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Legal and economic aspects of best execution in the context of the Markets in Financial Instruments Directive (MiFID)

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Abstract

This paper explores the implications for investment firms and clients that arise out of an interpretation of the Market in Financial Instruments Directive (MiFID) best execution requirements from a law and economics perspective. While best execution is often framed as a matter of investor protection, research on market microstructure suggests that there is, in fact, an efficiency rationale (and not only a distributional rationale) for having some degree of best execution regulation. In terms of the specific rules of MiFID, the analysis reveals that an investment firm's best execution policy will play a central role. MiFID's best execution concept is process- based, ie investment firms need to show that they took measures leading to best execution in expectation; actual best execution is not required. The paper also discusses current issues such as the form of the execution policy and the appropriate number of execution venues.

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