

MMI 2006 Sales & Marketing Leadership Summit  
January 26, 2006

**Morgan Lewis**  
C O U N S E L O R S   A T   L A W

# **International SMA Developments - A Legal & Regulatory Framework**

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**John Lohr**  
Howling Wolf Enterprises

**Steven W. Stone**  
Morgan, Lewis &  
Bockius LLP

# International SMA Developments - A Legal & Regulatory Framework

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- Issues under Foreign and US Law
- Complexities
- Strategy

# *Issues under Foreign Law*

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- 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

# *Issues under US Law*

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- AML (for broker-dealers)
- Use of Foreign Solicitors
  - NASD Rule on “Foreign Associates”
  - Advisers Act Rule on Cash Referral Fees
  - Foreign Corrupt Practices Act Issues
- US Tax Issues
  - Reporting and withholding
  - PFIC
- Holding Mail Issues
- Foreign Ownership Restrictions
- US Broker/Adviser Regulation Will Apply for Foreign Clients

# *Complexities*

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- 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

# *Strategies*

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- Plan
- Prioritize Countries/Models
- Collect Available Information
- Confirm Views with Foreign Counsel

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