

MiFID – it knows where you live

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IFIA Industry Seminar

Dublin, December 2006



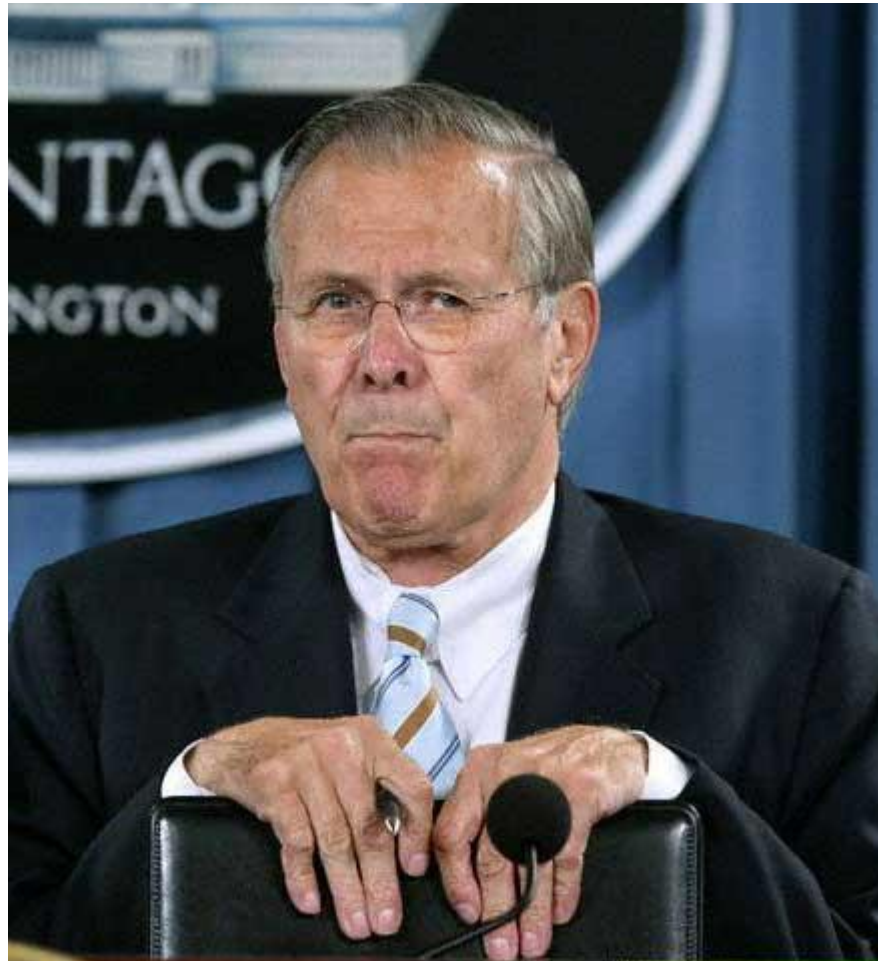
- ◆ **MiFID does not seek to regulate funds as funds**
- ◆ **Regulated funds, their managers and depositaries are excluded by Article 2**
- ◆ **Many intermediaries throughout Europe will be exempted by virtue of Article 3**

The position in Ireland

- ◆ **Service providers to investment funds, including fund administrators, may be affected as will those managers and trustees who carry out additional MiFID activities and will then be subject to its provisions.**

- ◆ **The administration of collective investment schemes is not generally regarded as an ISD activity. However, some Member States have authorised fund administration companies under receipt and transmission of orders for transfer agent activity. Others have not.**

So what's the problem?



Areas of known unknowns - 1

- ◆ **Best execution and the passing of orders in shares/units in collective investment schemes**
 - **The German model**
 - **The German solution**
 - **Whoops, let's try again**

Areas of known unknowns - 2

- ◆ **Inducements in the context of commission**
 - **The basic conditions**
 - **Disclosure**
 - **Conflicts of interest**
 - **Benefit to the client**
 - **Initial commission**
 - **Trail commission (retrocession)**
 - **Break point structures**
 - **Disclosure of monetary and non-monetary inducements**

