

Morgan Lewis

together

April 10, 2008

# Globalization of Compliance – MiFID and Best Execution for Investment Advisers



**Steven W. Stone**

Morgan, Lewis & Bockius LLP

Ascendant Compliance Conference

# MiFID – Markets in Financial Instruments Directive

- Major piece of European legislation
- Replaces the old Investment Services Directive
- Member states expected to adopt and implement legislation by November 1
- Some have, some haven't (Spain, Italy)
- Differing views on whether MiFID preempts national legislation or applies absent national legislation

# Far Reaching & Complex

- Two key aspects for investment advisers
  - *Best execution*
  - *Conflicts*

# Best Execution Concept

- Take all reasonable steps
- to obtain the best possible result for clients
- taking into account price, cost, speed, likelihood of execution and settlement size, nature and other factors

# MiFID – Best Execution

- Level 1 – Article 21 and Level 2 – Articles 44-46
- Two sets of requirements
  - *Firms that transmit orders for execution*
  - *Firms that execute orders*
- Policies for each (2.10)

# For Investment Advisers that Transmit

- Act in best interest of client
- Take reasonable efforts to attain best execution
- Have a policy
- Disclose the policy – key aspects

# For Investment Advisers that Transmit

- Advisers that Transmit Orders do not have to:
  - *Duplicate the work of broker-dealer*
  - *Have policy on venue selection*
  - *Get client consent to policy or notify them of changes*
  - *Prove best execution*

# But Investment Advisers that Execute Must

- Have more detailed policy, including factors considered in executing orders and venue selection
- Disclose to clients, get consent, and notice of material changes
- Give clients information on execution venues
- Assess venues annually
- Monitor effectiveness of execution arrangements
- On request, show that client orders were executed in line with investment adviser policies

# MiFID – Conflicts / Inducements

- Restrictions on receipt of inducements
  - *Requires that any fee or benefit received “must be designed to enhance the quality of” client services*
  - *Requires disclosure*

# MiFID – Implications

- US investment adviser with UK business should track MiFID
- Resources
  - *FSA – Best Execution 07/15 (Aug. 07) Policy Statement*
  - *FSA – Discussion paper 06/3 (May 06), Implementing MiFIDs Best Execution Requirements*
  - *Commonwealth of European Securities Regulators (CESR) – Best Execution under MiFID – Q&A (May 2007)*
- Soft Dollars

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