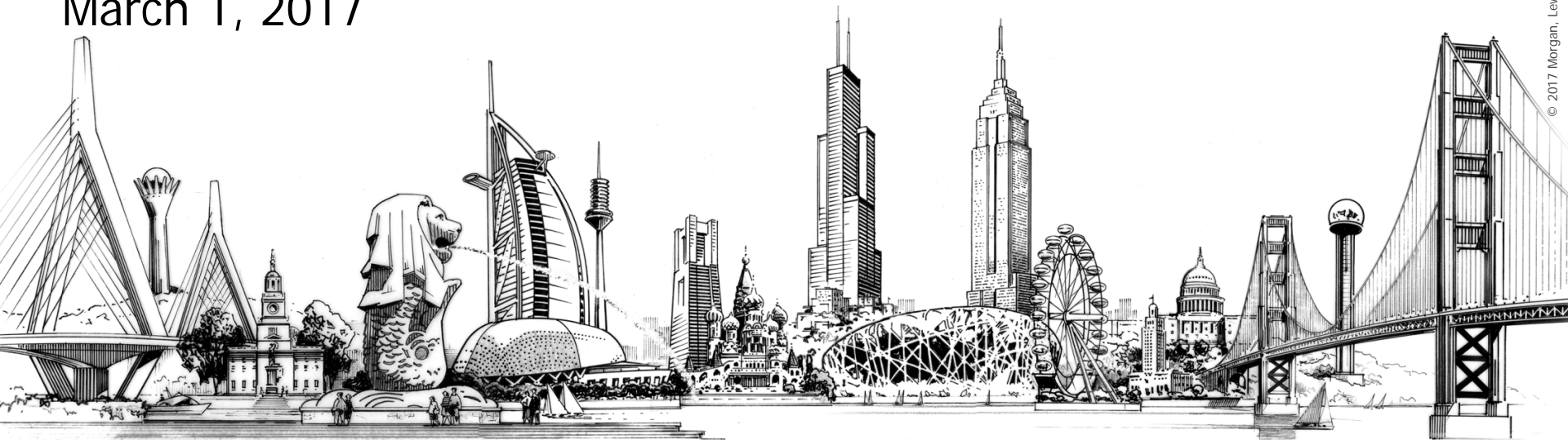


**Morgan Lewis**

# MARKETPLACE NOTICES

Jonathan Zimmerman  
ALI-CLE The Year in Employee Benefits  
March 1, 2017



# Background

- Marketplace notice informs employers that they may owe a shared responsibility penalty
  - Marketplaces cannot assess shared responsibility penalties
- Only the IRS can assess penalties
  - Not aware of any penalties assessed to date
  - Not clear if any penalties will be assessed
  - Employers will have an opportunity to respond to any IRS assessments

# Content of Marketplace Notices

- Will be sent to address provided by the employee
  - Notices may go to multiple locations
  - To minimize risk of missing a notice, complete the Employer Coverage Tool and include the desired address
- Includes the following information:
  - Employee's name
  - Statement that the employee has been determined to be eligible for a premium tax credit
  - Statement that the employer may be liable for a shared responsibility payment
  - Notice of opportunity to appeal within 90 days
- One-paragraph summary at end of model federal exchange notice is translated into fifteen (!) languages

# Other Important Warnings That Are Not Translated Into Fifteen Languages

- Caution: Highly Flammable
- Do Not Eat
- Choking Hazard
- For External Use Only
- Service Engine Soon
- Refrigerate After Opening
- Keep Away from Children
- Do Not Feed the Animals
- Danger: Risk of Death by Electric Shock
- Objects in Mirror Are Closer than they Appear

