements
Communications is a significant part of existing regulations (MAR and Dodd Frank) as well as upcoming regulations (MiFID II).

Global regulations will become all-encompassing in terms of communications reporting with a much larger scope in terms of activities to be recorded.

MiFID II is much more prescriptive than its predecessor, and widens the scope of MAR.

MiFID II will also expand the scope of firms that will be covered. It expands what is defined as an ‘investment firm’.

FX code of conduct introduces new requirements about information sharing and confidential information.

Firms brought into scope will need to implement controls and procedures from scratch.

More data will need capturing, more quickly and will need to be stored for a much longer period of time.

Regulators are being much more demanding about what they expect to see evidenced.
## What must be captured

**MAR and MiFID II**
- The number of data fields to be captured will increase dramatically
- Telephone conversations and electronic conversations are included (MiFID II Article 16.7)
- Order records must be end to end (MiFID II Delegated Acts 79, 80)
- Face-to-face records are included (MiFID II ESMA technical advice 2.6)
- Investment recommendations (MAR Article 3.1)
- Conflicts of interest (MAR Article 20 and MiFID II Article 38)
- Insider lists (MAR article 17) and market soundings (MAR article 11)
- Trading records (MAR Article 8 and 10)
- Benchmarks (MAR Article 3)
- Intent (MAR Annex II Section 1)
- Time-stamping
- Clock synchronisation

**Dodd-Frank**
- Security-based swaps (DFA Section 764)
- Audit trail (DFA Section 764)
- Trade surveillance (DFA Section 764)
- Records of all activities (DFA Section 731)
- Daily trading records (DFA Section 731, CEA 4s(g)(1))
- Oral and written communications to record all oral communications provided or received
- All communications relating to pre-execution trade information must be recorded completely and accurately, including: telephone, voicemail, instant messaging, face-to-face conversations, email, mobile, web conferencing, social media
- Records need to be uniformly time stamped: A record of the date and time, to the nearest minute, must be on every record

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**Code of conduct information sharing rules mean firms must ensure that employees are only communicating information that is accurate and truthful via communication channels**
MiFID II record keeping is all-encompassing

<table>
<thead>
<tr>
<th>Trading</th>
<th>Reporting</th>
<th>Investor protection</th>
<th>Governance</th>
<th>Evidencing</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Client agreements*&lt;br&gt;• Client order-handling - aggregated transactions*&lt;br&gt;• Aggregation and allocation of transactions for own account*&lt;br&gt;• Record keeping of client orders or decision to deal*&lt;br&gt;• Record keeping of transactions and order processing*&lt;br&gt;• Algorithmic and HFT records&lt;br&gt;• Market conditions&lt;br&gt;• Recording of telephone conversations or electronic communications&lt;br&gt;• Information to clients by systematic internalisers&lt;br&gt;• Transparency calculations&lt;br&gt;• Double volume cap data</td>
<td>• Pre-trade reporting&lt;br&gt;• Instrument reference data&lt;br&gt;• Post-trade reporting&lt;br&gt;• Position limit reporting&lt;br&gt;• Transaction reporting&lt;br&gt;• Execution of orders other than for portfolio management*&lt;br&gt;• Portfolio management*&lt;br&gt;• Statements of client financial instruments or client funds*&lt;br&gt;• Best execution statistics</td>
<td>• Marketing communications and investment research*&lt;br&gt;• Information about the investment firm and its services*&lt;br&gt;• Information about financial instruments*&lt;br&gt;• Client classification*&lt;br&gt;• Assessment of suitability and appropriateness*&lt;br&gt;• Information about costs and associated charges*&lt;br&gt;• Investment advice*&lt;br&gt;• Inducements*&lt;br&gt;• Safeguarding of client financial instruments and funds*&lt;br&gt;• Use of client financial instruments*</td>
<td>• The firm’s business and internal organisation*&lt;br&gt;• Compliance reports*&lt;br&gt;• Best execution policy&lt;br&gt;• Conflicts of interest policy and record*&lt;br&gt;• Risk management reports*&lt;br&gt;• Internal audit reports*&lt;br&gt;• Complaints-handling records*&lt;br&gt;• Records of personal transactions*&lt;br&gt;• Remuneration</td>
<td>• Retention of records&lt;br&gt;• Medium for record keeping&lt;br&gt;• Length of storage&lt;br&gt;• Trade reconstruction&lt;br&gt;• Data repositories&lt;br&gt;• Clock synchronisation&lt;br&gt;• Linking trades&lt;br&gt;• Transcription of voice trades&lt;br&gt;• WORM&lt;br&gt;• Reporting tools</td>
</tr>
</tbody>
</table>

