



Utah Department of Commerce
Division of Securities



DIVISION OF SECURITIES UPDATE

August 4, 2017

Utah Division of Securities

Keith Woodwell

Benjamin Johnson

Ken Barton



Utah Department of Commerce

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AGENDA

Keith Woodwell -- Regulatory Statistics and
Enforcement Trends

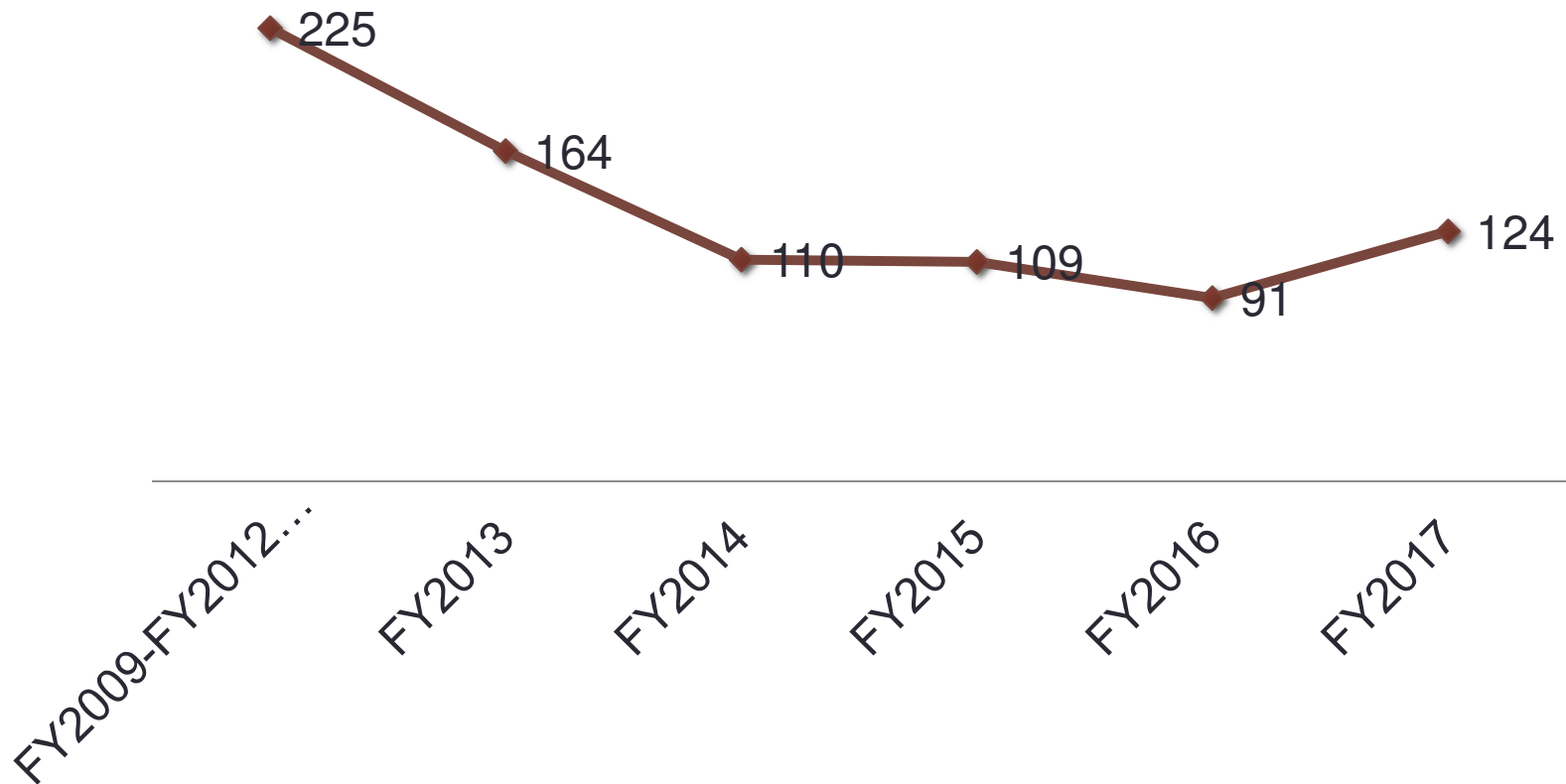
Benjamin Johnson – Corporate Finance
Developments