# Responding to Marketplace Notices

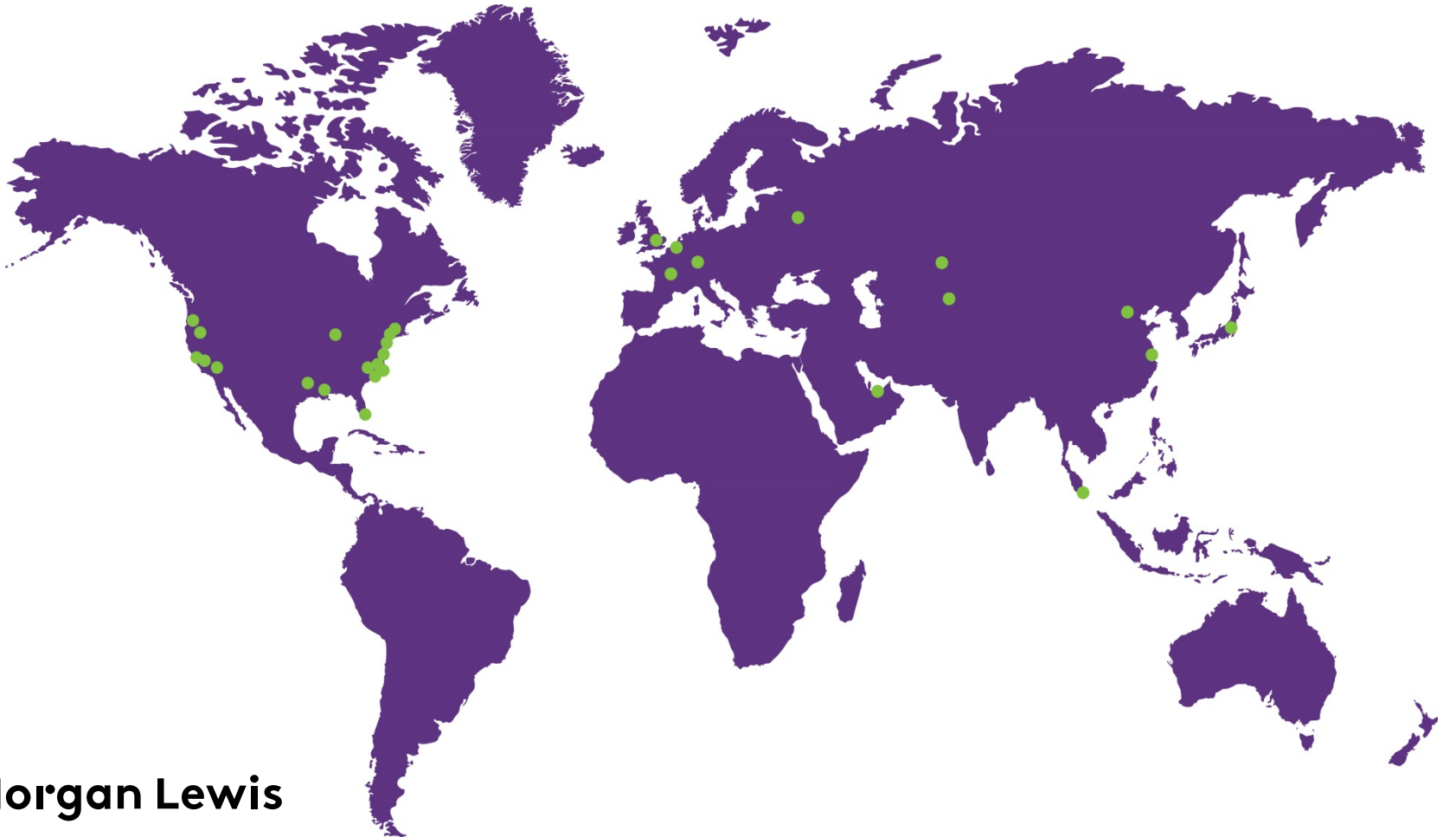
- Reasons to appeal
  - Ensures two bites at the apple to avoid liability
  - Employees less likely to owe penalties upon repayment of subsidy
  - May avoid a worker classification audit
- Reasons not to appeal
  - Notice may be accurate (e.g., employee is part-time, or was not offered coverage)
  - Employer may not be an “Applicable Large Employer” subject to mandate
  - May not be clear whether coverage is “affordable”
  - Failure to appeal marketplace notice does not prejudice an appeal to IRS
  - IRS may never assess this tax

## Our Global Reach

Africa  
Asia Pacific  
Europe  
Latin America  
Middle East  
North America

## Our Locations

Almaty  
Astana  
Beijing  
Boston  
Brussels  
Chicago  
Dallas  
Dubai  
Frankfurt  
Hartford  
Houston  
London  
Los Angeles  
Miami  
Moscow  
New York  
Orange County  
Paris  
Philadelphia  
Pittsburgh  
Princeton  
San Francisco  
Santa Monica  
Shanghai  
Silicon Valley  
Singapore  
Tokyo  
Washington, DC  
Wilmington



# THANK YOU

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