*A non-exhaustive list of minimum records prescribed to harmonise practices across the EU. Delegated Acts 79,80 MiFID II
Record retention

MAR and MiFID II

- The records kept in accordance with this paragraph shall be provided to the client involved upon request and shall be kept for a period of five years and, where requested by the competent authority, for a period of up to seven years. [MiFID II article 16(7)]

Dodd Frank

- Records must be kept throughout the duration of the transaction, and then retained for up to five years
- that records of oral communications communicated by telephone, voicemail, mobile device, or other digital or electronic media pursuant to §23.202(a)(1) and (b)(1) shall be kept for a period of one year.
- Within the first two years, these records must be readily accessible

How will you deal with data protection clashes?
Retrieval requirements

MAR and MiFID II

- All relevant records need to be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, and in such a manner that fulfils the following requirements:
  - the competent authority is able to access them readily and to reconstitute each key stage of the processing of each transaction;
  - it is possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;
  - it is not possible for the records otherwise to be manipulated or altered;
  - it allows IT or any other efficient exploitation when the analysis of the data cannot be easily carried out due to the volume and the nature of the data; and
  - the firm’s arrangements comply with the record keeping requirements irrespective of the technology used.

Dodd Frank

- Trading records need to be identifiable and searchable by transaction
  - All records must be maintained in a manner that is easily searchable
  - Records must be available for trade reconstruction
Evidencing to regulators

MAR and MiFID II
- Obligations regarding providing evidence to regulators are set to become much more invasive which will necessitate greater data retrieval and reconciliation capabilities.
- New rules will focus on firms being able to demonstrate compliance to the regulator on request on an ad hoc basis.
- Firms should arrange for records to be kept of all services, activities and transactions undertaken by it which shall be sufficient to enable the regulator to fully understand, upon request that the firm is meeting its obligations.

Code of Conduct
- Confidential Information - Market Participants need to ensure employees are not passing information that has not been made public.
- Measure and Monitor - Market Participants are expected to promote and maintain a robust control and compliance environment to effectively identify, measure, monitor, manage, and report on the risks associated with their engagement in the FX Market.

Dodd Frank / CFR
- The Code of Federal Regulations (CFR) enforces that all records must be stored securely and readily accessible, and must be in a format that can be retrieved and viewed accurately by the authorities.
- The CFR also provides for automatic verification of the quality and accuracy of the storage media recording process. It is intended to ensure that data being used for trade reconstruction as required by the CFTC is accurately reproduced.
- Relevant data must be produced to the authorities within 72 hours after receiving the request.
Pressing industry concerns ahead of MiFID II go live

<table>
<thead>
<tr>
<th>Area</th>
<th>Detail and key questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade reconstruction</td>
<td>• How will firms record events, trades, transactions and all types of communication accurately?</td>
</tr>
<tr>
<td>Data repositories</td>
<td>• How will firms aggregate data from new and old sources?</td>
</tr>
<tr>
<td></td>
<td>• Will there be one golden data storage or many data repositories?</td>
</tr>
<tr>
<td></td>
<td>• Do potential storage solutions meet the capacity required?</td>
</tr>
<tr>
<td>Linking trades</td>
<td>• To reconcile, how will firms link data from communications to a specific trade or counterparty? Will firms use a UTI or are there other industry standards that can be used?</td>
</tr>
<tr>
<td>Transcription of voice trades</td>
<td>• How will firms electronically record face to face/phone conversations?</td>
</tr>
<tr>
<td></td>
<td>• Are firms able to tag and search the transcriptions?</td>
</tr>
<tr>
<td>Reporting tools</td>
<td>• How will firms retrieve, consolidate and present data? How long will it take?</td>
</tr>
<tr>
<td></td>
<td>• Is there a timeline/deadline by which firms should provide information to NCAs? What happens if these deadlines are missed?</td>
</tr>
</tbody>
</table>
Across all layers there are four key areas to question:

**Policies and procedures.** Do they exist, include all the information it is necessary to capture

**Applications.** Do they capture all the data that have to be captured and store it in a format that will allow reconstitution at any time in the following years?