Ken Barton -- Market and Regulatory Changes
Impacting Securities Industry



Statistics and Trends

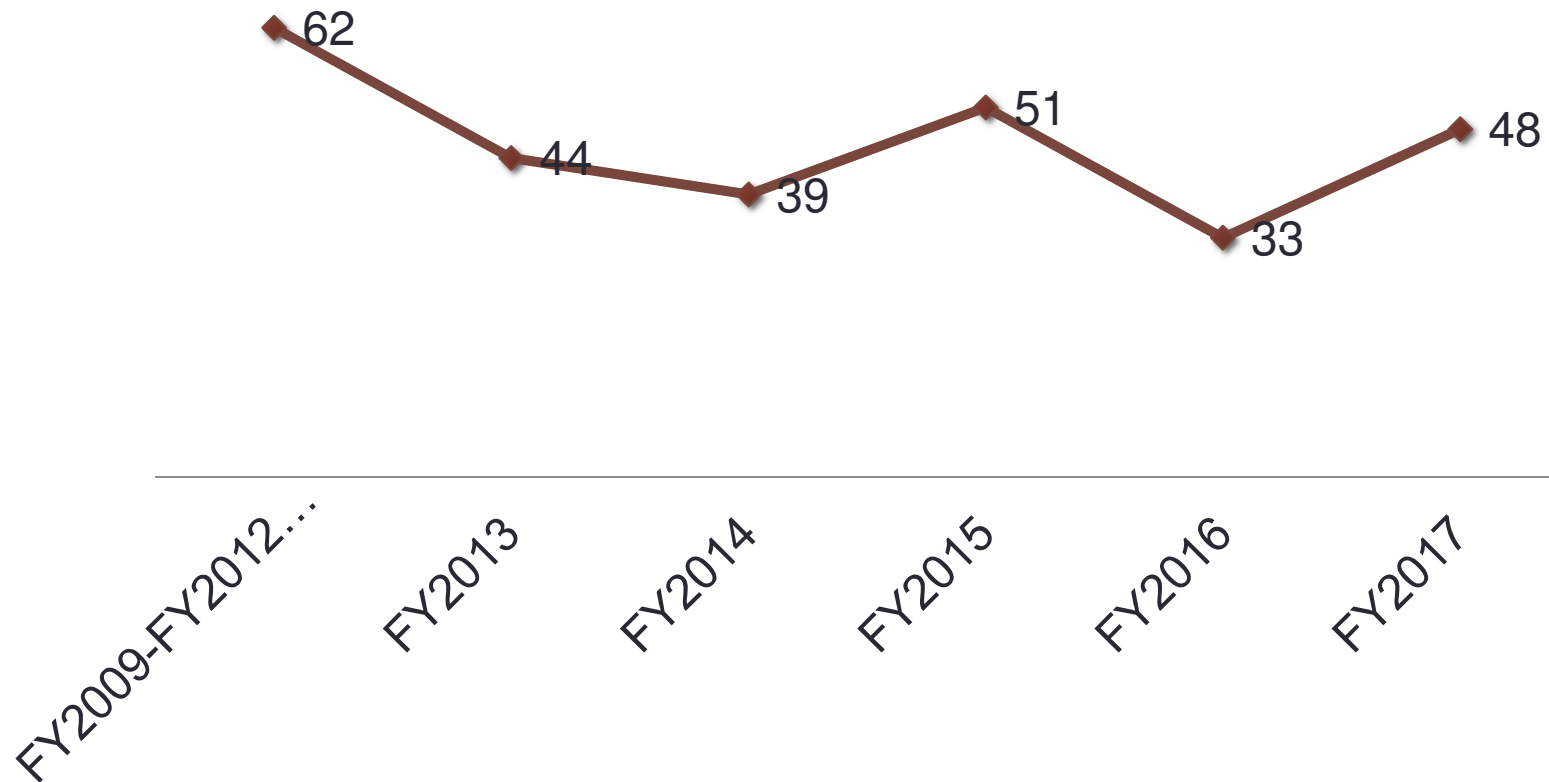
New Complaints





Statistics and Trends

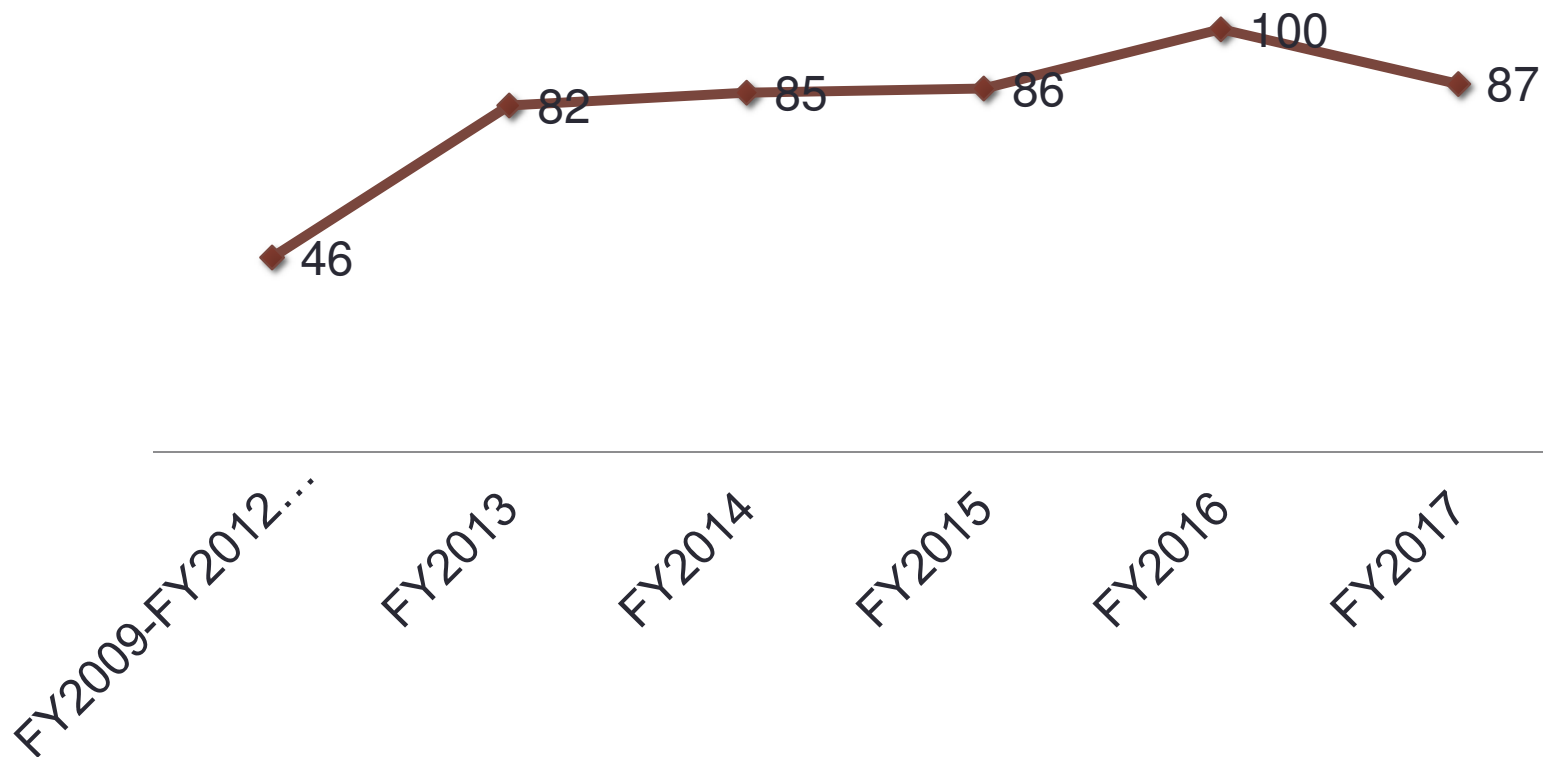
New Investigations





Statistics and Trends

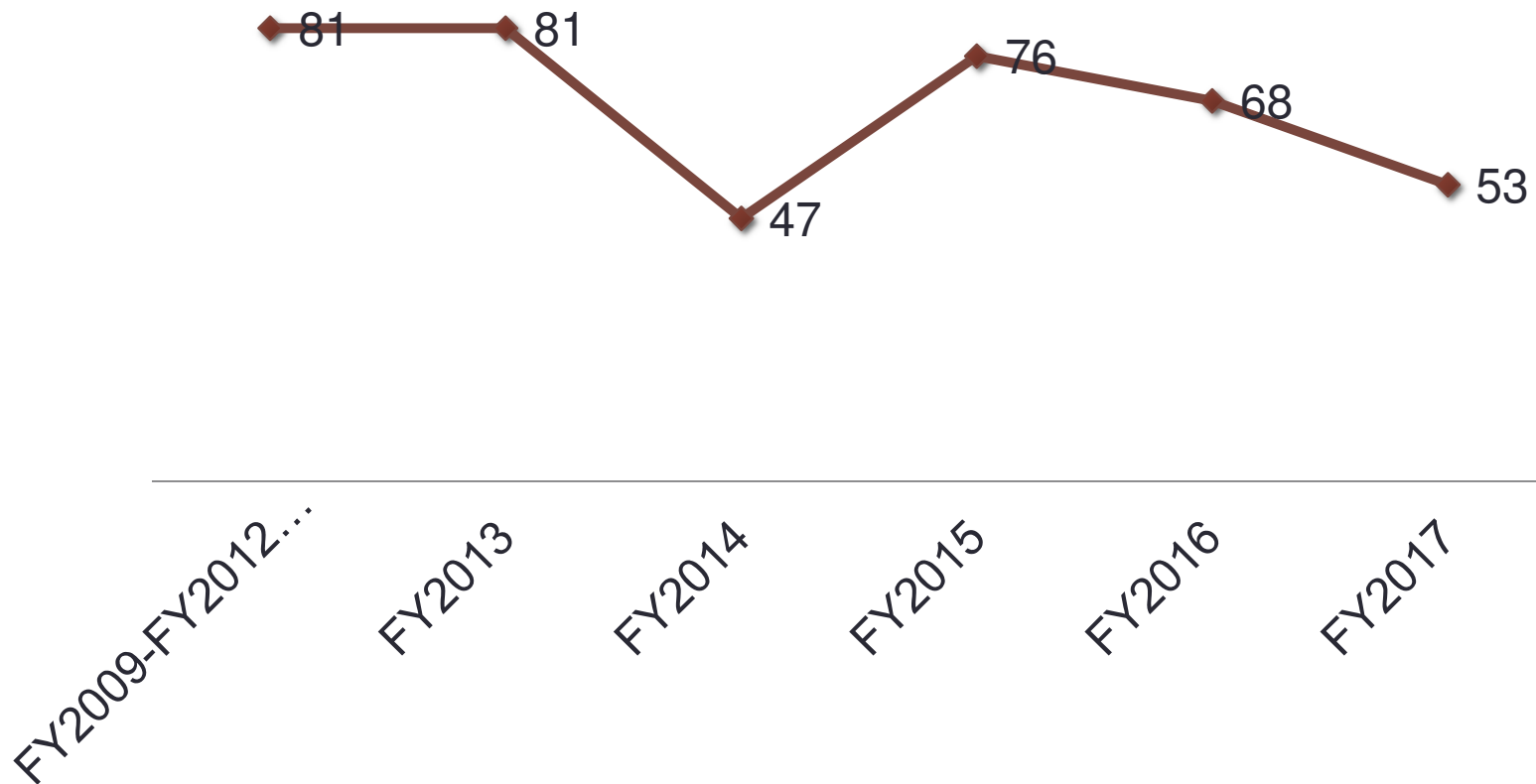
New Audits





Statistics and Trends

New Enforcement Cases

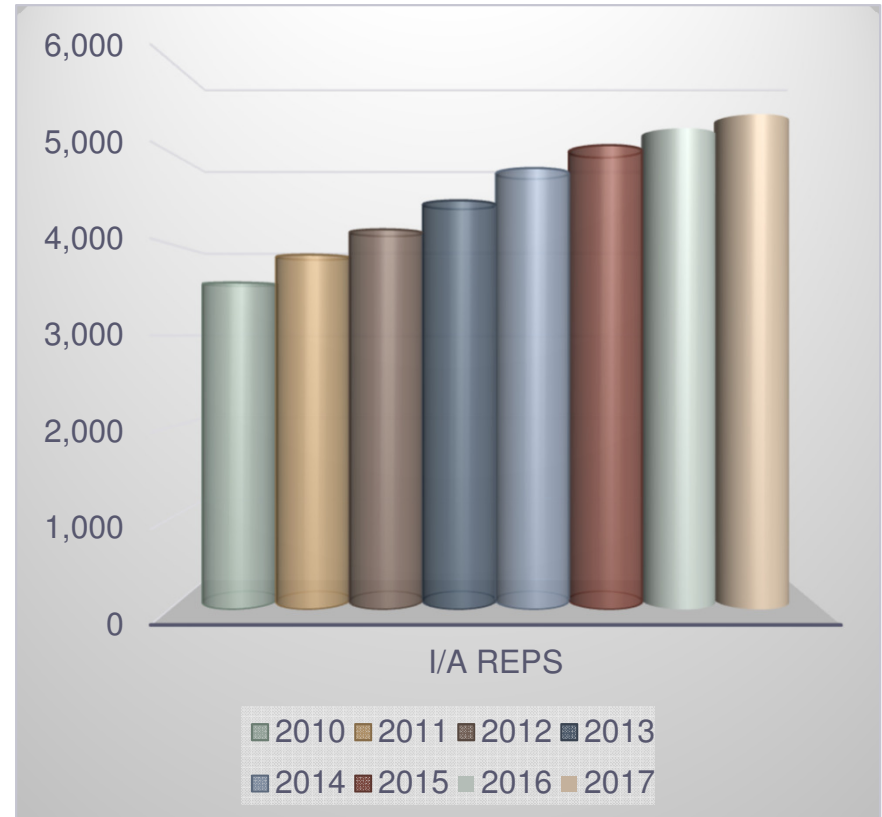




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Up 37%



Up 51%



Enforcement Trends

- Common Scams
 - Ponzi Schemes Connected to Real Estate
 - Advance Fee Schemes
 - New Technology Start-ups
- Common Violations Found in Exams
 - Books and Records
 - Reporting and Supervision of Outside Business Activities
 - Unlicensed Representatives
