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The New Examination Process: How to Be Prepared

A photograph of a man and a woman in business attire looking out a window at a building. The man is in the foreground, wearing a light blue shirt and a watch, holding a pair of glasses. The woman is behind him, wearing a light-colored top. They are both looking towards the right side of the frame, where a building with a grid-like facade is visible through the window.

PANELISTS:

Donald K. Litteau, FINRA
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Anne C. Flannery, Morgan Lewis
Beth D. Kiesewetter, Morgan Lewis

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Washington, DC

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Agenda

- The Post-Merger FINRA Examination Program
- FINRA Examination Priorities for 2008
- Common FINRA Examination Exceptions
- Strategies for Handling FINRA Examinations
- Questions and Answers

The Post-Merger FINRA Examination Program

- Integration of NASD and NYSE Examination Staffs and the Impact on Examinations
 - **Coordination and Assignment of Different Types of Exams**
 - Member Regulation Exams: (1) Sales Practice, (2) Risk Oversight & Operational Regulation
 - FINRA Examination Cycles: Risk-Based Approach Provides for 1, 2 and 4 Year Cycles
 - **Training for Examiners**
 - **Extension of the Liaison / Coordinator Program**
- Notice of Commencement of Exam
 - **Commencement of Exam Generally Announced 30 Days In Advance**
 - **Firm Receives Welcome Letter, WebIR Questionnaire and Initial Document Request**
- Close-Out Protocols for Examinations
 - **Exit Meeting, Examination Report, Disposition Letters, Enforcement Referrals**

FINRA Examination Priorities in 2008

Anti-Money Laundering

Collateralized Debt Obligations

Data Integrity

Electronic Storage Media

Fee-Based Accounts

Regulation SP / Protection of Customer Information

FINRA Examination Priorities in 2008 (*continued*)

Senior Investors – Marketing and Sales Practices

Supervision and Supervisory Controls

Suitability – New Products, Complex Products

Transaction Reporting

Valuation of Securities

Variable Insurance Products

Common FINRA Examination Exceptions

- Supervisory System / Written Supervisory Procedures
 - NASD Rule 3010 / MSRB Rule G-37 / NYSE Rule 342
- Supervisory Controls System
 - NASD Rules 3012 / NYSE Rule 342.23
- Form U-5 Filings
 - FINRA By-Laws, Article V, Section 3
- Anti-Money Laundering Program
 - NASD Rule 3011 / MSRB Rule G-41 / NYSE Rule 445
- Business Continuity Plan / Emergency Contacts
 - NASD Rules 3510 & 3520 / NYSE Rule 446

Common FINRA Examination Exceptions (*continued*)

- Transaction Reporting / Transaction Reporting of TRACE-Eligible Securities
 - [MSRB Rule G-14 / NASD Rule 6230](#)
- Preparation and Maintenance of Required Books & Records
 - [SEC Rules 17a-3 and 17a-4](#)
- Form U-4 Filings
 - [FINRA By-Laws, Article V, Section 2](#)
- Annual Certification of Compliance and Supervisory Processes
 - [NASD Rule 3013 / NYSE Rule 342.30](#)
- Short Sales

Strategies for Handling FINRA Examinations (*continued*)

- Preparation Prior to Commencement of a FINRA Examination
 - Remediate any Internal Audit / Supervisory Controls Report Findings
 - Understand FINRA Examination Priorities
 - Review FINRA website for Annual Exam Priorities, Sweep Letters, Phone Workshop Transcripts and other Educational Materials
 - Determine if Written Supervisory Procedures Current with New or Recently Amended Securities Laws / Rules?
 - Develop Relationships with FINRA Regulators Outside Exam Process
 - Attend FINRA District Office Training Programs
 - Regular Interaction with FINRA Coordinator (Conversations / Questions)

Strategies for Handling FINRA Examinations

- Managing the FINRA Examination Process
 - Appoint a “Point Person” for FINRA Examiners
 - Establish Specific Location Where FINRA Examiners May Work
 - Establish Quality Control Process for Completing FINRA Questionnaires and Documentation Requests / Responses
 - How Will You Address Broad-Ranging Requests?
 - Should You Discuss Compliance Issues In Advance With FINRA Examiners?
 - Should Legal or Compliance Be Present During Interviews?
 - Are Examiner’s Findings Likely to Be Referred to Enforcement?