**Data.** Is everything captured? Are there any risks related to the capture, storage and retrieval processes?

**Infrastructure.** Will the growth of each set of data be accommodated by the current infrastructure?

### Scope and integration of business requirements

What records must be kept? What level of linkage between disparate datasets?

- e.g., policies, promotions, agreements, transactions

### Functional requirements for detail and accessibility

- When, for how long, and where are the gaps?
- e.g., five years lifetime by instrument, synchronisation between advice and transactions, reconstitution, key stages in processing transactions

### Technical requirements

How?

- Format e.g., structured, sources, flexibility or unstructured voice or email
- Integrity (e.g., corrections and other amendments), history, security, data protection legislation

### Organisational responsibilities

Where and who?

- e.g., location (i.e., identifying where records are held in the organisation and by whom) responsibilities (i.e., assigning record-keeping role, seconding and co-opting staff)

### Tier 1 Strategic

- Tier 1
- Strategic

### Tier 2 Tactical

- Tier 2
- Tactical

### Tier 3a Operations (technical)

- Tier 3a
- Operations (technical)

### Tier 3b Operations (people)

- Tier 3b
- Operations (people)
How is your firm approaching communication compliance from a technology perspective?

- We are reliant on one external solution provider
- We are reliant on a number of external solution providers
- We have a mixed approach utilising both internal and external solutions
- We rely only on solutions built in house
Did I capture everything I should have?

Can I find the calls I am asked for quickly?

How do I prove the correct people are in the system and successfully recording?

How do I know the system is working even though I don’t have any alarms?

How do I export the calls you are asked for quickly?

Are all calls archived successfully with the correct retention?

Do outside callers know they are being recorded?

Are the correct people recorded?
Introducing Complete Compliance Assurance

Capture

Prove

Retrieve

com·pass 
ˈkæmpəs/
noun
An instrument that shows where you are and the direction ahead
Capture

Capture all communications

<table>
<thead>
<tr>
<th>Front &amp; Back-office</th>
<th>Omni-Channel</th>
<th>Platform</th>
</tr>
</thead>
<tbody>
<tr>
<td>Including Mobile Phones</td>
<td>Ready for new technology</td>
<td>Supporting latest technology</td>
</tr>
</tbody>
</table>

- IPC
- Cloud9
- AVAYA
- vodafone
- BT
- Singtel
- at&t
- Skype for Business
- cisco
- Spark
- 2N
- Windows Server 2016
How to test phone and prove quality and recording

• Test all the turrets and PBX phones on 34 recording systems
• Sample checks on 20 devices each day
• Different recording system locations

100% of all devices
255 days to complete

Existing process requires:
90 man days
Automated Recording Checks

<table>
<thead>
<tr>
<th>Result</th>
<th>Device</th>
<th>Extension / URI</th>
<th>Type</th>
<th>Recorder</th>
<th>Last Test Run</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cisco Test1</td>
<td>2566</td>
<td></td>
<td>TestRecorder0</td>
<td>11/23/2017, 5:15:47 PM</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Recordings checked last 30 days</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Archived recordings last 30 days</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Passed: 13 - 73%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Missing Recording: 0 - 0%</td>
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<tr>
<td></td>
<td></td>
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<td></td>
<td></td>
<td>Incorrect Metadata: 2 - 11%</td>
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<tr>
<td></td>
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<td></td>
<td></td>
<td>Voice Metric Low: 2 - 11%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Duration Short: 1 - 6%</td>
</tr>
<tr>
<td></td>
<td>Skype Test1</td>
<td>Test1@NICE</td>
<td></td>
<td>TestRecorder1</td>
<td>11/23/2017, 5:15:47 PM</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Recordings checked last 30 days</td>
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<tr>
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<td></td>
<td></td>
<td>Archived recordings last 30 days</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Passed: 15 - 53%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Missing Recording: 0 - 0%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Incorrect Metadata: 6 - 1%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Voice Metric Low: 2 - 11%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Duration Short: 1 - 6%</td>
</tr>
</tbody>
</table>
Provide evidence that you are compliant