 - Unsuitable Investments



Areas of Enforcement Focus



- Alternative Investment Products Sales Practices
 - Advertising Materials, Seminars, Unlicensed Investment Advice by Insurance Agents
- Affiliate Relationships with Credit Unions
- Settlement Negotiations
 - Push for Admissions, Neither Admit nor Deny Converts to Admissions if Fines Not Paid, Deposit Fines in Attorney Trust Account



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Phillips v. Dept. of Commerce

- Utah Court of Appeals decision; May 18, 2017
- Securities fraud case related to bogus MLM and emerald investment
- Issues on Appeal by Phillips:
 - (1) part of the Division's enforcement action was time-barred
 - (2) the penalty exceeded the Commission's statutory authority
 - (3) the penalty was unconstitutionally excessive under the Eighth Amendment to the United States Constitution



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Phillips v. Dept. of Commerce

- No Statute of Limitations on Administrative Enforcement Actions
 - Statute has now been amended to impose 10-year statute of limitations on administrative actions
- Court analyzed the factors for determining the amount of a fine under R164-3-1(B)(1) (now codified as Utah Code Ann. Section 61-1-31) and held that the Commission needed to issue a “unitary fine” after consideration all of the factors outlined in the rule (now statute).



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Utah's "Securities Fraud Reporter Program Act" (Whistleblower Law)

- Low Threshold: Material assistance on case which results in collection of penalties over \$50,000.
- First Whistleblower Award granted in 2014.
- § 61-1-101 et. Seq.





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CORPORATE FINANCE DEVELOPMENTS

Benjamin Johnson
Director of Registration and Licensing



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DOL FIDUCIARY RULE

Ken Barton
Compliance Section Director



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DOL FIDUCIARY RULE

- Over \$24.5 trillion dollars of retirement assets
- Impacts retirement assets (401a, 401k, 403b, any type of IRA,)
- ERISA '74, TEFRA'82, TRA'86, etc. USC Labor Regulations and Internal Revenue Code
- Treasury (IRS) enforcement
- Rule under legal and political challenges
- SEC wants to make it's own rules

