

# GLOBAL PUBLIC COMPANY ACADEMY

Current Developments and Trends in  
SEC Enforcement for Public Companies

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# Presenters



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# SEC Enforcement: Current Trends

- Increased enforcement activity against public companies and subsidiary defendants
- Sweeps
- Increasing monetary penalties
  - Civil penalties and disgorgement
  - SOX 304 clawbacks
  - Untethered to precedent
- Self reporting and cooperation credit
- Whistleblowers



# SEC Enforcement: Areas of Focus

- Cybersecurity
  - New cyber rules
  - Aggressive discovery
  - Internal controls
- Insider trading
  - Data analytics
  - 10b5-1 updates
- ESG
- Gatekeepers



# SEC Enforcement: Areas of Focus

- Executive perks and compensation
  - SOX 304 clawbacks
  - Airplane usage; commuting expenses
- Accounting and disclosures
  - Internal controls
- FCPA
- Reg F-D



# Best Practices

- When an issue is identified in which the SEC may take interest:
  - Consult with outside counsel early; proactive counseling and risk assessment
  - Internal investigations
  - Disclosure to external auditors
  - Responding to FINRA requests, including chronology requests
  - Investigate whistleblower issues

# Best Practices

- When the SEC sends a request to, or makes an inquiry of, your company:
  - Consult with outside counsel early
  - Voluntary requests are becoming more common
  - Counsel can provide keen insights into the investigatory and enforcement processes, and steps to limit exposure

# Best Practices

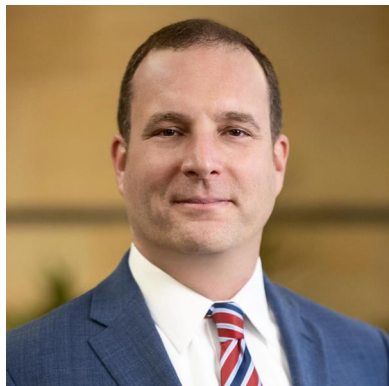
- When an issue is identified in which the SEC may take interest:
  - Loop in outside counsel early – proactive counseling and risk assessment
  - Internal investigations
  - Disclosure to external auditors
  - Responding to FINRA requests, including chronology requests
  - Investigate whistleblower issues
- When the SEC sends a request to, or makes an inquiry of, your company
  - Loop in outside counsel early
  - Voluntary requests are becoming more common
  - We can provide keen insights into the investigatory and enforcement processes, and steps to limit exposure



# Morgan Lewis Resources

- Deep bench of SEC enforcement attorneys
- Publication: *Current Developments on SEC Enforcement for Public Companies*
- CLEs, webinars, and roundtables on SEC enforcement trends and developments
- LawFlashes and other contemporaneous publications

# Biography



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Fred, a former supervisory trial counsel in the Enforcement Division of the US Securities and Exchange Commission, focuses on securities enforcement and government investigations, internal investigations, and complex commercial litigation. He handles all phases of complex federal and state court litigation and regularly obtains favorable pretrial, trial, and arbitration results for publicly held corporations, private equity funds, and other financial firm clients. At the SEC, Fred served as a key member of the management team responsible for counseling approximately 120 trial attorneys nationwide on the assessment of the evidentiary record, litigation strategies, settlement negotiations, and trial preparation.

# Biography



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Jeff is the co-leader of our securities enforcement practice. The former regional director of the Philadelphia Regional Office of the US Securities and Exchange Commission (SEC), Jeff defends public companies, financial services firms, and their executives in SEC, self-regulatory organization (SRO), and state enforcement matters.

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Kelly is the co-leader of the firm's securities enforcement practice and the firm's ESG and sustainability advisory practice. She previously held numerous national and regional leadership roles at the US Securities and Exchange Commission (SEC), including serving as the acting deputy director of the Division of Enforcement, as leader of the Enforcement Division's nationwide Climate and ESG Task Force, and as director of the SEC's Philadelphia Regional Office. Kelly advises and defends public companies, financial services clients, and their executives in SEC, self-regulatory organization (SRO), and state enforcement matters, and in internal investigations.