Assurance
Prove you are compliant

Secure
Always protected

Retention
Robust retention and legal hold
Compliance Assurance Reporting

A Customer with an existing recording assurance process

- Daily checks of replay and call quality
- Weekly checks that turrets have CDR enabled
- Monthly reports showing call volumes recorded
- Quarterly reports to show archive retention

Existing solutions requires:

89 Man Days
Automated and Centralized Reporting
Retrieve all communications easy and fast

- **Central Search**: One Portal for all retrievals
- **Fast Search**: Advanced search capabilities
- **Bulk Download**: Quick download for investigations
Large regulatory request

• A LATAM regulator
• Requested entire Trading Desks calls over multiple years

7 million calls

Process took

80 days to extract
It just sits on top of what you have today

**Portal**
- Search and Replay
- Assurance Dashboards
- Assurance Reports
- Extraction
- User Management

**Manage**
- User Data
- Auditing
- Events Index
- Provisioning and Reporting API’s

**Assurance**
- System Assurance
- Retention Control
- Announcement Control
- Voice Quality Control

**Capture**
- Turrets
- PBX
- Unified Communications
- Mobile devices
Centralize your Communication Compliance process

Central Search & Replay

Bulk extraction

Automated Recording Check

Recording dashboard with configurable widgets
Efficiency improvements with

- 89 man days of reporting needs
- 90 man days to test end points
- 80 days of regulatory extraction

NICE - COMPASS

- More consistent – 80% less effort
- Achieve 100% of devices – 95% less effort
- Could have been done in 4 days or less

www.HolisticSurveillance.com / Compliance Assurance
In the communications space how often does your firm perform manual checks?

- Daily
- Weekly
- Monthly
- Quarterly
- Never
### Q1. How well prepared for MiFID II is your firm?

<table>
<thead>
<tr>
<th>Description</th>
<th>Score</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ready to go</td>
<td>3/10</td>
<td>30%</td>
</tr>
<tr>
<td>Have changed the operating model, all that is left are final tweaks</td>
<td>4/10</td>
<td>40%</td>
</tr>
<tr>
<td>Understand what it means to us but there is much left to do in 2018</td>
<td>2/10</td>
<td>20%</td>
</tr>
<tr>
<td>Limited understand of requirements</td>
<td>1/10</td>
<td>10%</td>
</tr>
</tbody>
</table>

### Q2. How is your firm approaching communication compliance from a technology perspective?

<table>
<thead>
<tr>
<th>Description</th>
<th>Score</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>We are reliant on one external solution provider</td>
<td>1/15</td>
<td>7%</td>
</tr>
<tr>
<td>We are reliant on a number of external solution providers</td>
<td>2/15</td>
<td>13%</td>
</tr>
<tr>
<td>We have a mixed approach utilising both internal and external solutions</td>
<td>10/15</td>
<td>67%</td>
</tr>
<tr>
<td>We rely only on solutions built in house</td>
<td>2/15</td>
<td>13%</td>
</tr>
</tbody>
</table>

### Q3. In the communications space how often does your firm perform manual checks?

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Score</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daily</td>
<td>2/7</td>
<td>29%</td>
</tr>
<tr>
<td>Weekly</td>
<td>0/7</td>
<td>0%</td>
</tr>
<tr>
<td>Monthly</td>
<td>0/7</td>
<td>0%</td>
</tr>
<tr>
<td>Quarterly</td>
<td>2/7</td>
<td>29%</td>
</tr>
<tr>
<td>Never</td>
<td>2/7</td>
<td>29%</td>
</tr>
</tbody>
</table>
Thank you

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