

Morgan Lewis

MMI Sales and Marketing Leadership Summit



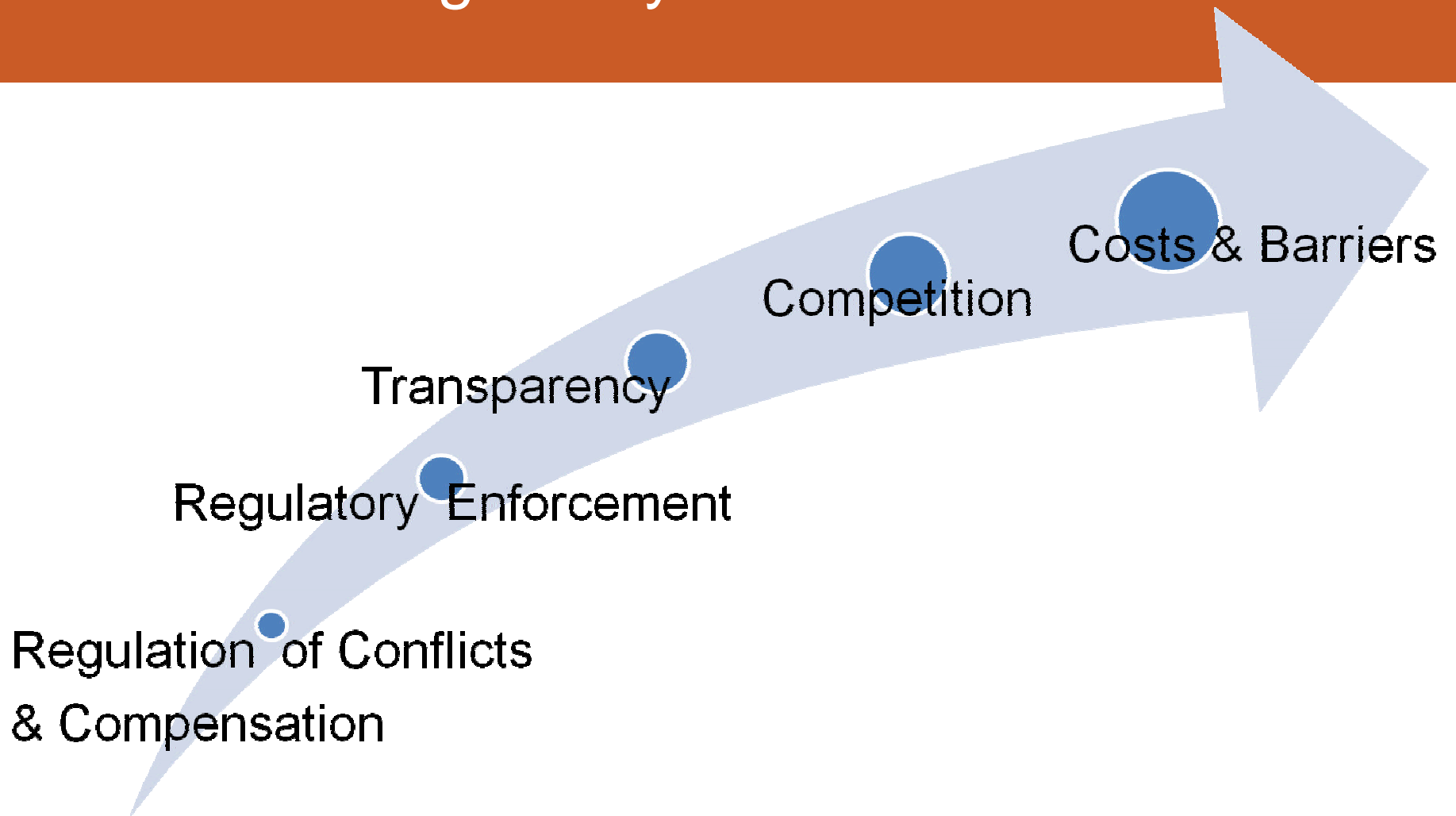
Presenter:
Steven W. Stone

Wednesday, February 9, 2011

**How Will Regulatory Change
Affect the Positioning of Managed
Solutions?**

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Regulatory Environment



Dodd-Frank – Focus on Compensation and Conflicts

- Dodd-Frank – SEC Mandate to:
 - Facilitate clear disclosure to investors of brokerage and advisory relationships, including material conflicts
 - Issue rules designating “point of sale” disclosures to be provided by brokers to retail investors before purchasing investment products & services
 - Issue rules governing sales and compensation practices and conflicts

