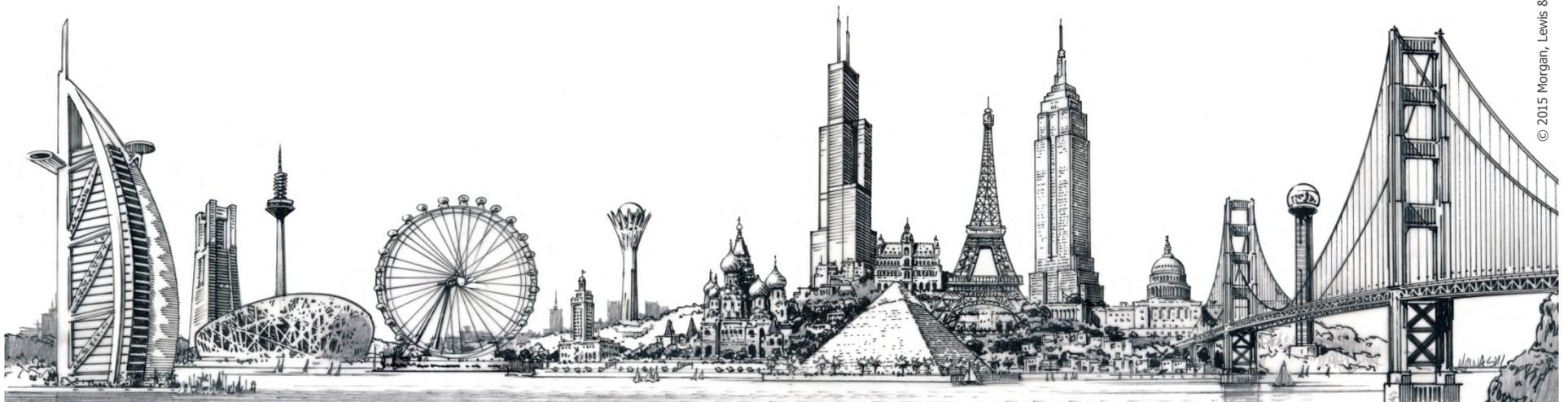


Morgan Lewis

**INVESTMENT ADVISORY:
REGULATORY, LEGAL AND
SUPERVISION ISSUES**
SIFMA C&L – ST. LOUIS REGIONAL SEMINAR

June 16, 2015



Our Panel

David C. Prince - Moderator

General Counsel and Chief Compliance Officer
Stephens Investment Management Group, LLC

Pete Driscoll

Managing Executive - Office of
Compliance Inspections and
Examinations

**U.S. Securities & Exchange
Commission**

Joe Fleming

Senior Vice President & Chief
Compliance Officer, Wealth
Management Division

RBC Capital Markets LLC

Jennifer L. Klass

Partner

Morgan, Lewis & Bockius LLP

Kenneth L. Wagner

Partner and Broker/Dealer
Compliance Officer

William Blair & Company, LLC



SEC Examination Priorities

- **SEC Examination Priorities and Regulatory Initiatives for 2015**
- **Advisory vs. Brokerage Account Selection**
 - Process for recommending advisory vs. brokerage accounts, including consideration of:
 - Fees charged
 - Services provided
 - Disclosures
 - Analysis surrounding account conversions (brokerage to advisory and vice versa)

SEC Examination Priorities

- **Substantiating the Provision of Advice**
 - Generally focuses on situations where rep provides advice
 - Inactive accounts (reverse churning)
 - High-cash balances
 - Concentrated positions, style drift and failure to adhere to asset allocation
 - Client meetings and communications (and documentation of meetings)

SEC Examination Priorities

■ **Trading Away and Best Execution in Wrap Programs**

- Sponsor focus on
 - Process for identifying and monitoring trading away activity, including whether it is motivated by manager conflicts of interest
 - Disclosure of trading away activity and fee consequences for clients
- Manager focus on substantiating best execution

■ **Sales Practices and Suitability**

- Mutual fund share class selection in advisory accounts
- Retirement investments and IRA rollovers
- Interest rate sensitive fixed income securities
- “Alternative” mutual funds

SEC Priorities

- **Compliance Policies and Internal Controls**
 - Effectiveness of key control functions and overall compliance program
 - Branch office supervision, including surveillance to identify branches that may be deviating from centralized compliance policies
 - Movement of representatives with disciplinary history between firms

DOL Fiduciary Rule Proposal

- Current law
 - ERISA plan fiduciaries must:
 - Adhere to prudent expert standard of care and duty to act solely in the interest of plan and participants and other fiduciary standards
 - ERISA plan and IRA fiduciaries must:
 - Comply with highly prescriptive prohibited transaction rules barring variable compensation and many other common transactions (absent an exemption)
- Proposed rule
 - Increases activities that would result in fiduciary status
 - Provides limited exceptions and exemptions
 - Imposes contractual “impartial conduct standards” including duty to act in client’s “best interests” that would apply as a condition of a new exemption
 - Changes current exemptions for fiduciaries