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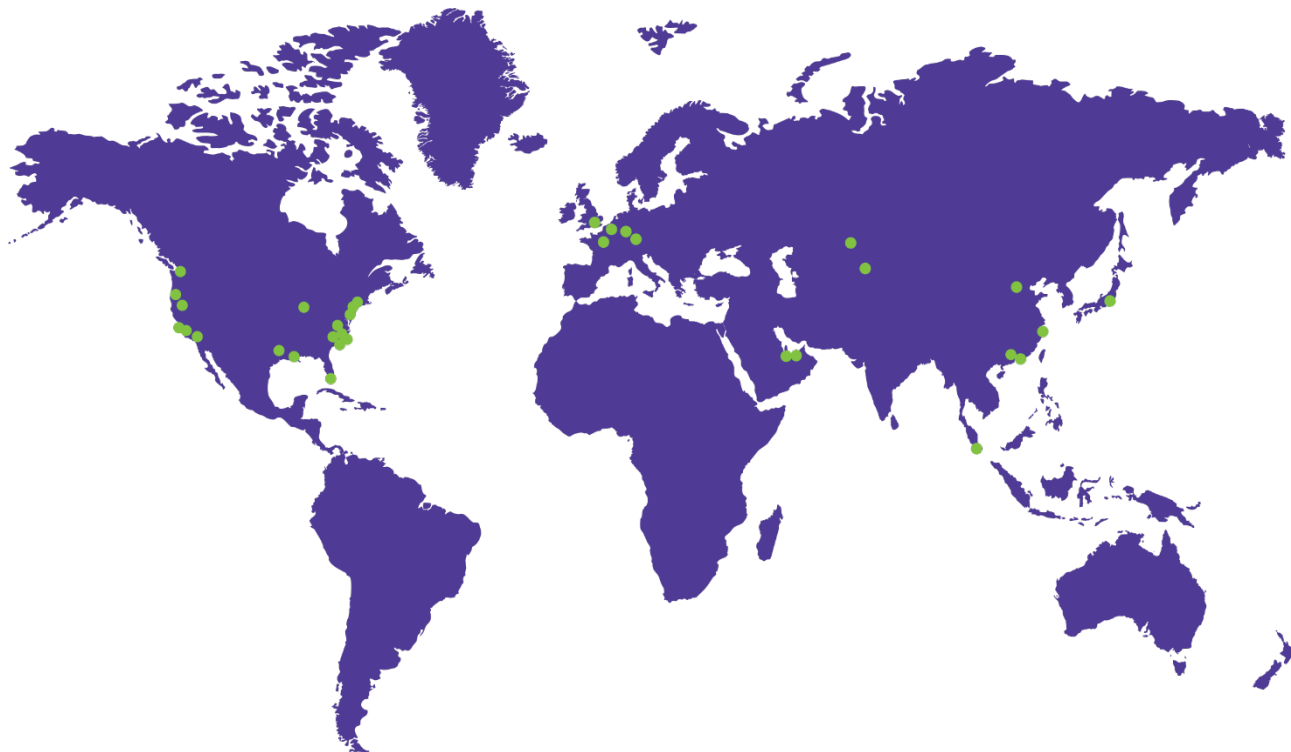
Emily focuses her practice on securities enforcement and litigation matters. Emily represents public companies and their officers, directors, and board committees, as well as financial services firms, hedge funds, private companies, and their executives, in regulatory and internal investigations, examinations, and civil litigation. Emily represents clients in enforcement and examination proceedings brought by the US Securities and Exchange Commission (SEC), Financial Industry Regulatory Authority (FINRA), and state regulators, and before federal and state trial and appellate courts across the United States.

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