Dodd-Frank – Focus on Fiduciary Duty

- SEC Authority to Mandate Fiduciary Duty for Brokers
 - Conflicting Authorizations
 - Key Components
 - *“Best Interest” Standard*
 - *“Personalized Investment Advice” to “Retail Customers”*
 - *Comfort for Dual Registrants*
 - Receipt of Commissions,
 - Offering Limited & Proprietary Products
 - Non-Continuing Duty
- Prelude to Fiduciary Duty for Brokers – SEC Study

SEC Staff Study on Investment Advisers & Broker-Dealers

- Uniform Fiduciary Standard (UFS) for both advisers and broker-dealers
 - Personalized Investment Advice
 - Retail Customers
 - Comfort for Dual Registrants
 - *Receipt of Commissions*
 - *Offering Limited & Proprietary Products*
 - *Non-Continuing Duty*
- Comparable Enforcement & Non-Scienter Based Enforcement

UFS & Broker-Dealers

- Uniform Fiduciary Standard
 - *Affect on institutional suitability doctrine.*
- Use of proprietary products – possible disclosure and consent requirements
- Principal trades – possible enhanced disclosure and consent requirements
- Possible “Form ADV, Part 2”–type disclosure to customers
- Possible enhanced supervisory controls for personal trading

UFS & Investment Advisers

- Possible SRO
- Possible enhanced preregistration review
- Possible Federal or SRO licensing and continuing education requirements for supervised persons
- Possible required designation of supervisor to review and pre-approve advertising
- Possible expansion of record requirements to include e-mail

UFS – Both Advisers & Brokers

- Uniform Fiduciary Standard
- Possible uniform baseline standard for duty of care
- Possible summary disclosure document highlighting fees, services, and conflicts
- Possible interpretive guidance on disclosure or prohibition of certain conflicts
- Review of solicitation arrangements regs

DOL “Investment Advice” Proposal

- Expansion of investment advice concept
- ERISA & IRA accounts covered
- Controversial – heated comment
- Upcoming hearings in Congress

Evolving Fiduciary Models

Adviser

Adviser

Adviser-UFS

Adviser-ERISA

Adviser-UFS & ERISA

Broker

Broker

Broker-UFS

Broker-ERISA

Broker-UFS & ERISA

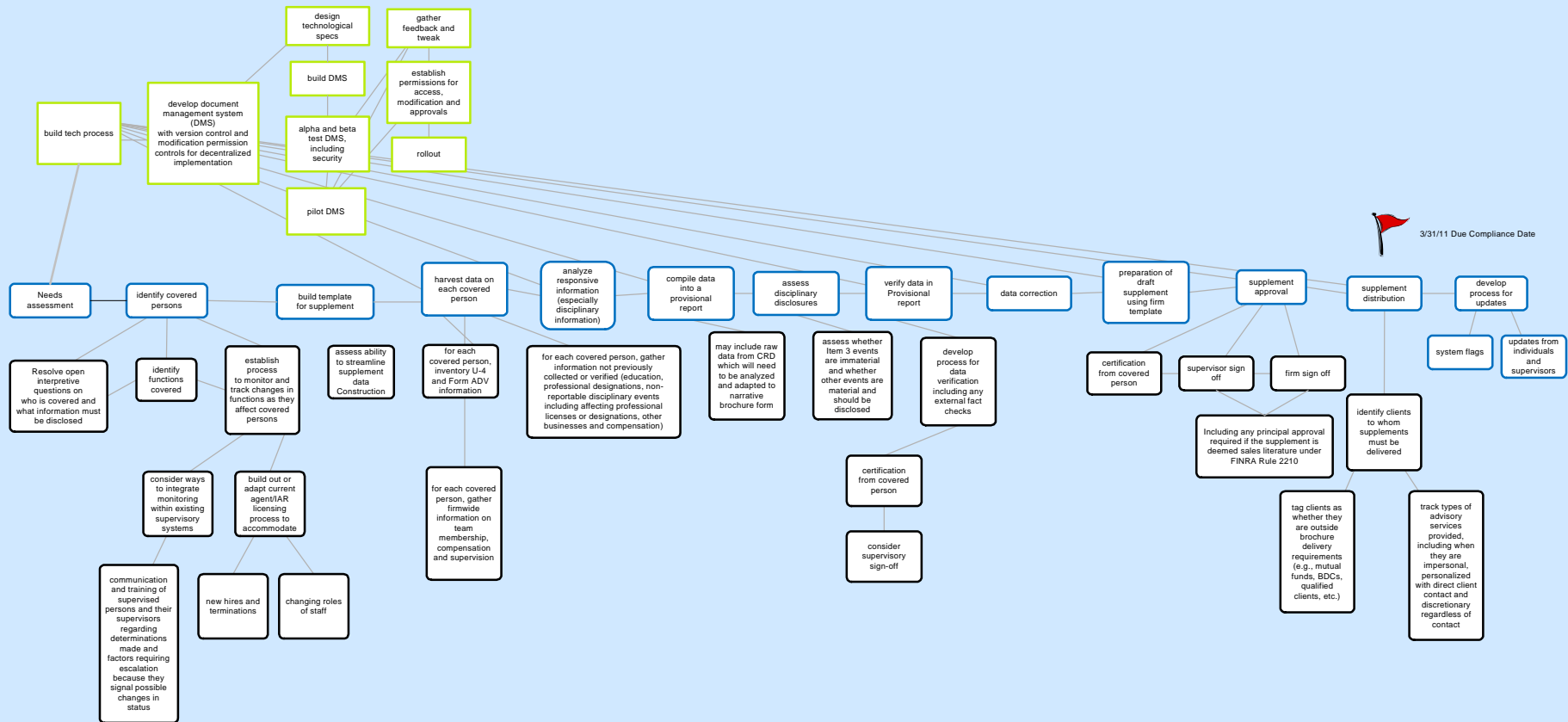
Focus on Compensation & Conflicts – Form ADV