DOL Fiduciary Rule Proposal

■ Overview of Proposal

- Revised definition of “investment advice” fiduciary
 - Broader definition of activities that result in fiduciary status
 - Six explicit carve-outs
- Two new prohibited transaction exemptions
 - “Best Interest Contract” exemption
 - Principal transactions exemptions
- Amendments to ten current prohibited transaction exemptions, including exemptions for affiliated brokerage, affiliated mutual funds, insurance products, agency transactions, underwriting and margin loans

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Tokyo

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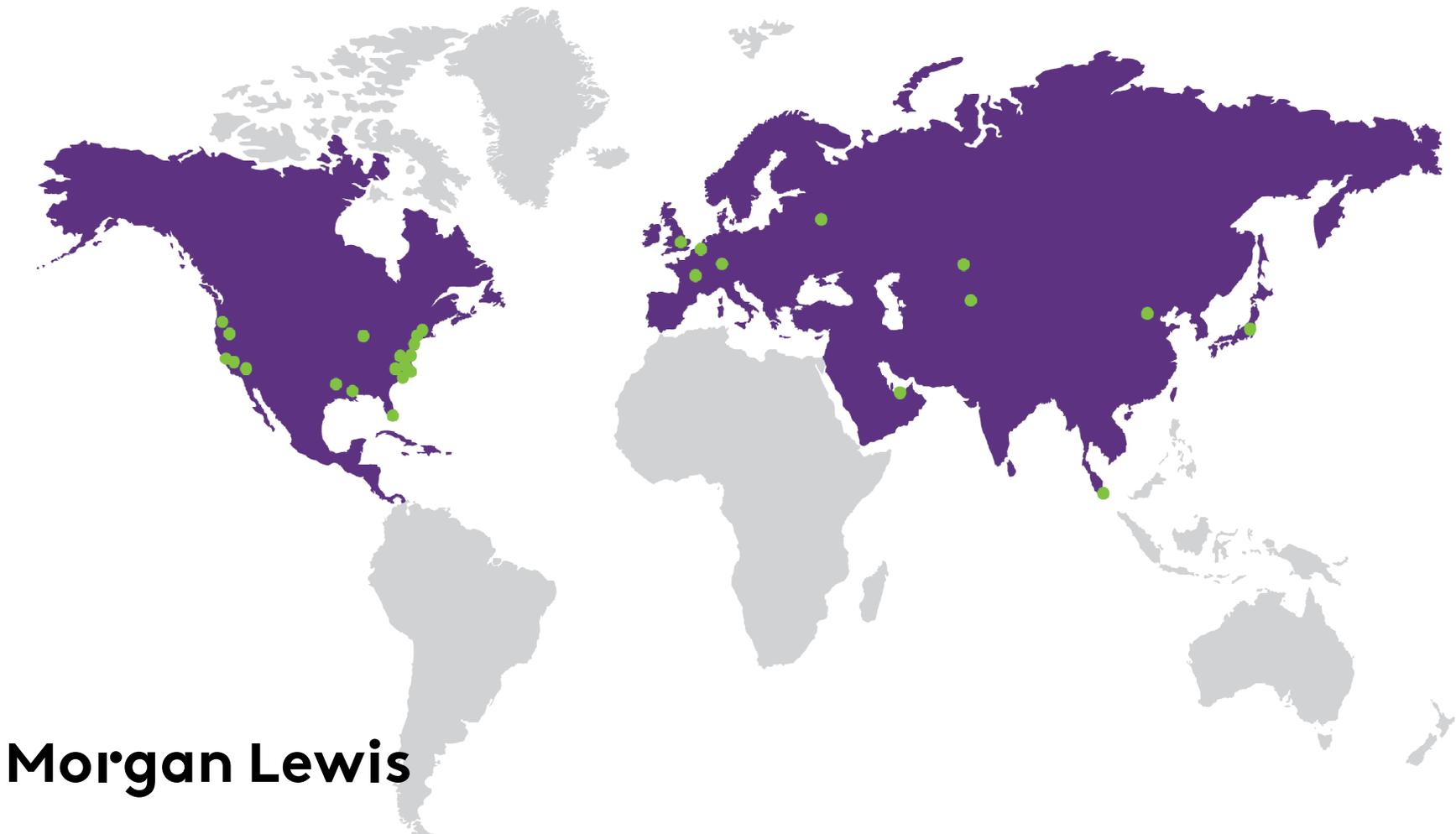
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