Response to Hon Audrey Eu's request to clarify whether investors as a matter of legal right are entitled to tape recordings of transaction orders

Paragraph 3.9 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission provides that "...a licensed or registered person should record and immediately time stamp records of the particulars of the instructions for agency orders and internally generated orders (such as proprietary accounts and staff accounts). Where order instructions are received from clients through the telephone, a licensed or registered person should use a telephone recording system to record the instructions and maintain telephone recordings as part of its records for at least three months."

Usually, firms that have tapes will play them for clients to resolve complaints but this is a voluntary act and they do not always give the investors a copy of the relevant tape recording. However, investors have no right to tape recordings unless through some compelled discovery process, e.g. an investor might sue the firm and get access through normal discovery. As well, most firms do not keep tape recordings for more than a few months so unless the product was bought in the last few months, phone records may not be available.

Under section 3(1) of the Securities and Futures (Keeping of Records) Rules (KOR), an intermediary shall keep accounting, trading and other records in relation to the business which constitute any regulated activities for which it is licensed or registered. However, for this purpose, "records" are defined to exclude "any tape or other sound recording of any telephone conversation.

Section 14(1) & (2) of the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules provide that an intermediary or an associated entity of an intermediary shall provide a copy of any particular contract note, statement of account or receipt to a client who requests for such documents. The Rules do not cover audio recordings.

Securities and Futures Commission
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