



THE MONEY MANAGEMENT INSTITUTE

Legal/Regulatory Affairs Conference for General  
Counsels & Chief Compliance  
June 7, 2007

## *International Issues*

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# International SMA Developments - A Legal & Regulatory Framework

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- Issues under Foreign and US Law
- Complexities
- Strategy

# 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
  - Beneficial ownership reporting issues

# Issues under US Law

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- AML
- 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
  - Gift & Estate Tax
  - Dividends and Capital Gains
- Prospectus Delivery Issues
- 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 Minimis 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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- Prioritize Countries/Models
- Collect Available Information
- International Organization of Securities Commissioners, [www.iosco.org](http://www.iosco.org)
- Minimum Contacts; Securities Activities: Restatement (Third) of Foreign Relations Law of the United States
  - Section 402 (Bases of Jurisdiction to Prescribe)
  - Section 403 (Limitations on Jurisdiction to Prescribe)
  - Section 416 (Jurisdiction to Regulate Activities Related to Securities)
- Plan
- Confirm Views with Foreign Counsel



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