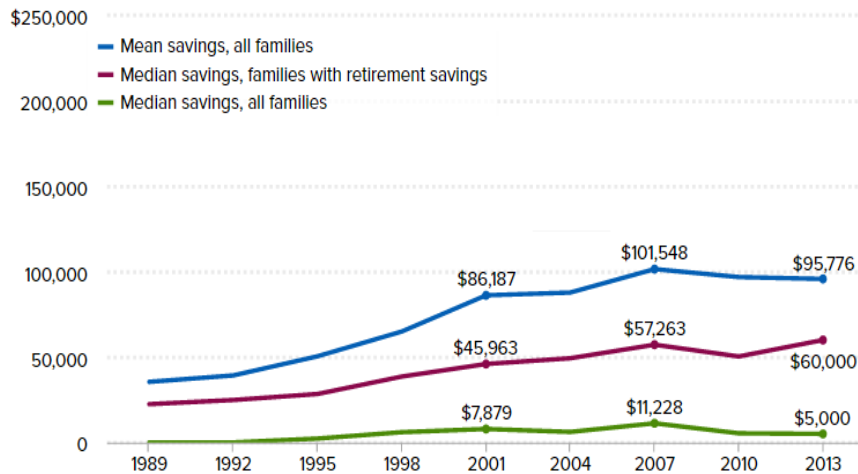


Why?

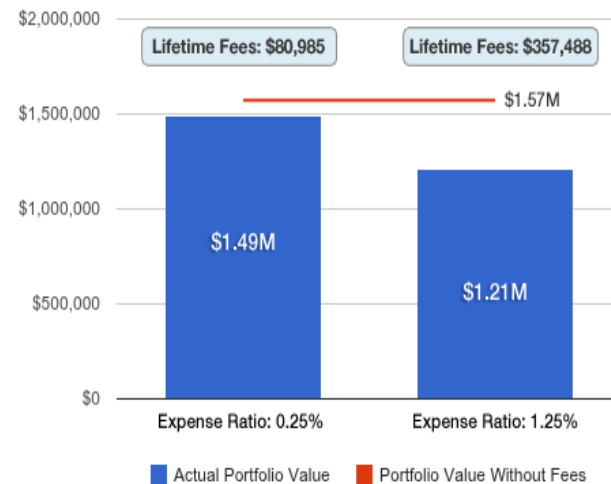
Mean w/Retirement Account \$95k
 Median w/Retirement Account \$60k
 Mean Savings All Families \$5K

Fees impact Retirement Savings

Retirement account savings of families age 32–61, 1989–2013 (2013 dollars)



Comparison of Two Portfolios at Retirement





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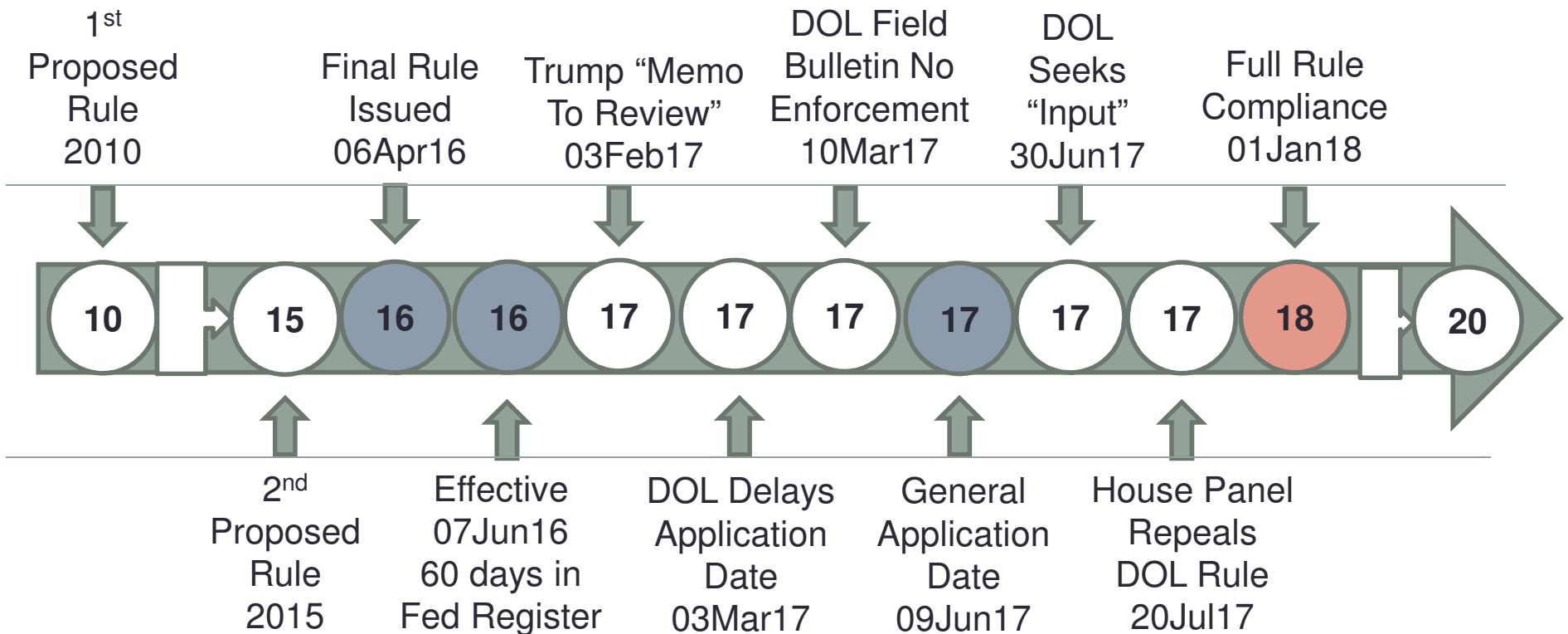