Strategies for Handling FINRA Examinations (*continued*)

- Examination Dispositions and Remedial Measures
 - Who Should Attend the FINRA Exit Meeting?
 - Strategies for Responding to the Exit Meeting Memorandum
 - Clarify Misunderstandings
 - Describe Remedial Measures Completed or Provide Remediation Plan with Realistic Completion Dates
 - Receipt of FINRA Examination Report
 - Preparation of Response Letter
 - Quality Control of Facts
 - » Consider Involving Legal, Compliance and Business Team
 - Provide Documentation of Remediation Efforts Completed
 - How Do You Handle Enforcement Referrals?

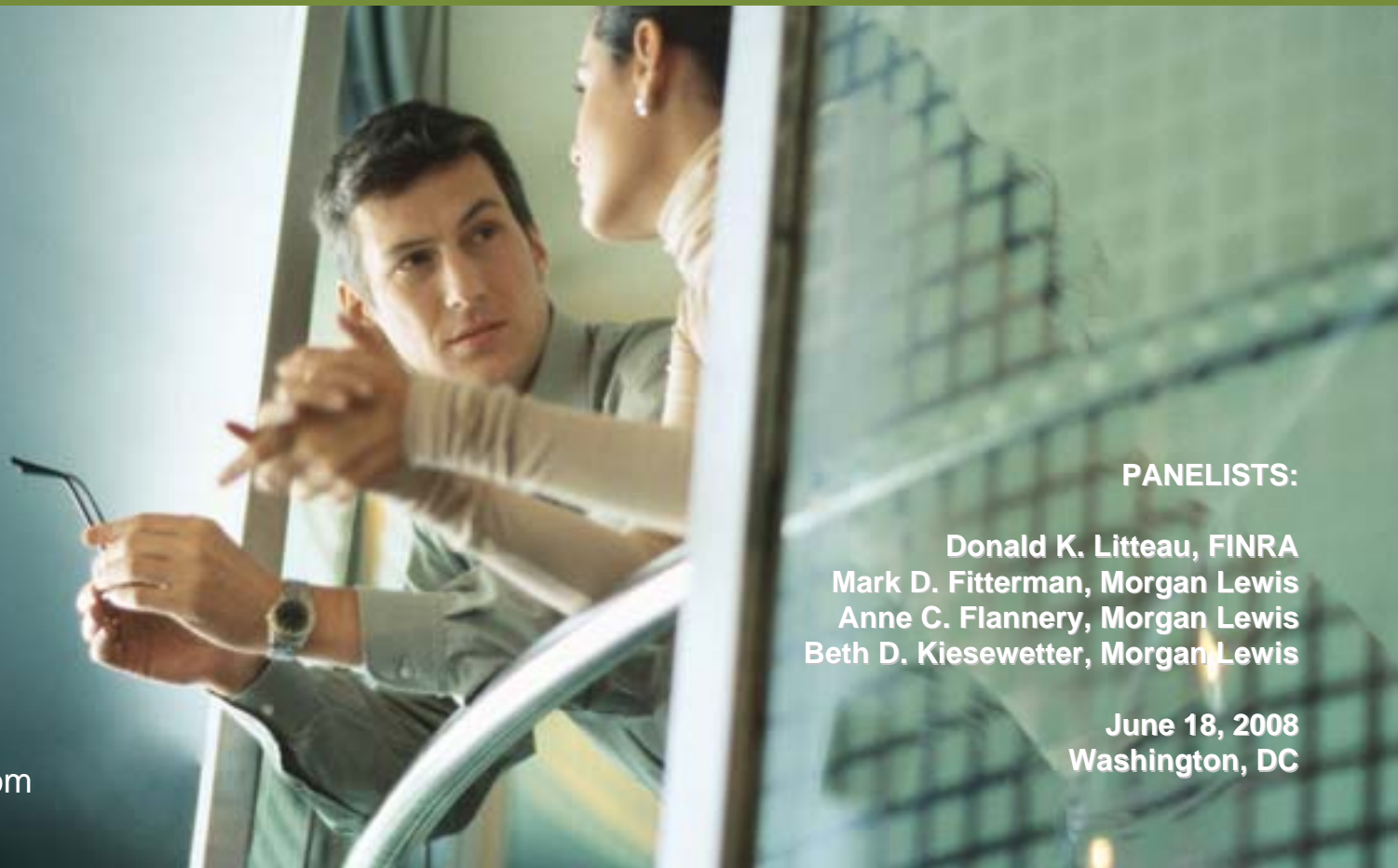
Conclusion

Your Opportunity to Ask Questions
of the Panelists

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