



THE MONEY MANAGEMENT INSTITUTE

Legal/Regulatory Affairs Conference for General  
Counsels & Chief Compliance  
June 6, 2006

*Discussion of MMI Legal/Regulatory  
Affairs Initiatives*

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# Discussion of MMI Legal/Regulatory Affairs Initiatives

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- Constructive Delivery
- International Registry
- Regulatory Relief Agenda

# Constructive Delivery

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- Legal principles supporting delivery of disclosure documents to adviser instead of customer
  - Agency law concepts
  - SEC principles and exemptions (e.g., for confirmations)
  - SRO rules (e.g., for proxies and shareholder communications)
- Principles
- Key documents

# Draft Constructive Delivery Principles

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1. The customer should authorize the agent to accept communications on the customer's behalf or such authorization should be implicit in the documents governing the relationship between the customer and the agent ("underlying customer authorization")
2. A broker-dealer should be able to rely on the underlying customer authorization without the need to obtain separate instruction from the customer or renewal or reconfirmation of the constructive delivery arrangements
3. The underlying customer authorization may specify the communications covered by constructive delivery ("covered communications") or covered communications may be inferred from the scope of the customer's grant of authority to the agent
4. Instead of relying on an underlying customer authorization, a broker-dealer may obtain a separate oral or written instruction ("separate instruction") from the customer authorizing and directing the broker-dealer to direct covered communications to the customer's agent
5. Instead of relying on an underlying customer authorization, a broker-dealer may in certain circumstances (i.e., for institutional accounts trading on a DVP/RVP basis) obtain a representation and warranty from the agent to the effect that it is authorized to act for and receive covered communications on behalf of the customer ("blanket letter")

# Draft Constructive Delivery Principles

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6. A broker-dealer need not obtain any particular assurances from the agent (unless it is relying on a blanket letter)
7. The agent should be independent of the broker-dealer or, if affiliated with the broker-dealer, should have policies and procedures designed to ensure that its decisions with respect to covered communications are exercised independently)
8. A broker-dealer should, on the customer's reasonable request, provide the customer with copies of covered communications issued by the broker-dealer and delivered to the agent (at least for a reasonable period) and, in the case of covered communications issued by third parties, undertake commercially reasonable efforts to provide the customer with copies of such communications or to provide for an alternative means for the customer to obtain the information contained in the covered communications (such as on the broker-dealer's web site or otherwise on the Internet)
9. A broker-dealer should not require constructive delivery as a condition to the customer's opening or maintaining a customer account or being entitled to preferential fees
10. The customer should retain the right to revoke or amend the underlying customer authorization or any separate instruction to the broker-dealer at any time

# International Registry - Issues under Foreign Law

- Firm registration
  - Investment adviser
  - Broker-dealer
  - Bank
- Individual Registration
- Investments Registration
- Tax on Doing Business
- AML
- Contract issues
  - 3<sup>rd</sup> Party Beneficiary Clauses
  - Formalities for authorization
  - Arbitration
- Language issues
- Use of Solicitors
- Local Office Requirements
- Privacy
- Substantive Regulation of Investment Activity
  - Approach to Conflicts
  - Soft Dollars
  - Commission Sharing Arrangements

# International Registry - Complexities

- Structure
  - Single, Dual & Model
  - Local Host
- Differing Institutional and De Minimus Exemptions
- Whether Country Participates or Follows EU Passport
- Legal Culture
  - Opacity of Laws
  - Cultural Differences
  - Disharmony of Views
  - Need to Check Many Firms
- “Minimum Contacts” Vary
  - Local Presence
  - Advertising
  - Websites
  - Local Solicitors
  - Meetings
  - Signing Contracts Overseas
  - Having Assets Overseas
- Reach of Foreign Regulation and Regulators

# International Registry Project

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- Inquiries to foreign counsel
- Clearing house of
  - Advice of foreign counsel
  - Underlying law and rules
  - Registration forms
- Initial Countries
  - Argentina
  - Australia
  - Brazil
  - Canada
  - Hong Kong
  - Mexico
  - Netherlands
  - Spain
  - Taiwan
  - Venezuela
  - United Kingdom

# Regulatory Relief Agenda

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1. Compliance with applicable office requirement for money manager books and records maintained by a sponsor
2. Confirmation Suppression under Advisers Act Rule 206(3)-2
3. Confirmation Suppression under ERISA PTCE 86-128
4. Recordkeeping requirements for performance records prepared by a wrap fee program sponsor
5. Applicability of “access person” concept to registered representatives for SMA accounts
6. Point of Sale Disclosure
7. NYSE Daily Program Trade Reporting Requirements



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