STATED PURPOSE

- Demographic changes in retirement saving
 - Defined contribution over pension
 - Longer life spans
- Consumer protections
- Over \$400 billion in fee savings
- Consumers believed providers had a “best interest of the customer responsibility”



“TORTURED” TIMELINE





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REGULATORY IMPACT

- Increasing number of RIA and IAR licensees
- New product offerings:
 - Fee-based version of commissioned products
- Higher fee products are going to suffer
- Lower revenues offset with cost savings move to digital and passive models



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DIGITAL INVESTMENT ADVICE



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Digital Evolution



Digital commerce



Digital consumption



Digital identity

Like all forms of evolution, digital progression is not linear; instead different stages can be overlapping and concurrent.

Source: PwC Strategy & Global Wealth Management Survey 2016



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Digital Overview

- Rapidly changing the advice offering
 - Growing comfort with technology
 - Boomers, GenXers, and Millennials
 - Shift to passive investments
 - 2016 AUM \$300b to 2020 AUM \$2.2t



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M&A and In House Offerings

Direct-to-Consumer Digital Wealth Management



Traditional Firms with In-House "Robo Advisor" Offerings





SEC CONCERNS

- “What does a fiduciary duty even look like or mean for a robo adviser” SEC Commissioner Kara Stein
- How can a robo adviser offer personalized advice?
- How can we know advice is free from conflicts of interest?
- How can we know the robo advice is acting in the best interest of the customer



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FINRA FINDING



- Investor Profiling

Asset Class	Digital Adviser A	Digital Adviser B	Digital Adviser C	Digital Adviser A	Digital Adviser D	Digital Adviser E	Digital Adviser F
Equity	90.1%	72.0%	51.0%	84.0%	60.0%	69.0%	72.2%
Domestic	42.1%	37.0%	26.0%	34.0%	30.0%	47.0%	28.9%
U.S. total stocks	16.2%	22.0%		34.0%		47.0%	13.0%
U.S. large-cap	16.2%		8.0%		19.0%		13.0%
U.S. mid-cap	5.2%						
U.S. small-cap	4.5%		18.0%		11.0%		2.9%
Dividend stocks		15.0%					
Foreign	48.0%	35.0%	25.0%	50.0%	30.0%	22.0%	43.3%
Emerging markets	10.5%	16.0%	13.0%	25.0%	9.0%	9.0%	17.0%
Developed markets	37.5%	19.0%	12.0%	25.0%	21.0%	13.0%	26.3%
Fixed income	10.1%	13.0%	40.0%	10.0%	21.5%	11.0%	15.0%
Developed markets bonds			15.0%		2.5%		4.1%
U.S. bonds	4.9%	6.0%	25.0%	10.0%	12.0%		10.9%
International bonds	3.6%						
Emerging markets bonds	1.6%	7.0%			7.0%		
Other	0.0%	15.0%	9.0%	6.0%	10.0%	16.0%	12.8%
Real estate		15.0%	9.0%	6.0%	5.0%		12.8%
Currencies						2.0%	
Gold & precious metals					5.0%		
Commodities						14.0%	
Cash					8.5%	4.0%	

Asset Allocation Models for a 27-Year-Old Investing for Retirement, September 2015



REGULATORY IMPACT

- Governance and Supervision
- Algorithms
- Input  **Black Box**  Outputs
- Hidden conflicts of interests
- Non-Quantitative customer events
- Digital product development faster than regulations



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Q & A

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