- Form ADV Part 2 Revamp and the Brochure Supplement
 - Part 2 – New Subjects & Delivery Requirements
 - Brochure Supplement
 - *New Form*
 - *Covered Persons*
 - *Required Topics & Information Needed*
 - Compensation
 - Other business activities
 - Supervision
 - *Transition Challenge for Large Firms*

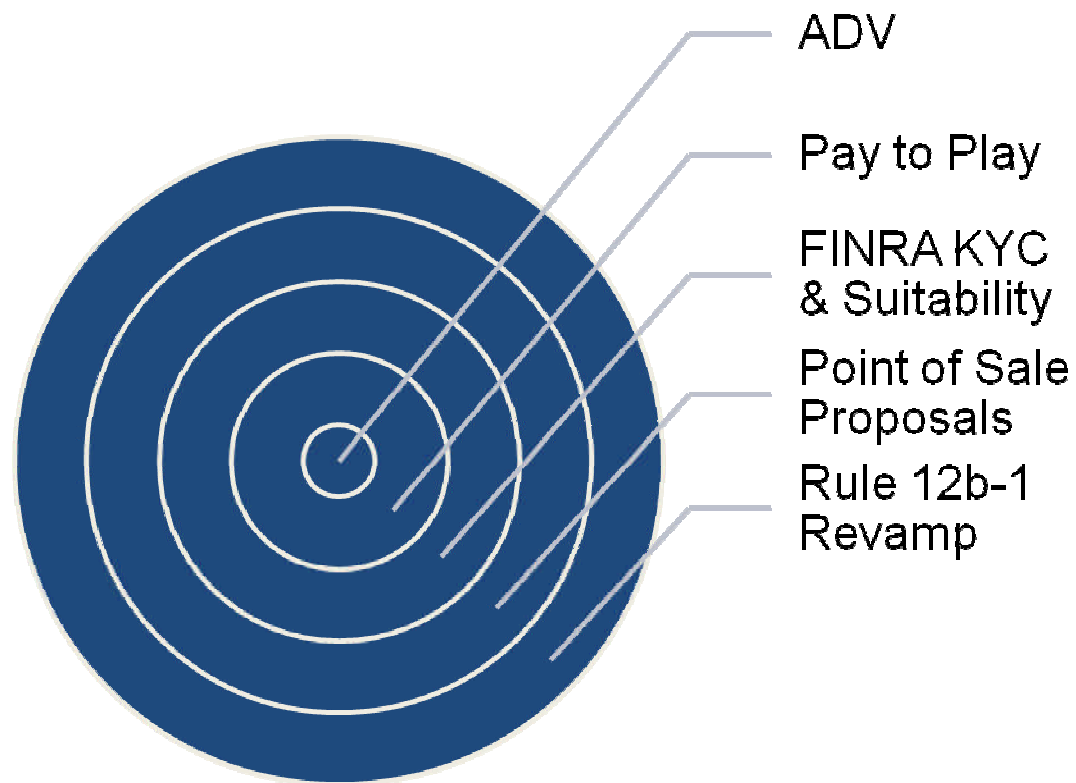
Brochure Supplement Process

Process for Rolling Out Brochure Supplements

EXHIBIT 2



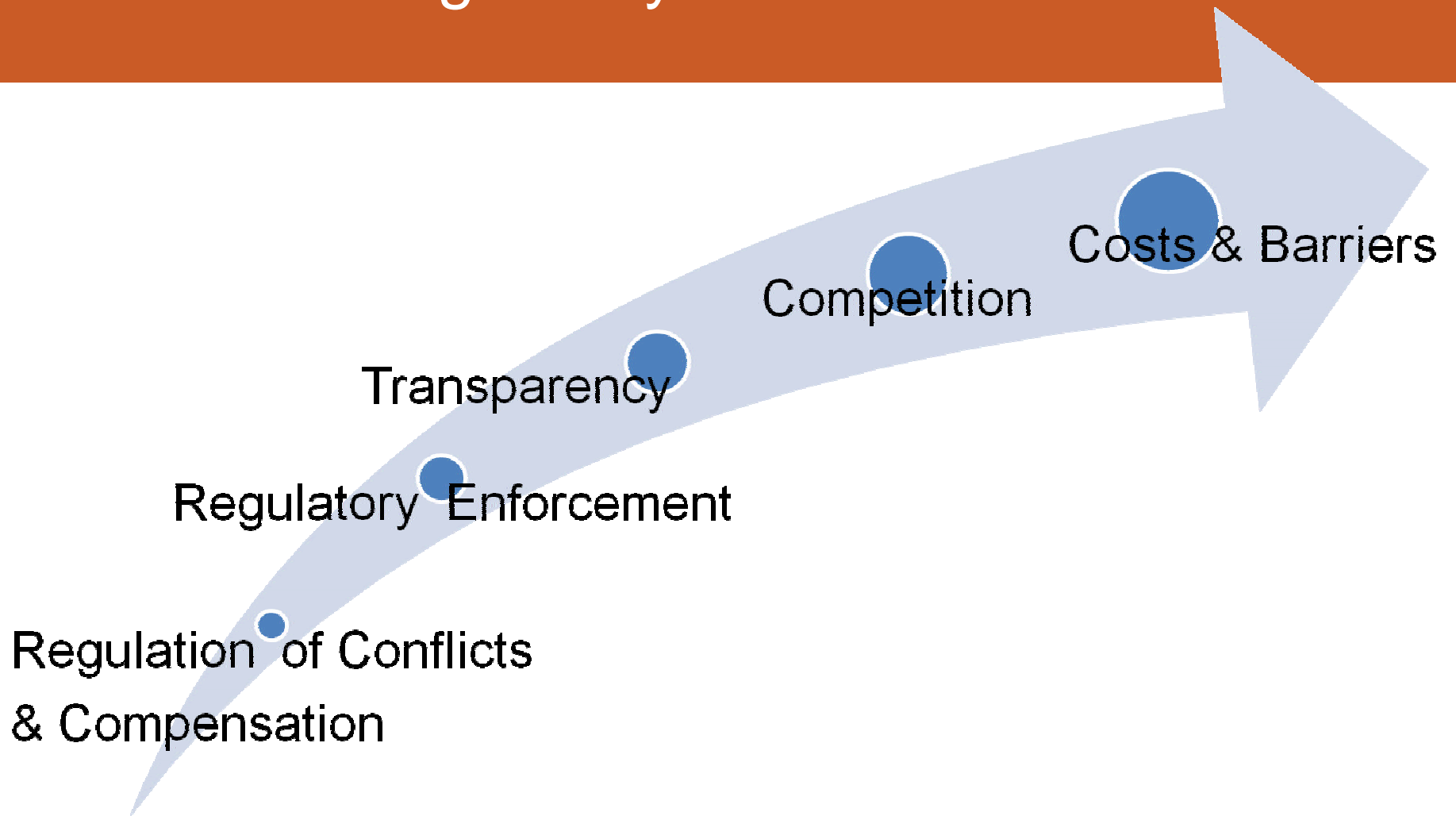
Regulation Radar



SEC Enforcement FY2010

- SEC Enforcement Reorganization in 2009
- 531 formal investigations opened (compared to 496 in 2009)
- 681 cases brought (from 664 in 2009)
 - Highest since at least FY 2001
- 70 broker-dealers cases (from 109 in 2009)
- 53 insider trading cases (up from 37) against 138 defendants (versus 85)
- “Favorable outcome” in 92% of cases

Regulatory Environment



Innovation: What's Next in SMAs?

Manufacturing

- Sponsors

Distribution

- Wire houses
- Independents
- RIA platforms

Analytics

- Portfolio Managers
- Overlay Managers

Factors in Change

- Increasing transparency in compensation
- Migration to fiduciary duty with stricter approach to conflicts
- Possible tougher DOL standard may channel servicing of retirement accounts to managed accounts
- Possible migration to highest common denominator standard
- Focus on managed accounts

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