Areas of known unknowns - 3

◆ Appropriateness

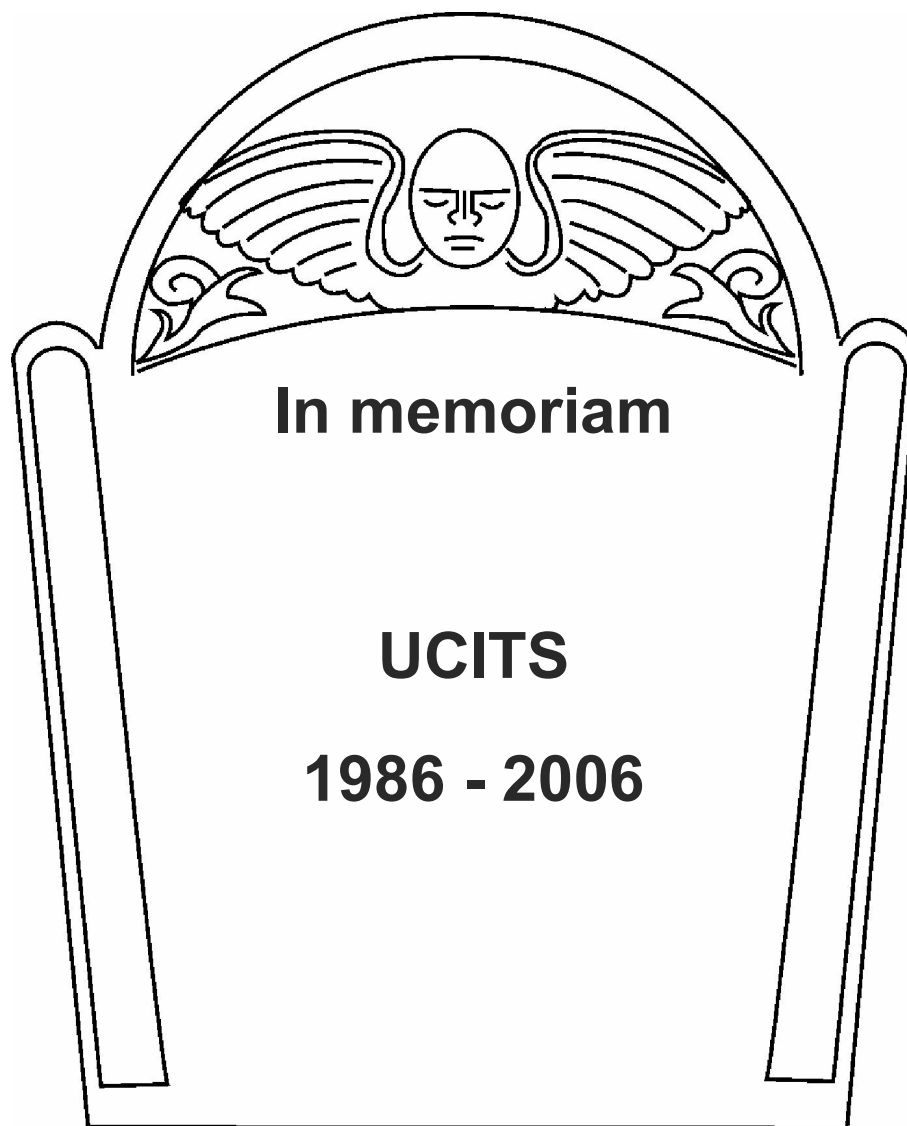
- The basic conditions for taking advantage of execution-only
 - Non-complex product
 - Clear statement of execution-only nature of the service
 - Compliance with conflict of interest rules
 - At the initiative of the client
- How can you tell?
- The UK FSA's approach

Areas of known unknowns - 4

◆ The promotion of non-UCITS

- While MiFID does not deal with the origination of products or funds it does limit the freedom of Member States to regulate the selling process in a way that would limit the scope of MiFID
- The prohibition of selling to investors of funds not registered or authorised by competent authorities or which do not comply with other specified requirements could be argued to unduly restrict the scope of Articles 19(4) – (6)

Areas of known unknowns - 4



Further regulation or clarification?

- ◆ **CESR Level 3 Guidance promised on:**
 - **Inducements**
 - **Best Execution**

- ◆ **But focus appears to be on soft dollars and trading desks respectively**